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BEFORE THE LABOR COMMISSIONER
FOR THE STATE OF CALIFORNIA

AMY HSIAO,
Petitioner,
vs.
JASON OTTO, d.b.a. OTTO MODEL
MANAGEMENT,
Respondent.

Case No. 4-98
DETERMINATION OF CONTROVERSY

Introduction

The above-captioned matter was initiated by a petition filed on February 18, 1998, by AMY HSIAO, (hereinafter "petitioner") against JASON OTTO, doing business as OTTO MODEL MANAGEMENT (hereinafter "respondent"), charging that respondent violated the Talent Agencies Act, Labor Code §§1700 *et seq.*, by charging a registration fee. By the petition, petitioner seeks return of sums paid, plus the 100% penalty provided by Labor Code §1700 40.

Respondent did not file any answer to the petition. The matter was heard on May 26, 1998.

Petitioner and respondent both appeared in person.

Based on the testimony and evidence presented at the hearing, the Labor Commissioner adopts the following Determination of Controversy

Findings of Fact

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1. On or about May 17, 1997, petitioner saw an advertisement in the U.C.L.A. Bruin seeking "Asian hair models." Petitioner was interested in possibly working as such a model, since it was the type of job which would not interfere with her studies. She responded to the advertisement, and met with respondent.

2. Respondent told petitioner that he could obtain work for her as a regular model (rather than as a hair model). Respondent told petitioner that, in order for him to represent her in obtaining employment, he needed photo cards of a particular type, with petitioner's photograph on them. Respondent asked petitioner for \$400 to arrange a photo session, and to provide make-up and hair dressing. Petitioner signed a charge slip in this amount against her VISA card.

3. On May 24 or 25, 1997, petitioner had photographs taken by a photographer to whom she was referred by respondent.

4. Subsequently, petitioner met with an employee of respondent, who asked her to pay for 400 photo cards, at 99¢ each. Petitioner wrote a check for \$396 for these cards.

5. Respondent never obtained any employment for petitioner.

6. Petitioner requested the return of the amounts which she paid to respondent, but, to date, respondent has not refunded any amount to petitioner.

7. Respondent admits charging petitioner the initial \$400 fee, admits charging the subsequent \$396 for photographs, and admits receiving both amounts. Respondent expresses a willingness to refund the initial \$400, but maintains that it is not fair for him to have to refund the \$396 paid for photo cards, since this was "an actual expense."

8. Respondent argues that, because he and petitioner never signed any written agreement, she was not an artist, and he never represented her, and therefore owes her no obligations under the Talent Agencies Act.

9. Respondent was formerly licensed as a talent agency, but its license was terminated on or about December 3, 1997.

Conclusions of Law

1. The Labor Commissioner has jurisdiction over this matter pursuant to Labor Code

1 §1700.44.

2 2. Petitioner is an "artist," within the meaning of Labor Code §1700.4(b).

3 3. Respondent acted as a "talent agency" within the meaning of Labor Code §1700.4(a)
4 by offering, promising, or attempting to procure employment or engagements for an artist

5 4. Respondent argues that, because petitioner did not sign respondent's talent agency
6 contract, petitioner is not an artist, and is not entitled to the protections of the Talent Agencies
7 Act. However, it is the factual situation which controls petitioner's status, not whether she did, or
8 did not, sign respondent's contract. Respondent does not have the power to confer or withhold
9 status as an artist by controlling whom he permits to sign his contract.

10 5. Labor Code §1700.2(b) defines "registration fee" as "any charge made . . . for
11 registering or listing an applicant . . . photographs . . . or other reproductions of the applicant."
12 Both of the amounts paid by petitioner fall within the definition of "registration fee."

13 6. Labor Code §1700.40 provides that any registration fee or expenses charged by a talent
14 agency shall be refunded to an artist on demand, and further provides that if the sums are not
15 returned within 48 hours of a demand, the talent agency shall pay an additional sum equal to the
16 amount charged.

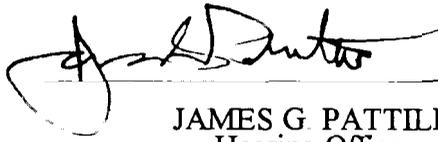
17 7. Respondent argues that the \$396 paid for photo cards was an "actual expense" and
18 should not be refunded. However, the definition of a "registration fee" under the statute does not
19 turn on whether the amount was actually expended by the talent agency -- rather, the definition
20 turns on the purpose for which the charge was made. Since the charge in this case was made for
21 photographs, it is a "registration fee" as defined, without regard to whether (once petitioner had
22 paid the money to respondent) the money was in turn paid by respondent to a printer or
23 photographer, or whether the money was retained by respondent.

24 **Order**

25 1. It is hereby ordered that respondent refund to petitioner the sum of Seven Hundred and
26 Ninety-six and no/100 Dollars (\$796), and that respondent pay to petitioner the additional sum of
27 Seven Hundred and Ninety-six and no/100 Dollars (\$796) pursuant to Labor Code §1700.40(a),
28 for a total of One Thousand Five Hundred and Ninety-two and no/100 Dollars (\$1,592).

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Dated May 26, 1998.



JAMES G. PATTILLO
Hearing Officer

Adoption By The Labor Commissioner

The above determination is adopted by the Labor Commissioner in its entirety.

Dated: July 31, 1998.



Signature
Print Name JOSE MILLAN
For the Labor Commissioner

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