

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

10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
12

13 CATHLEEN BRANICH, as guardian ad) No. TAC 8-98
14 litem for CANDACE BRANICH,)
15 NICHOLAS GOMES, CHRISTOPHER GOMES,)
16 and IVY DURIO,)
17)
18 Petitioner,) DETERMINATION OF
19 vs.) CONTROVERSY
20)
21 JOHN HUTCHESON (aka "Jack)
22 Hutcheson") and KRISTEN USICH, both)
23 individually and as partners dba)
24 BOOM! MODELS & TALENT AGENCY,)
25)
26 Respondents.)
27)
28)

29 BACKGROUND

30 On or about March 5, 1998, Cathleen Branich (hereinafter
31 "Branich" or "petitioner"), as guardian ad litem for Candace
32 Branich, Nicholas Gomes, Christopher Gomes, and Ivy Durio, filed a
33 petition to determine controversy, pursuant to Labor Code
34 §1700.44, against John Hutcheson (aka Jack Hutcheson) and Kristen
35 Usich, individually and as partners dba Boom! Model & Talent
36 Agency (hereinafter "respondents"), alleging that Usich improperly
37 referred Branich to a photography business owned by Hutcheson, and
38 that Hutcheson charged Branich \$1,238.55 for photographs. By her
39 petition, Branich seeks reimbursement of the amount paid for

1 photographs. This claim was amended during the hearing, according
2 to proof, to include a claim for penalties pursuant to Labor Code
3 section 1700.40.

4 On April 10, 1998, Usich filed an answer to the petition,
5 asserting that Hutcheson's photography business is a separate
6 business entity than Boom!, and that Boom! could not be held
7 responsible for petitioner's issues with this separate business
8 entity.

9 A hearing was scheduled before the undersigned attorney for
10 the Labor Commissioner. This hearing was held on August 11, 1998.
11 Petitioner and respondents appeared in propria persona. Based on
12 the testimony and documentary evidence presented at this hearing,
13 the Labor Commissioner adopts the following determination of
14 controversy.

15 FINDINGS OF FACT

16 1. At all relevant times herein, Boom! Models and Talent
17 Agency has been licensed by the State Labor Commissioner as a
18 talent agency. It is a partnership, owned by John (aka Jack)
19 Hutcheson and Kristen Usich. Hutcheson and Usich are married.

20 2. Hutcheson also owns a photography business, operating
21 under the name "Jack Hutcheson Photos". Hutcheson's photography
22 business and Boom! are located in different offices, but in the
23 same building.

24 3. In October 1997, petitioner decided to find a model and
25 talent agency to represent her daughter, two nephews and a niece,
26 in the hope that they would find work in the field of modeling or
27 acting. She obtained a list of agencies which included the name
28 of Boom! Models and Talent Agency, and she sent some snapshots of

1 the children to the agency. Petitioner soon received a telephone
2 call from Kristen Usich, who said that she would be interested in
3 representing the children but to do so, she would need
4 professional photographs. Petitioner asked Usich if she could
5 recommend any photographer. Usich recommended Jack Hutcheson,
6 without telling Usich that Hutcheson was Usich's husband and a
7 partner in the model and talent agency. In response to
8 petitioner's request for the names of other photographers, Usich
9 stated "we only use Jack."

10 4. Petitioner then called Hutcheson to set up a photo shoot.
11 The shoot took place on November 21, 1997 at Hutcheson's studio.
12 Petitioner paid Hutcheson \$683.55, by check, for the photo shoot.
13 In his testimony at the hearing, Hutcheson stated that he "did not
14 make any money on these photographs" because "they were shot at
15 cost."

16 5. About a month later, Usich advised the petitioner that
17 the proofs were ready, and that she would need to pay for zed
18 cards, to enable Usich to send photos of the children to different
19 companies seeking to employ models. Zed cards are an important
20 means of obtaining work in the modeling industry. Usich told
21 petitioner that she would select the best photos for inclusion on
22 the zed cards. On December 28, 1997, petitioner paid for the zed
23 cards, by check made out to "Boom Modeling Agency", in the amount
24 of \$555. During the hearing, Hutcheson testified that Boom! did
25 not make any money on the zed cards, because this amount was
26 "exactly what the printer charged us."

27 6. Usich sent these children out on two 'go-sees'
28 (auditions), one for a job with Macy's, and the other for a job

1 with Baby Gap. Neither of these go-sees resulted in an offer of
2 employment, and none of these children obtained any work through
3 Boom!

4 7. Petitioner felt dissatisfied with the quality of the
5 photographs, and on February 7, 1998, sent a letter to Boom!
6 requesting a refund of the \$1,238.55 that she spent on the photo
7 shoot and zed cards. Respondents failed to respond to this
8 demand, and have not made any reimbursement.

9 LEGAL ANALYSIS

10 1. Respondents, that is, Boom! Models & Talent Agency and
11 the two individual partners who comprise this partnership, are a
12 "talent agency" within the meaning of Labor Code section
13 1700.4(a). Petitioner's daughter, nephews and niece are "artists"
14 within the meaning of Labor Code section 1700.4(b). The Labor
15 Commissioner has jurisdiction to hear and determine this
16 controversy pursuant to Labor Code section 1700.44.

17 2. Labor Code section 1700.40(a) prohibits a talent agency
18 from collecting a "registration fee." The term "registration
19 fee" is defined at Labor Code section 1700.2(b) to include, among
20 other things, any charge made to an artist for "photographs . . .
21 or other reproductions of the applicant". This section of the
22 Talent Agencies Act makes it unlawful for a talent agency and its
23 owners or employees to collect any money for photographs or zed
24 cards, whether or not the agency is making any profit on the those
25 items, and whether or not the entire amount is simply being
26 transmitted to someone else. By accepting the petitioner's checks
27 for the photo shoot and for the zed cards, Usich and Hutcheson,
28 the two partners of Boom! Models & Talent Agency, violated this

1 statute Petitioner is therefore entitled to full reimbursement
2 of the \$683.55 charged for the photo shoot, and the \$555.00
3 charged for the zed cards, for a total of \$1,238.55.

4 3. Labor Code section 1700.40(a) further provides that "in
5 the event that a talent agency shall collect from an artist a fee
6 or expenses for obtaining employment for the artist, and the
7 artist shall fail to procure the employment . . . the talent
8 agency shall, upon demand therefor, repay to the artist the fee or
9 expenses so collected. Unless prepayment thereof is made within
10 48 hours after demand therefor, the talent agency shall pay the
11 artist an additional sum equal to the amount of the fee." The
12 fees that petitioner paid for the photo shoot and zed cards were
13 paid for the purpose of obtaining work for her daughter, nephews,
14 and niece. Despite payment of such fees, these children did not
15 obtain any work through Boom! By failing to timely repay
16 petitioner following her demand for repayment of these fees,
17 respondents became liable for the statutory penalty, in the amount
18 of the unreimbursed fees. Consequently, petitioner is entitled to
19 a penalty in the amount of \$1,238.55.

20 4. Labor Code section 1700.40(b) provides that "no talent
21 agency may refer an artist to any person, firm or corporation in
22 which the talent agency has a direct or indirect financial
23 interest for other services to be rendered to the artist,
24 including . . . photography . . . or other printing." The
25 partners of Boom! Models & Talent Agency, Jack Hutcheson and his
26 wife, Kristen Usich, have an obvious and blatant direct financial
27 interest in Hutcheson's photography business. By referring

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1 petitioner to Hutcheson's photography business, respondents
2 violated this provision of the Talent Agencies Act.

3 ORDER

4 For all of the reasons set forth above, IT IS HEREBY ORDERED
5 that respondents JOHN HUTCHESON (aka Jack Hutcheson) and KRISTEN
6 USICH, both individually and as partners doing business as BOOM!
7 MODELS & TALENT AGENCY pay petitioner CATHLEEN BRANICH, as
8 guardian ad litem for CANDACE BRANICH, NICHOLAS GOMES, CHRISTOPHER
9 GOMES, and IVY DURIO, \$1,238.55 for reimbursement of unlawfully
10 collected fees, plus \$93.18 for interest on the unlawfully
11 collected fees, pursuant to Civil Code section 3287, plus
12 \$1,238.55 in penalties, pursuant to Labor Code section 1700.40(a),
13 for a total of \$2,570.28.

14
15 Dated: 9/28/98

Miles E. Locker
MILES E. LOCKER
Attorney for he Labor Commissioner

17
18 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

19
20 Dated: SEP 28 1998

Jose Millan
JOSE MILLAN
State Labor Commissioner

