

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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8 Attorney for the Labor Commissioner

9 BEFORE THE LABOR COMMISSIONER  
10 OF THE STATE OF CALIFORNIA

11 HEIDI KORTENBACH, ) No. TAC 25-97  
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INTRODUCTION

19 The above-captioned petition was filed by Heidi Kortenbach  
20 (hereinafter "petitioner") on May 29, 1997, seeking reimbursement  
21 of the \$700 that Charlie Rairdoni, an individual dba Photo Casting  
22 Productions, aka Rairdoni Productions (hereinafter "respondent")  
23 had charged the petitioner for photographs, plus penalties  
24 pursuant to Labor Code section 1700.40. Respondent was personally  
25 served with a copy of the petition on June 13, 1997 and filed an  
26 answer to the petition on June 26, 1997, admitting that he  
27 collected \$700 from the petitioner for a "portfolio fee", but  
28 denying that that held himself out as a talent agency or that he

1 ever promised, offered, or attempted to procure employment for  
2 petitioner, and therefore, that he is entitled to keep the amounts  
3 paid by petitioner for the "portfolio fee", and to payment of  
4 additional sums purportedly still owed by the petitioner pursuant  
5 to a written agreement between the parties.

6 A hearing was scheduled before the undersigned attorney,  
7 specially designated by the Labor Commissioner to hear this  
8 matter, and the hearing commenced as scheduled on August 4, 1997,  
9 in Los Angeles, California. Both the petitioner and the  
10 respondent appeared in propria persona.

11 Based upon the testimony and evidence received at this  
12 hearing, the Labor Commissioner adopts the following determination  
13 of controversy.

14 FINDINGS OF FACT

15 Petitioner first met the respondent while she was jogging.  
16 According to the petitioner's testimony, the respondent introduced  
17 himself to her by saying that he owned a "production agency" and  
18 that he could find work for her modeling for JC Penney and other  
19 companies, and work as an actress on a film, but that she would  
20 first need to come into his office for a photo shoot. Respondent  
21 gave a business card to the petitioner that identified his  
22 business as Photo Casting Productions, and that stated he did  
23 "casting for calendars, department store ads, videos, feature  
24 films, posters, models, [and] television commercials."

25 On April 5, 1997, petitioner met with respondent at his  
26 office, and signed pre-printed 'Personal Management Contract' that  
27 had been prepared by the respondent. Under this contract,  
28 petitioner engaged respondent as her "personal manager" for a

1 period of five years, for which she agreed to pay commissions to  
2 the respondent equal to 10% of her entertainment and modeling  
3 earnings for the first two years of the agreement, and 20% of  
4 these earnings during the next three years of the agreement. The  
5 contract states that "it is clearly understood that you are not an  
6 employment agency nor theatrical, modeling agent, that you have  
7 not offered or attempted or promised to obtain employment or  
8 engagements for me, and that you are not obliged, authorized or  
9 expected to do so."

10 On April 10, 1997 petitioner returned to respondent's office  
11 to sign another agreement, entitled 'Actors/Actresses/Models  
12 Contract Agreement,' under which petitioner agreed to pay \$1,500  
13 for "a portfolio of photos [and] registrations for work in the  
14 modeling and acting film industry." At that same time,  
15 petitioner paid \$500 in cash to the respondent as an initial  
16 payment for her photographs, and promised to pay the remaining  
17 \$1,000 balance in \$200 weekly installments. One week later,  
18 petitioner provided the respondent with a \$200 money order,  
19 leaving a remaining balance of \$800.

20 Shortly thereafter, respondent began expressing a romantic  
21 interest towards the petitioner; this made her quite uncomfortable  
22 and she told the respondent that she no longer was interested in  
23 having him take her photographs, and she requested a different  
24 photographer for the as yet unscheduled shoot. Respondent failed  
25 to set up the photo shoot with another photographer, and  
26 petitioner demanded reimbursement of the \$700 that she had already  
27 paid. Respondent refused to make any refund, and instead demanded  
28 that petitioner pay the remaining balance. Petitioner then filed

1 and served the respondent with this petition to determine  
2 controversy.

3 Respondent stipulated that he has never been licensed by the  
4 Labor Commissioner as a talent agency. He testified that he  
5 routinely "works with licensed talent agents", and denied that he  
6 ever told the petitioner that he could get work for her. Rather,  
7 respondent testified that he had told the petitioner that he would  
8 help her find an agent. Petitioner's testimony differed sharply  
9 from that of the respondent; she testified that he told her that  
10 he could find employment for her, and that until he was served  
11 with this petition, he had never advised her of the need to engage  
12 the services of a licensed talent agent, and never gave her the  
13 names of any licensed talent agents. According to the petitioner,  
14 after the respondent was served with the petition, he telephoned  
15 her and said, "I'm not a talent agent. . . . I use companies like  
16 Elite that are licensed." Respondent testified that he never  
17 told the petitioner that he does business with Elite. As to this  
18 conflict in testimony, there is no doubt that it is the  
19 petitioner's account that is truthful - - during her rebuttal  
20 testimony, petitioner played a tape recording from her answering  
21 machine of the respondent's telephone call to her after he was  
22 served with the petition, and the respondent clearly stated, "I go  
23 through other agencies that are licensed, like William Morris and  
24 Elite."

25 Other areas of Respondent's testimony cast further doubts on  
26 his credibility. Respondent testified that the amount charged to  
27 the petitioner was for a portfolio of photographs and  
28 "registrations to work as a model or actress." According to the

1 respondent, this would enable him to register the petitioner with  
2 three talent agencies, that is, to pay the "registration fees"  
3 that he claims these agencies charge to represent artists. The  
4 contract that was signed by the petitioner on April 10, 1997  
5 specifically states that she will be provided "three agency  
6 registrations."<sup>1</sup> But when asked to state the names of the three  
7 agencies that he uses, and whether those agencies charge such  
8 "registration fees", the respondent replied that he could not  
9 recall the names of any agents that he uses, except for a business  
10 in Hollywood called "Judy's Casting", which he claims charges a  
11 "registration fee" of \$25. Respondent testified that he did not  
12 know the full name of the owner of this business, or its street  
13 address.<sup>2</sup> Respondent's alleged inability to recall any details  
14 about the licensed agencies that he previously claimed he  
15 "routinely works with" speaks volumes about his utter lack of  
16 credibility. We therefore credit petitioner's testimony over the  
17 respondent's in other areas where their testimony conflicts; and  
18 we specifically find that the respondent did state to the  
19 petitioner that he would attempt to find work for her, and did not  
20 inform the petitioner of the need to obtain the services of a  
21 licensed talent agent.

#### 22 CONCLUSIONS OF LAW

- 23 1. Labor Code section 1700.40 provides that "no talent  
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25 <sup>1</sup> The contract does not define the term "agency registrations", and there was no discussion  
26 between the parties as to what this term meant.

27 <sup>2</sup> The Labor Commissioner's Licensing & Registration Unit maintains records of all talent  
28 agencies that are, or have been, licensed by the State Labor Commissioner. A search of these  
records reveals that no license has ever been issued to a business operating under the name "Judy's  
Casting."

1 agency shall collect a registration fee." The term "registration  
2 fee" is defined at Labor Code section 1700.2(b) as "any charge  
3 made, or attempted to be made, to an artist for . . . registering  
4 or listing an applicant for employment in the entertainment  
5 industry [or for] photographs, film strips, video tapes, or other  
6 reproductions of the applicant [or] . . . any activity of a like  
7 nature." It is well established, pursuant to section 1700.40,  
8 that a talent agency cannot charge an artist for a photo shoot,  
9 for the printing of photographs, or for the production of a  
10 portfolio of photographs.

11 2. The issue here, of course, is whether based on the  
12 evidence presented, Respondent operated as a "talent agency"  
13 within the meaning of Labor Code section 1700.4(a). That statute  
14 defines a "talent agency" as "a person or corporation who engages  
15 in the occupation of procuring, offering, promising, or attempting  
16 to procure employment or engagements for an artist or artists."<sup>3</sup>  
17 The statute also provides that "talent agencies may, in addition,  
18 counsel or direct artists in the development of their professional  
19 careers."

20 3. The provisions in the "Personal Management Contract" that  
21 warrant that Respondent is not a talent agent, and that he has not  
22 offered, attempted or promised and is not authorized or expected  
23 to procure employment for the petitioner are not dispositive, nor  
24 particularly significant, as to the issue of whether Respondent  
25 did, in fact, do or promise to do any of the things that fall  
26 within the definition of a "talent agency" under Labor Code

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27  
28 <sup>3</sup> We find that petitioner is an "artist" within the meaning of Labor Code sect. 1700.04(b),  
which defines that term to include, *inter alia*, actresses and models..

1 section 1700.04(a). In Buchwald v. Superior Court (1967) 254  
2 Cal.App.2d 347, the court rejected the argument that the identical  
3 provisions of a written contract between the musical group  
4 "Jefferson Airplane" and their "personal manager" established that  
5 the "personal manager" was not a "talent agent" within the meaning  
6 of the Talent Agencies Act. Instead, the court held, "The court,  
7 or as here, the Labor Commissioner, is free to search out the  
8 illegality lying behind the form in which a transaction has been  
9 cast for the purpose of concealing such illegality. [citation  
10 omitted.] The court will look through provisions, valid on their  
11 face, and with the aid of parol evidence, determine that the  
12 contract is actually illegal or is part of an illegal  
13 transaction." Id., at p. 355.

14 4. Weighing the evidence presented, we have concluded that  
15 the Respondent offered and promised to procure modeling or acting  
16 employment for the petitioner. Consequently, Respondent engaged  
17 in the occupation of a "talent agency" within the meaning of Labor  
18 Code section 1700.4(a). Under section 1700.4(a), the act of  
19 either promising or offering to procure modeling employment,  
20 without anything more, constitutes engaging in the occupation of a  
21 talent agency. But here, there is more. Respondent's testimony  
22 leaves no doubt that he routinely engaged in activities to procure  
23 employment for the artists he represents. And the petitioner's  
24 decision to engage respondent as her "personal manager" was based  
25 precisely on his representations to do just that for her.

26 5. Labor Code section 1700.5 provides that "no person shall  
27 engage in or carry on the occupation of a talent agency without  
28 first procuring a license therefor from the Labor Commissioner."

1 This means that a person who engages in any of the activities  
2 enumerated in Labor Code section 1700.04(a) - - that is,  
3 procuring, offering, promising, or attempting to procure  
4 employment for an artist or artists - - must be licensed as a  
5 talent agency. By doing any of these things without being  
6 licensed as a talent agency, Respondent is in violation of Labor  
7 Code section 1700.5. To be sure, Labor Code section 1700.44(d)  
8 provides that it is not unlawful for a person who is not licensed  
9 as a talent agency to "act in conjunction with, and at the request  
10 of, a licensed talent agency in the negotiation of an employment  
11 contract." Respondent does not fall into this very limited  
12 exception to the Act's licensing requirement. Respondent  
13 presented no evidence that his employment procurement activities  
14 on behalf of the artists he represents are undertaken at the  
15 request of any licensed talent agency. Moreover, as previously  
16 held in Pamela Anderson v. Robert D'Avola (Labor Commissioner Case  
17 No. TAC 63-93), the licensing exception allowed by Labor Code  
18 section 1700.44(d) does not apply to any period prior to the  
19 artist's retention of a licensed talent agent, and the unlicensed  
20 person seeking to come within the exception offered by section  
21 1700.44(d) must show that his participation in negotiations was  
22 requested by that licensed agent. An arrangement between an  
23 unlicensed person and a licensed agent who is unknown to the  
24 artist and was never hired by the artist, under which these  
25 individuals "work together" to procure employment for the artist,  
26 is little more than a transparent subterfuge. To permit such a  
27 subterfuge would eviscerate the Act's licensing requirement.

28 6. Having determined that Respondent engaged in the

1 occupation of a "talent agency" within the meaning of Labor Code  
2 section 1700.4(a), we necessarily conclude that the Respondent  
3 violated Labor Code section 1700.40 by charging and collecting  
4 \$700 from petitioner as a deposit for the photo shoot, photo  
5 processing, production of the portfolio of photographs, and  
6 "agency registrations". Petitioner is therefore entitled to  
7 reimbursement of this amount, with interest at 10 percent per  
8 annum from the date these amounts were unlawfully collected by the  
9 Respondent, in accordance with the provisions of Civil Code  
10 sections 3287 and 3289.

11 7. Labor Code section 1700.40 further provides that a talent  
12 agency that fails to reimburse an artist within 48 hours of the  
13 artist's demand for reimbursement of any fees that were paid to  
14 the agency for the procurement of employment must pay the artist a  
15 penalty equal to the amount of the improperly withheld fee if the  
16 artist did not procure, or was not paid for, the employment for  
17 which the fee was paid. Here, petitioner paid the above-described  
18 fees in order to have Respondent procure modeling or acting  
19 employment on her behalf. Respondent failed to reimburse these  
20 fees to petitioner within 48 hours of her demand therefor, and  
21 never procured any such employment for the petitioner.

22 Consequently, we find that all of the requirements are met for an  
23 award of penalties pursuant to section 1700.40. Without such an  
24 award, there would be little incentive for Respondent to conform  
25 his future conduct to the Act's requirements. We therefore  
26 conclude that petitioner is entitled to \$700 in penalties.

27 8. Petitioner is also entitled to reimbursement of the  
28 amounts paid to the respondent pursuant to the "Actors/Actresses/

1 Models Contract Agreement" under the following alternative cause  
2 of action: Any agreement between an unlicensed talent agent and  
3 an artist under which the agent derives a purported right to  
4 compensation is unenforceable and void *ab initio*, and an artist  
5 who paid commissions or any other compensation to an unlicensed  
6 agent pursuant to such an agreement is entitled to reimbursement  
7 of such amounts paid in the one year period prior to the artist's  
8 filing of a petition or action for recovery. See, Buchwald v.  
9 Superior Court, supra; Waisbren v. Peppercorn Productions (1995)  
10 41 Cal.App.4th 246. We therefore hold that both contracts  
11 executed by the parties - - the "Actors/Actresses/Models Contract  
12 Agreement" and the "Personal Management Agreement" are void and  
13 unenforceable, and that respondent has no right to any additional  
14 amounts purportedly owed under either of these agreements.

15 ORDER

16 For the above-stated reasons, IT IS HEREBY ORDERED that  
17 Respondent CHARLIE RAIRDONI, an individual dba PHOTO CASTING  
18 PRODUCTIONS aka RAIRDONI PRODUCTIONS, pay petitioner HEIDI  
19 KORTENBACH \$700.00 for unlawfully collected fees, \$23.51 for  
20 interest on these fees, and \$700.00 in penalties under Labor Code  
21 section 1700.40, for a total of \$1,423.51.

22  
23 Dated: 8/20/97 Miles E. Locker  
24 MILES E. LOCKER  
Attorney for the Labor Commissioner

25 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

26  
27 Dated: 8/22/97 Jose Millan  
28 JOSE MILLAN  
State Labor Commissioner