

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	AZAM HUSSAIN, as guardian ad litem )	No. TAC 13-97
12	for CAITLIN LEEDLE, )	
13	) Petitioner, )	
14	vs. )	
15	IVAN ADKISON, aka IVON ADKISON, )	DETERMINATION OF CONTROVERSY
16	an individual dba ADKISON MODEL )	
17	MANAGEMENT, )	
	) Respondent. )	

18 INTRODUCTION

19 The above-captioned petition was filed on March 12, 1997,  
20 seeking the payment of \$1,365 in unpaid earnings for modeling work  
21 that had been procured by the Respondent. Respondent was  
22 personally served with a copy of the petition on April 10, 1997,  
23 but failed to file an answer thereto. On May 1, 1997, the parties  
24 were duly served with notice of hearing.

25 Said hearing commenced on the scheduled date, June 12, 1997,  
26 in San Francisco, California, before the undersigned attorney for  
27 the Labor Commissioner, specially designated to hear this matter.  
28 Petitioner appeared in propria persona. Respondent failed to

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19 DETERMINATION OF CONTROVERSY

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1 appear.

2 Based upon the testimony and evidence received at this  
3 hearing, the Labor Commissioner adopts the following determination  
4 of controversy.

5 FINDINGS OF FACT

6 1. Prior to March 1996, petitioner, a minor who has worked  
7 in the field of modeling, had been represented by Michael  
8 Washington, a talent agent employed by Palmer's Talent Agency.  
9 Petitioner had become dissatisfied with Palmer's and in March  
10 1996, Washington urged the petitioner to follow him to a new  
11 agency he had started working for, Adkison Model Management. On  
12 March 7, 1996, petitioner's mother, Janette Kusmaul, sent a letter  
13 to Palmer's terminating their services, and the next day, she  
14 entered into an agreement with Adkison Model Management to secure  
15 Adkison's services as a talent agency.

16 2. From March 8, 1996 to June 5, 1996, petitioner performed  
17 modeling services on 21 separate occasions for Byer California.  
18 All of these modeling engagements were procured by Michael  
19 Washington or other employees of Adkison Model Management.  
20 Washington informed petitioner (and Adkison's invoices to Byer  
21 indicate) that she was to be paid \$65 for each of these modeling  
22 sessions, for a total of \$1,365.

23 3. Months went by and Adkison never sent any payment to  
24 petitioner for the modeling work that she had performed. Azam  
25 Hussain made several calls to Adksion, on petitioner's behalf,  
26 seeking payment of these earnings. Finally, on January 7, 1997,  
27 Adksion's bookkeeper, Bill Hague, told Hussain that a check for  
28 \$1,092 (the \$1,365 earned less Adkison's 20% purported commission)

1 had been prepared, and that it would be mailed to petitioner as  
2 soon as it was signed by Ivan Adkison, within one or two days.  
3 This check was never sent to petitioner and to date, petitioner  
4 has not been paid anything for this modeling work.

5 4. The records of the Labor Commissioner's Licensing Unit  
6 show that neither Ivan Adkison nor Adkison Model Management have  
7 ever been licensed as a talent agency by the State Labor  
8 Commissioner. These records show that in 1996 Adkison Model  
9 Management, a sole proprietorship owned by Ivan Adkison, applied  
10 for a talent agency license, that the Labor Commissioner  
11 subsequently initiated proceedings to deny this application, and  
12 that during these proceedings, Adkison withdrew the application.

13 CONCLUSIONS OF LAW

14 1. Respondent is a "talent agency" within the meaning of  
15 Labor Code section 1700.4(a). Petitioner is an "artist" within  
16 the meaning of Labor Code section 1700.4(b). The Labor  
17 Commissioner has jurisdiction to hear and determine this  
18 controversy pursuant to Labor Code section 1700.44(a).

19 2. Labor Code section 1700.25 provides that a talent agency  
20 that receives any payment of funds on behalf of an artist must  
21 disburse such funds, less any commission payments, within thirty  
22 days after receipt. Here, although petitioner did not present any  
23 direct evidence that Respondent received the \$1,365 from Byer, the  
24 evidence that was presented allows us to infer that such payment  
25 was received. Specifically, Bill Hague's statement that a check  
26 had been prepared for the amount Respondent believed was owed to  
27 petitioner, and that the check would be mailed to petitioner  
28 within a day or two, compels the finding that Respondent received

1 these funds from Byer. In any event, a talent agency owes a  
2 fiduciary duty to an artist it represents to take all reasonable  
3 steps to collect the artist's earnings, and unless the agency can  
4 show that despite having taken all such steps, it was unable to  
5 secure payment from the purchaser of the artist's services, it  
6 will be presumed that the agency has, in fact, received payment  
7 from the purchaser. Here, obviously, the non-appearing respondent  
8 failed to carry this burden of proof.

9 3. Labor Code section 1700.5 provides that "no person shall  
10 engage in or carry on the occupation of a talent agency without  
11 first procuring a license therefor from the Labor Commissioner."  
12 Under Buchwald v. Superior Court (1967) 254 Cal.App.2d 347, and  
13 Waisbren v. Peppercorn Productions (1995) 41 Cal.App.4th 246, any  
14 agreement between an artist and an unlicensed agent is unlawful,  
15 void from its inception, and hence, unenforceable, and the agent  
16 is therefore not entitled to any commissions purportedly due under  
17 such an agreement. We therefore find that Respondent, never  
18 having been licensed as a talent agency, is not entitled to any  
19 commissions on petitioner's modeling earnings.

20 4. Respondent's failure to disburse petitioner's earnings  
21 constituted a willful violation of Labor Code section 1700.25, and  
22 thus, in accordance with subsection (e) of that statute,  
23 petitioner is entitled to interest on the unlawfully withheld  
24 funds at the rate of 10 percent per year from the date said  
25 amounts should have been paid to the petitioner. Since we do not  
26 know the exact date that Respondent received these funds from  
27 Byer, we will use January 7, 1997, the date of Bill Hague's  
28 statement that a check had been prepared for Adkison to sign, as


1 the date on which the right to interest commences.

2 5. As a direct consequence of Respondent's unlawful  
3 withholding of petitioner's earnings, petitioner was forced to  
4 file this petition and secure the services of a process server to  
5 serve the petition on respondent. According to the proof of  
6 service on file, petitioner was required to pay \$45 in process  
7 server's fees. These fees constitute an element of damages in  
8 this case, and petitioner is therefore entitled to reimbursement  
9 of these fees.

10 ORDER

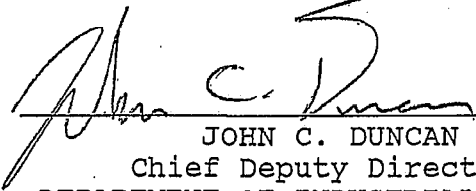
11 For the above-stated reasons, IT IS HEREBY ORDERED that  
12 Respondent IVAN ADKISON, aka IVON ADKISON, an individual dba  
13 ADKISON MODEL MANAGEMENT pay petitioner AZAM HUSSAIN, guardian ad  
14 litem for CAITLIN LEEDLE \$1,365 for unlawfully withheld earnings,  
15 \$73.94 for interest on these withheld earnings, and \$45 for  
16 reimbursement of process server fees, for a total of \$1,483.94.

17  
18  
19 Dated: 7/21/97

  
MILES E. LOCKER  
Attorney for the Labor Commissioner

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21  
22 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

23  
24 Dated: 7/23/97

  
JOHN C. DUNCAN  
Chief Deputy Director  
DEPARTMENT OF INDUSTRIAL RELATIONS

