

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

INTRODUCTION

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

