

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
4 BY: MILES E. LOCKER, No. 103510  
5 45 Fremont Street, Suite 3220  
6 San Francisco, CA 94105  
7 Telephone: (415) 975-2060

8 Attorney for the Labor Commissioner

9 BEFORE THE LABOR COMMISSIONER  
10 OF THE STATE OF CALIFORNIA

11 TAMERA L. MORDWINOW, ) No. TAC 31-96  
12 )  
13 Petitioner, )  
14 vs. )  
15 MARY REJES VALENCIA, an individual ) DETERMINATION OF CONTROVERSY  
16 dba THE MODELING CONNECTION, )  
17 Respondent. )  
18 )

19 INTRODUCTION

20 The above-captioned petition was filed on October 1, 1996,  
21 alleging that Respondent was operating as an unlicensed talent  
22 agency, and seeking the reimbursement of money that petitioner  
23 paid to Respondent for photographs and zed cards. Respondent was  
24 personally served with a copy of the petition on February 20,  
25 1997. A hearing was scheduled before the undersigned attorney,  
26 specially designated by the Labor Commissioner to hear this  
27 matter, and the hearing commenced as scheduled on April 22, 1997,  
28 in San Jose, California. Petitioner appeared in propria persona;  
Respondent appeared and was represented by attorney Donn Waslif.

Based upon the testimony and evidence received at this

1 hearing, the Labor Commissioner adopts the following determination  
2 of controversy.

3 FINDINGS OF FACT

4 1. The parties stipulated that Respondent has never been  
5 licensed by the State Labor Commissioner as a talent agency.

6 2. Petitioner first came into contact with the Respondent  
7 during the summer of 1995, when she stopped by Respondent's booth  
8 at the County Fair, and told the person staffing the booth that  
9 she might be interested in exploring modeling opportunities for  
10 her two daughters. Petitioner was asked to write out her name,  
11 address and telephone number on a sign-up sheet, and was told that  
12 she would be contacted by the Respondent.

13 3. On or about October 7, 1995, petitioner received a  
14 telephone call from The Modeling Connection, and was asked to  
15 bring her two daughters in that same day for an interview and  
16 audition. Petitioner testified that both Mary Rejes Valencia and  
17 Valencia's secretary, Nickelle, insisted that the interview and  
18 audition had to be done that same day because there were one or  
19 two places open for a Christmas catalog shoot that was going to  
20 take place in the very near future, and that any delay would mean  
21 losing out on this shoot. Petitioner brought her daughters to  
22 Respondent's office, and was then told that she would have to pay  
23 The Modeling Connection to schedule a photo shoot with a hair  
24 stylist and make-up artist, and have photographs and zed cards  
25 produced for her two daughters. At first, Valencia requested  
26 \$1,000 for each daughter, but then agreed to reduce the price to  
27 \$795 each, for a total of \$1,590. Credit card records show that  
28 petitioner paid \$1,590 to Respondent on October 7, 1996.

1           4. At this same time, Petitioner signed two copies (one for  
2 each daughter) of a "Professional Models Agreement", a printed  
3 contract that had been prepared by The Modeling Connection. These  
4 Agreements were also signed by Valencia. These Agreements state  
5 that the photo shoot was scheduled for October 15, that the amount  
6 paid to The Modeling Connection was non-refundable, that 150 zed  
7 cards would be produced for each model but that "The Modeling  
8 Connection will keep 50 zed cards in order to help further my  
9 modeling career," and finally, that the model gives "The Modeling  
10 Connection Model Management office and its agents the irrevocable  
11 right to use my pictures in any way they deem appropriate to  
12 further my modeling career."

13           5. Petitioner testified that during her conversation with  
14 Valencia at The Modeling Connection office, Valencia assured her  
15 that "we will represent your daughters and promote their career in  
16 modeling", that "you will make the money [being charged for the  
17 photo shoot and zed cards] back by December because of the money  
18 you will make on the [upcoming Christmas catalog] photo shoot",  
19 and that "we will send your daughters out on auditions, and I have  
20 no doubt they'll do well and get business." Petitioner testified  
21 that she would not have agreed to pay for the photo shoot and zed  
22 cards if it weren't for the likelihood of getting future modeling  
23 employment through The Modeling Connection.

24           6. The next day, petitioner concluded that she had been  
25 pressured into signing the agreements, and she faxed a letter to  
26 Respondent's office, stating that she wished to rescind the  
27 agreements and requesting a refund of the amount she had paid. A  
28 few days later, Valencia told petitioner that she could not then

1 refund the money because it had been charged on a credit card, but  
2 that once it was posted, she would notify the credit card company  
3 to reverse the charge. A few days after that, petitioner  
4 telephoned Respondent's office to find out why the charge had not  
5 yet been reversed. Valencia's secretary then told petitioner that  
6 the matter was out of their hands, and that further communications  
7 should be addressed to respondent's attorney or accountant.  
8 Further attempts by petitioner to resolve this matter proved  
9 unsuccessful, and she subsequently filed this petition with the  
10 Labor Commissioner.

11 7. Valencia's testimony sharply differed from that of the  
12 petitioner in several important respects. Respondent testified  
13 that she never told the petitioner that she would find, or try to  
14 find, modeling work for her daughters. According to Respondent,  
15 The Modeling Connection is nothing more than a "middleman",  
16 providing a service to aspiring models by "setting them up with a  
17 photo shoot and getting their pictures for them at a better price  
18 than they could otherwise get, because we do groups of girls."  
19 Valencia testified that the next step for an aspiring model after  
20 obtaining the photos and zed cards from the Respondent is to find  
21 a modeling agent, since it is the modeling agent who gets work for  
22 the model. According to Valencia, The Modeling Connection does  
23 not act as a talent agency, and she specifically made that clear  
24 to petitioner during their meeting on October 7, 1996. Nor,  
25 according to Valencia, does her business provide any sort of  
26 instruction or training to aspiring models, or otherwise function  
27 as a modeling school. In short, Valencia explained that the only  
28 role provided by her business is to assist aspiring models in

1 getting their photo portfolios and zed cards prepared.

2 8. For a number reasons, Valencia's testimony cannot be  
3 credited. To begin with, the undersigned hearing officer has  
4 presided over dozens of talent agent controversy hearings during  
5 the past five years, half of which have involved instances where  
6 models were charged for photo shoots, photographic printing, and  
7 the production of portfolios and zed cards. In not a single one  
8 of these cases was a model charged as much as Valencia testified  
9 she is currently charging for this service, \$1,500. Indeed, even  
10 the "reduced" amount that Valencia charged to petitioner - \$795  
11 for each daughter, purportedly "discounted" from her then standard  
12 price of \$995 - is way above the customary range for these  
13 services, namely \$250 to \$500. The fact that Valencia  
14 characterized her absurdly high charges as "a better price than  
15 otherwise available" speaks volumes about her credibility as a  
16 witness.

17 Valencia's testimony is also called into question by the  
18 provisions of the "Professional Models Agreement" under which the  
19 Respondent is given "the irrevocable right to use [the model's]  
20 pictures in any way [deemed] appropriate to further [her] modeling  
21 career", and it is spelled out that Respondent "will keep 50 zed  
22 cards in order to further [the model's] modeling career." When  
23 asked why Respondent kept these zed cards, and what Respondent did  
24 with these cards to further any model's career, Valencia replied  
25 that she never showed these zed cards to third parties in an  
26 attempt to procure work for any models, and never offered to show  
27 these zed cards to anyone on behalf of the models, but merely kept  
28 these extra zed cards "for our own promotional purposes" and so

1 that the models would have more zed cards available to them in  
2 case they ran out of the ones given to them. Whether or not these  
3 statements are in fact true, the models who signed the  
4 "Professional Models Agreement" could draw only one inference from  
5 these express provisions of the agreement - - namely, that  
6 Respondent would use these zed cards, by showing them to potential  
7 purchasers of modeling services, as a means of trying to procure  
8 modeling employment for the individuals pictured on the zed cards.  
9 The implications that derive from the statements contained in the  
10 Agreement are not consistent with Valencia's testimony that she  
11 "made it clear" to petitioner that The Modeling Connection does  
12 not act as a talent agency.

13           Finally, the fact that the name and telephone number of  
14 The Modeling Connection is printed on all zed cards purchased from  
15 the Respondent, as admitted by Valencia in her testimony, would  
16 unquestionably lead the purchaser (or, for that matter, any third  
17 party employer looking at the zed card in deciding whether to  
18 offer a modeling job to the model) to conclude that Respondent was  
19 representing the model as his or her talent agency. By printing  
20 her business name and telephone number on these zed cards,  
21 Respondent held herself out as a talent agency. It is a standard  
22 business practice among talent agents to have their business names  
23 and telephone numbers listed on the zed cards of the models the  
24 agent represents; this enables third party employers to contact  
25 the agency, rather than the artist in making arrangements for  
26 employment, as for obvious reasons, few models want to have their  
27 personal telephone numbers circulated indiscriminately. If  
28 Valencia's testimony that her business does nothing more than

1 "make it easier, and less expensive, for models to obtain zed  
2 cards" were true, there would be little reason to print  
3 Respondent's business name and telephone number on the zed cards,  
4 and the fact that that information is printed on each zed card  
5 casts further doubt on the veracity of Respondent's testimony.

6 CONCLUSIONS OF LAW

7 1. Labor Code section 1700.40 provides that "no talent  
8 agency shall collect a registration fee." The term "registration  
9 fee" is defined at Labor Code section 1700.2(b) as "any charge  
10 made, or attempted to be made, to an artist for . . . photographs,  
11 film strips, video tapes, or other reproductions of the applicant  
12 [or] . . . any activity of a like nature." It is well  
13 established, pursuant to section 1700.40, that a talent agency  
14 cannot charge an artist for a photo shoot (and for the services of  
15 professional photographers, hair stylists, make-up artists or  
16 anyone else associated with a photo shoot), for the printing of  
17 photographs, or for the production of zed cards.

18 2. The issue here, of course, is whether based on the  
19 evidence presented, Respondent operated as a "talent agency"  
20 within the meaning of Labor Code section 1700.4(a). That statute  
21 defines a "talent agency" as "a person or corporation who engages  
22 in the occupation of procuring, offering, promising, or attempting  
23 to procure employment or engagements for an artist or artists."  
24 The statute also provides that "talent agencies may, in addition,  
25 counsel or direct artists in the development of their professional  
26 careers." The term "artists" is defined at Labor Code section  
27 1700.4(b) to include models. Here, there is overwhelming evidence  
28 that Respondent both offered and promised to procure modeling

1 employment for petitioner's two daughters. That alone means that  
2 Respondent engaged in the occupation of a "talent agency" within  
3 the meaning of Labor Code section 1700.4(a). While no evidence  
4 was presented at this hearing that Respondent has ever procured  
5 (or for that matter, even attempted to procure) modeling  
6 employment for anyone, that does not allow Respondent to escape  
7 classification as a "talent agency". Under section 1700.4(a), the  
8 act of either promising or offering to procure modeling  
9 employment, without anything more, constitutes engaging in the  
10 occupation of a talent agency.

11 3. Having determined that Respondent engaged in the  
12 occupation of a "talent agency" within the meaning of Labor Code  
13 section 1700.4(a), we necessarily conclude that the Respondent  
14 violated Labor Code section 1700.40 by charging and collecting  
15 \$1,590 from petitioner as a deposit for the photo shoot, photo  
16 processing, and zed cards. Petitioner is therefore entitled to  
17 reimbursement of this amount, with interest at 10 percent per  
18 annum from the date these amounts were unlawfully collected by the  
19 Respondent, in accordance with the provisions of Civil Code  
20 sections 3287 and 3289.

21 4. Labor Code section 1700.40 further provides that a talent  
22 agency that fails to reimburse an artist within 48 hours of the  
23 artist's demand for reimbursement of any fees that were paid to  
24 the agency for the procurement of employment must pay the artist a  
25 penalty equal to the amount of the improperly withheld fee if the  
26 artist did not procure, or was not paid for, the employment for  
27 which the fee was paid. Here, petitioner paid the fees for the  
28 photo shoot and zed card in order to have Respondent procure



1 modeling employment on behalf of her daughters. Respondent failed  
2 to reimburse these fees to petitioner within 48 hours of her  
3 demand therefor, and never procured any modeling employment for  
4 petitioner's daughters. Consequently, we find that all of the  
5 requirements are met for an award of penalties pursuant to section  
6 1700.40. Without such an award, there would be little incentive  
7 for Respondent to conform its future conduct to the Talent Agency  
8 Act's requirements. We therefore conclude that petitioner is  
9 entitled to \$1,590 in penalties.

10 5. By operating as a talent agency without a license,  
11 Respondent is violating Labor Code section 1700.5, which provides  
12 that "[n]o person shall engage in or carry on the occupation of a  
13 talent agency without first procuring a license therefor from the  
14 Labor Commissioner." Although this case does not present this  
15 particular issue, it should be noted that any agreement between an  
16 unlicensed talent agent and an artist under which the agent  
17 derives a purported right to compensation for having procured work  
18 for the artist is unenforceable and void ab initio, and an artist  
19 who paid commissions to an unlicensed agent pursuant to such an  
20 agreement is entitled to reimbursement of such amounts paid in the  
21 one year period prior to the artist's filing of a petition or  
22 action for recovery. See, Buchwald v. Superior Court (1967) 254  
23 Cal.App.2d 347, Waisbren v. Peppercorn Productions (1995) 41  
24 Cal.App.4th 246.

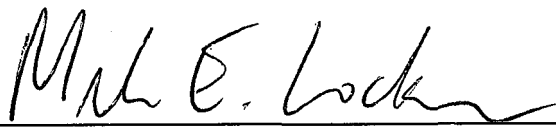
25 ORDER

26 For the above-stated reasons, IT IS HEREBY ORDERED that  
27 Respondent MARY REJES VALENCIA, an individual dba THE MODELING  
28 CONNECTION pay petitioner TAMERA L. MORDWINOW \$1,590 for

1 unlawfully collected fees, \$286.20 for interest on these fees, and  
2 \$1,590 in penalties under Labor Code section 1700.40, for a total  
3 of \$3,466.20.

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Dated: 7/28/97

  
MILES E. LOCKER  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 7/29/97

  
JOSE MILLAN  
State Labor Commissioner

