

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

10	KATYA WIEBER,)	Case No. TAC 69-94
)	
11	Petitioner,)	
)	
12	vs.)	DETERMINATION OF
)	CONTROVERSY
)	
13	PRESTIGE MODEL AND TALENT MANAGEMENT;)	
	DARLENE DAMALERIO-SAN PEDRO,)	
14)	
	Respondent.)	
15	_____)	

16 INTRODUCTION

17 The above-captioned petition was filed on November 14,
18 1994 by KATYA WIEBER (hereinafter "Petitioner") alleging that
19 DARLENE DAMALERIO-SAN PEDRO dba PRESTIGE MODEL & TALENT AGENCY
20 (hereinafter "Respondent" or "PRESTIGE") violated the Talent
21 Agencies Act (Labor Code §1700, et seq.) by charging Petitioner for
22 printing photographs. By this petition, WIEBER seeks reimbursement
23 of the amount paid to PRESTIGE for printing and the amount paid to
24 the photographer who took the photographs.

25 Respondent, although having been served with the
26 petition, failed to file an answer. A telephonic hearing was
27 thereupon scheduled for April 7, 1995 in San Francisco, California,
28 before the undersigned attorney for the Labor Commissioner. The

1 parties were duly served with notice of this hearing. Petitioner
2 appeared in propria persona. Respondent failed to appear. Based
3 upon the testimony and evidence presented at this hearing, the
4 Labor Commissioner adopts the following Determination of
5 Controversy.

6 FINDINGS OF FACT

7 1. In December 1993, after finding PRESTIGE listed in
8 the San Francisco Yellow Pages under the heading "modeling
9 agencies", Petitioner sent photographs of her two-year-old son,
10 Sasha, to PRESTIGE in the hope of obtaining Respondent's services
11 as a talent agent.

12 2. In January 1994, DARLENE DAMALERIO-SAN PEDRO
13 telephoned Petitioner and scheduled an appointment to meet with
14 Petitioner at Respondent's business address. At this meeting, on
15 January 31, 1994, SAN PEDRO gave Petitioner a business card which
16 falsely stated that PRESTIGE was then "state licensed" as a model
17 agency. SAN PEDRO told Petitioner that in order for PRESTIGE to
18 represent Sasha, Petitioner would need to obtain "professional
19 quality" photographs, and that once these photographs were
20 obtained, PRESTIGE would be able to secure modeling employment for
21 Sasha.

22 3. Petitioner agreed to have PRESTIGE serve as her
23 son's modeling agent. Petitioner made arrangements with a
24 photographer who had been recommended by SAN PEDRO, and on
25 March 14, 1994, Petitioner paid this photographer \$200 for taking
26 photographs of her son.

27 4. On March 28, 1994, SAN PEDRO selected the slides
28 that would be used for printing ZED cards. SAN PEDRO told

1 Petitioner that it would cost \$240 to print the ZED cards, and
2 Petitioner provided SAN PEDRO with a check, made out to PRESTIGE in
3 the amount of \$240, for that purpose.

4 5. Despite numerous demands, PRESTIGE never provided
5 Petitioner with the ZED cards and never returned the slides that
6 Petitioner gave to SAN PEDRO to use in producing the ZED cards. By
7 letter to PRESTIGE dated September 15, 1994, Petitioner demanded
8 reimbursement of the amounts paid for photographs and ZED card
9 printing. This demand for reimbursement was ignored.

10 6. Petitioner's son never obtained any modeling
11 employment through PRESTIGE. As a result of PRESTIGE's efforts,
12 Sasha was sent out for one audition, but it did not result in an
13 employment offer.

14 7. On June 6, 1994, Respondent file an application with
15 the Labor Commissioner for a talent agency license. Respondent was
16 not licensed as a talent agency at any time until June 9, 1994,
17 when it received a temporary license from the Labor Commissioner.
18 Following the expiration of this temporary license, on October 18,
19 1994, Respondent has not been licensed. Respondent's application
20 for a permanent license was denied by the Labor Commissioner on
21 April 7, 1995.

22 CONCLUSIONS OF LAW

23 1. Petitioner's minor child is an "artist" within the
24 meaning of Labor Code §1700.4(b). Respondent is a "talent agency"
25 within the meaning of Labor Code §1700.4(a), which defines "talent
26 agency" as a person who "engages in the occupation of procuring,
27 offering, promising, or attempting to procure employment or
28 engagements for an artist". The Labor Commissioner has

1 jurisdiction over this matter pursuant to Labor Code §1700.44.

2 2. Labor Code §1700.5 provides that "no person shall
3 engage in or carry on the occupation of a talent agency without
4 first procuring a license therefor from the Labor Commissioner".
5 Respondent violated Labor Code §1700.5 by advertising its services
6 in the Yellow Pages when it was not licensed by the Labor
7 Commissioner, by entering into an agreement with Petitioner to
8 represent Petitioner's son as a talent agent, and by sending
9 Petitioner's son to an audition for a modeling job.

10 3. Labor Code §1700.40 provides that "no talent agency
11 shall collect a registration fee". Labor Code §1700.2(b) defines
12 the term "registration fee" to include "any charge made . . . to an
13 artist for . . . photographs, film strips, video tapes, or other
14 reproductions of the [artist]." Thus, by collecting \$240 from
15 Petitioner for the printing of ZED cards, Respondent violated Labor
16 Code §1700.40.

17 4. Labor Code §1700.40 further provides that if a
18 talent agency collects any fee or expenses from an artist in
19 connection with the agency's efforts to obtain employment for the
20 artist, and the artist fails to procure the employment, or fails to
21 be paid for the employment, the agency must, upon demand, repay to
22 the artist the fees and expenses that were paid. If repayment of
23 such fee is not made within 48 hours of the demand, section 1700.40
24 requires the talent agency to "pay to the artist an additional sum
25 equal to the amount of the fee", as a penalty for the agency's
26 failure to make prompt repayment. Here, Respondent's failure to
27 respond to Petitioner's written demand for repayment of the \$240
28 paid to Respondent for ZED cards compels imposition of this penalty

1 in the amount of \$240.

2 5. Turning to Petitioner's claim that Respondent should
3 reimburse her for the \$200 she paid to the photographer for the
4 slides that were to be used for the ZED cards, generally a talent
5 agency is not responsible for reimbursement of funds that it did
6 not collect but rather, that were paid directly by the artist to an
7 independent photographer. Here, however, Respondent was entrusted
8 with custody of these slides in order to print the ZED cards, a
9 service for which Respondent received payment from Petitioner. By
10 its failure to deliver the ZED cards to Petitioner, and its
11 subsequent refusal to comply with Petitioner's demand for return of
12 the slides, Respondent prevented Petitioner from using the slides
13 for the purpose for which they had been purchased. For this
14 reason, Petitioner is entitled to reimbursement from Respondent for
15 \$200, the full amount that Petitioner paid for these slides.

16 6. Respondent's false claim, printed on its business
17 card, that it was licensed by the State as a talent agency,
18 constitutes a deceptive and fraudulent business practice, designed
19 to induce artists to employ PRESTIGE in reliance upon this
20 misrepresentation. By making this false claim, PRESTIGE violated
21 Labor Code §1700.32, which provides that "no talent agency shall
22 publish or cause to be published any false, fraudulent, or
23 misleading information, representation, notice or advertisement."

24 7. Pursuant to Civil Code sections 3287(a) and 3289(b),
25 Petitioner is entitled to interest on all amounts found owed in
26 this proceeding, from the date of Petitioner's demand letter to
27 Respondent (September 15, 1994), at the rate of 10% per year.

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ORDER

For all of the above-stated reasons, IT IS HEREBY ORDERED that Respondent DARLENE DAMALERIO-SAN PEDRO dba PRESTIGE MODEL & TALENT AGENCY pay Petitioner KATYA WIEBER \$240 for reimbursement of the unlawfully collected fee for ZED cards, \$200 for reimbursement of the cost of the improperly withheld slides, \$40.33 for interest on the above-amounts, and \$240 as a penalty pursuant to Labor Code §1700.40, for a total of \$720.33.

DATED: 8/16/95

Miles E. Locker
MILES E. LOCKER
Attorney for Labor Commissioner

The above Determination is adopted by the Labor Commissioner in its entirety.

DATED: 8/18/95

Victoria L. Bradshaw
VICTORIA L. BRADSHAW
STATE LABOR COMMISSIONER

