

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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6
7 BEFORE THE LABOR COMMISSIONER
8 OF THE STATE OF CALIFORNIA
9

10	HELEN CARO, as guardian ad litem)	No. TAC 10-96
	for IVY CARO,)	
11)	
	Petitioner,)	DETERMINATION OF
12	vs.)	CONTROVERSY
)	
13	IVAN ADKISON dba ADKISON MODEL)	
	MANAGEMENT,)	
14)	
	Respondent.)	
15	_____)	

16 INTRODUCTION

17 The above-captioned petition to determine controversy, filed
18 on April 25, 1996, alleges that respondent failed to pay
19 petitioner for amount earned in connection with modeling work that
20 had been procured by respondent. The petition was served on
21 respondent on April 9, 1996. Respondent failed to file an answer
22 to the petition. Notice of a hearing was duly served on all
23 parties on June 3, 1996. This hearing was held, as scheduled on
24 July 1, 1996 in San Francisco, California, before the undersigned
25 attorney for the Labor Commissioner, specially designated as
26 hearing officer. Petitioner appeared in propria persona;
27 Respondent failed to appear. Based on the evidence presented at
28 hearing, the Labor Commissioner adopts the following determination

1 of controversy.

2 FINDINGS OF FACT

3 1. In November 1995, Michael Washington, a talent agent
4 working for respondent Ivan Adkison dba Adkison Model Management,
5 advised Helen Caro of a modeling assignment available for her
6 2-year-old daughter, Ivy, with Mervyn's. Caro agreed to
7 compensate respondent for acting as her daughter's talent agency
8 by allowing respondent to charge a 20% commission on Ivy's
9 modeling earnings.

10 2. Ivy Caro performed these modeling services for Mervyn's
11 on November 13 and November 27, 1995. She worked 1.75 hours on
12 November 13, for which she was to be paid \$113.75 (based upon a
13 rate of \$65 per hour), and 1 hour on November 27, for which she
14 was to be paid \$32.50 (a "back-up" rate, since her modeling
15 services were not used at the photo shoot), for a total of \$146.25
16 earned. On both of these days, a representative from Mervyn's
17 signed a voucher approving these hours, and petitioner gave these
18 vouchers to respondent so that respondent could prepare the
19 necessary invoices in order to bill Mervyn's for Ivy's modeling
20 services.

21 3. Despite petitioner's repeated demands for payment,
22 respondent has not paid petitioner anything for these jobs.

23 4. In June 1996, petitioner called Mervyn's to inquire as to
24 whether they paid respondent for Ivy's modeling services.
25 Petitioner was told that respondent sent an invoice to Mervyn's on
26 January 4, 1996 in the amount of \$32.50 for the modeling work
27 performed on November 13, 1995, and that Mervyn's paid this
28 invoice in full on January 24, 1996 by sending a check to

1 respondent, but that respondent never invoiced Mervyn's for the
2 modeling work that Ivy performed on November 27, 1995.

3 5. Neither respondent nor Michael Washington has ever been
4 licensed as a talent agency by the State Labor Commissioner.

5 6. Petitioner incurred \$25 in costs in connection with the
6 service of the petition on the respondent.

7 CONCLUSIONS OF LAW

8 1. Petitioner is an "artist" within the meaning of Labor
9 Code §1700.4(b). Respondent is a "talent agency" within the
10 meaning of Labor Code §1700.4(a). The Labor Commissioner has
11 jurisdiction over this controversy pursuant to Labor Code
12 §1700.44.

13 2. Under Labor Code §1700.25, a talent agency that receives
14 any payment of funds on behalf of an artist must disburse those
15 funds (less the agency's lawful commission) to the artist within
16 thirty days of the receipt of those funds. Respondent's failure
17 to disburse the \$32.50 in funds it received on January 24, 1996 on
18 behalf of Ivy Caro constitutes a violation of Labor Code §1700.25.

19 3. A talent agency owes a fiduciary obligation to an artist
20 to take all reasonable and necessary actions to collect amounts
21 earned by the artist in connection with employment that has been
22 procured by the agency on behalf of the artist. A talent agency
23 obviously breaches this fiduciary obligation by failing to send an
24 invoice to the customer who purchased the artist's modeling
25 services, particularly where the customer is ready and willing to
26 pay for these services immediately upon the receipt of an invoice.
27 Here, respondent breached its fiduciary duty to petitioner by
28 failing to take any steps to bill Mervyn's for the modeling

1 services performed by Ivy Caro on November 27, 1995. As a
2 consequence of this breach of fiduciary duty, respondent is liable
3 to petitioner for the full amount of Ivy Caro's earnings for the
4 modeling work performed on November 27, 1995, namely, \$113.75.

5 4. Labor Code §1700.5 provides that "no person shall engage
6 in or carry on the occupation of a talent agency without first
7 procuring a license therefor from the Labor Commissioner." Any
8 agreement between an artist and an unlicensed talent agency is
9 unlawful and void ab initio, and the unlicensed talent agency has
10 no right to retain commissions arising under such an agreement.
11 Waisbren v. Peppercorn Productions, Inc. (1995) 41 Cal.App.4th
12 246, Buchwald v. Superior Court (1967) 254 Cal.App.2d 347.

13 5. Here, the agreement to allow respondent to retain
14 commissions on Ivy Caro's earnings is void from its inception and
15 respondent has no right to charge commissions or to retain any
16 amount of petitioner's earnings for the Mervyn's jobs.

17 6. Under Labor Code §1700.25(e) and Civil Code sections 3287
18 and 3289, petitioner is entitled to interest on her improperly
19 withheld earnings, at the rate of 10% per year from January 24,
20 1996, in the present amount of \$9.75.

21 7. Petitioner is also entitled to reimbursement of her costs
22 for serving the petition in the amount of \$25.

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ORDER

For the above reasons, IT IS HEREBY ORDERED that Respondent IVAN ADKISON, an individual dba ADKISON MODEL MANAGEMENT, pay petitioner HELEN CARO, as guardian ad litem for IVY CARO, \$146.25 for the amounts earned in connection with the Mervyn's modeling jobs, \$9.75 in interest on this amount, and \$25 in costs, for a total of \$181.00.

DATED: 9/26/96

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

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

DATED: 10/1/96

Roberta E. Mendonca
ROBERTA E. MENDONCA
STATE LABOR COMMISSIONER

