

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

11 LYDIA ZAKI,) No. TAC 7-97
12)
13 Petitioner,)
14 vs.)
15)
16 JUDITH DeLONG, an individual) DETERMINATION OF CONTROVERSY
17 dba SELECT MODELS AND TALENT,)
18 Respondent.)
19 _____)

20 INTRODUCTION

21 On February 11, 1997, Petitioner LYDIA ZAKI filed a petition
22 to determine controversy pursuant to Labor Code section 1700.44,
23 alleging that Respondent SELECT MODELS AND TALENT required
24 Petitioner to pay for a photo session and ZED card prints.
25 Respondent was personally served with a copy of the petition on
26 February 26, 1997, but failed to file an answer thereto. On April
27 1, 1997, the parties were duly served with notice of hearing.

28 Said hearing commenced on the scheduled date, April 17, 1997,
in Los Angeles, California, before the undersigned attorney for
the Labor Commissioner, specially designated to hear this matter.
Petitioner appeared in propria persona. Respondent failed to

1 appear, but had a note delivered to the hearing, requesting that
2 the hearing be rescheduled. Respondent's note failed to provide
3 any reason for her absence other than the assertion that she was
4 "out of town." Consequently, the request for a continuance was
5 denied for lack of good cause.

6 Based upon the testimony and evidence received at this
7 hearing, the Labor Commissioner adopts the following determination
8 of controversy.

9 FINDINGS OF FACT

10 1. On October 18, 1996, Petitioner contacted SELECT MODELS
11 AND TALENT ("Select") in response to an ad which appeared in the
12 UCLA campus newspaper, 'The Daily Bruin', for modeling work with
13 "clients includ[ing] Benetton." Petitioner spoke to JUDITH
14 DeLONG, Select's owner, to discuss the possibility of obtaining
15 modeling work through Select. DeLong agreed to represent
16 Petitioner, stating that she would attempt to secure auditions and
17 find appropriate modeling work for the Petitioner. However,
18 DeLong stated that in order for her to represent Petitioner, it
19 would be necessary for the Petitioner to pay for a photo shoot and
20 photographs. Petitioner agreed to purchase these services.

21 2. That same day, Petitioner provided DeLong with a cashiers
22 check, made out to SELECT MODELS, in the amount of \$295. DeLong
23 gave Petitioner a receipt for this payment for a "portfolio".

24 3. DeLong then sent Petitioner to a photographer for the
25 photo shoot. After the photo shoot, DeLong informed Petitioner
26 that she would have to pay \$150 for enlargements of six photos.
27 On October 26, 1996, Petitioner provided DeLong with a personal
28 check, made out to SELECT MODELS, in the amount of \$150. DeLong

1 gave Petitioner a receipt for this payment for "blowups".

2 4. Almost two weeks later, DeLong informed Petitioner that
3 she would have to pay \$195 for zed cards. Zed cards depict a
4 small number of photographs of the model, along with the model's
5 name and measurements, and are used in the modeling industry by
6 agents for distribution to potential purchasers of models'
7 services as a means of allowing the potential purchaser to assess
8 the models' appearance. On November 8, 1996, Petitioner provided
9 DeLong with a personal check, made out to SELECT MODELS, in the
10 amount of \$195. DeLong gave Petitioner a receipt for this payment
11 for "cards".

12 5. Petitioner never obtained any modeling work, nor even any
13 auditions, through Respondent.

14 6. On December 13, 1996, Petitioner sent a certified letter
15 to Respondent, demanding reimbursement of the \$640 that Petitioner
16 had paid to Respondent for the photo shoot, photographs and zed
17 cards. Respondent failed to provide any reimbursement to
18 Petitioner."

19 7. The note that Respondent had delivered to the hearing
20 states, "I have a license to get jobs for models. . . . We did a
21 composite card of Lydia [ZAKI] which was sent to our clients."

22 8. The Licensing Unit of the State Labor Commissioner has no
23 record of any talent agency license ever issued to Judith DeLong
24 or to Select Models and Talent. Respondent is not licensed by the
25 State Labor Commissioner as a talent agency.

26 CONCLUSIONS OF LAW

27 1. Labor Code section 1700.4(a) defines "talent agency"
28 as a "person or corporation who engages in the occupation of

1 procuring, offering, promising, or attempting to procure
2 employment for an artist or artists. . . ." (See Waisbren v.
3 Peppercorn Productions, Inc. (1995) 41 Cal.App.4th 246.)

4 Respondent is a "talent agency" within the meaning of Labor Code
5 section 1700.4(a).

6 2. Labor Code section 1700.4(b) includes "models" within its
7 definition of "artists". Petitioner is an "artist" within the
8 meaning of Labor Code section 1700.4(b).

9 3. The Labor Commissioner has jurisdiction to hear and
10 determine this controversy pursuant to Labor Code section
11 1700.44(a).

12 4. Labor Code section 1700.40(a) prohibits talent agencies
13 from collecting any "registration fee". The term "registration
14 fee" is defined by Labor Code section 1700.2(b) to include "any
15 charge made, or attempted to be made, to an artist for . . .
16 photographs, film strips, videotapes, or other reproductions of
17 the applicant." The statute is violated anytime a talent agent
18 collects such fees from an artist, even if the agent transmits the
19 entire fee to another person without retaining any portion as a
20 profit, and even if the agent is not yet representing the artist
21 at the time the fees are collected. Consequently, Respondent
22 violated Labor Code section 1700.40(a) by collecting \$640 from the
23 Petitioner for the photo shoot, photographs, enlargements, and zed
24 cards.

25 5. Labor Code section 1700.40(a) further provides that if a
26 talent agency collects any fees or expenses from an artist in
27 connection with the agency's efforts to obtain employment for the
28 artist, and the artist fails to procure or to be paid for the

1 employment, the agency must, upon demand, reimburse the artist for
2 such fees and expenses, and that if reimbursement is not made
3 within 48 hours of the demand, "the talent agency shall pay to the
4 artist an additional sum equal to the amount of the fee." The
5 \$640 that Petitioner paid to Respondent for the photo shoot,
6 photographs, enlargements, and zed cards constitute "fees or
7 expenses for obtaining employment" within the meaning of section
8 1700.40(a). And since Respondent failed to procure any employment
9 for the Petitioner, Respondent's failure to reimburse Petitioner
10 for these fees within 48 hours of her demand compels the
11 imposition, pursuant to section 1700.40(a), of a penalty equal to
12 the amount of these fees.

13 6. Pursuant to Civil Code sections 3287(a) and 3289(b),
14 Petitioner is entitled to interest on the unlawfully collected
15 fees, from the dates of the payment of these fees, at the rate of
16 10 percent per annum.

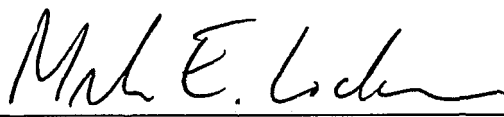
17 7. Although we are not presented with this issue, we note
18 that had Respondent obtained any employment for Petitioner,
19 Respondent would have no legal right to commissions or other
20 compensation. Labor Code section 1700.5 provides that "no person
21 shall engage in or carry on the occupation of a talent agency
22 without first procuring a license therefor from the Labor
23 Commissioner." Under Buchwald v. Superior Court (1967) 254
24 Cal.App.2d 347, and Waisbren v. Peppercorn Productions, supra, any
25 agreement between an artist and an unlicensed agent is unlawful,
26 void from its inception, and hence, unenforceable, and the artist
27 is entitled to reimbursement of commissions paid to the agent
28 pursuant to such an agreement.

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ORDER

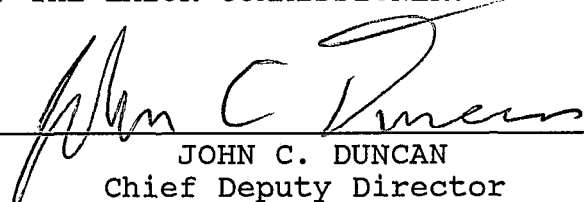
For the above-stated reasons, IT IS HEREBY ORDERED that Respondent JUDITH DeLONG, an individual dba SELECT MODELS AND TALENT, pay petitioner LYDIA ZAKI \$640 for the unlawfully collected registration fees, \$34.67 for interest on these fees, and \$640 as a penalty pursuant to Labor Code section 1700.40(a), for a total of \$1,314.67.

Dated: 5/12/97


MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 5/14/97


JOHN C. DUNCAN
Chief Deputy Director
DEPARTMENT OF INDUSTRIAL RELATIONS

