

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
4 BY: DAVID L. GURLEY (Bar No. 194298)
5 455 Golden Gate Ave., 9th Floor
6 San Francisco, CA 94102
7 Telephone: (415) 703-4863

8 Attorney for the Labor Commissioner

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10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
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14 SUSAN MILANO,) Case No. TAC 30-98
15)
16 Petitioner,)
17 vs.) DETERMINATION OF
18) CONTROVERSY
19)
20 SOUNDSTAGE STUDIOS,)
21)
22 Respondents.)
23)
24)
25)

26 INTRODUCTION

27 The above-captioned petition was filed on October 19,
1998, by SUSAN MILANO as guardian ad litem for STEPHANIE MILANO
(hereinafter "Petitioner"), alleging that SOUNDSTAGE STUDIOS
(hereinafter "SS" or "Respondent"), failed to refund petitioner's
deposit upon request, for a photo shoot and modeling workshops
attended by her daughter. Petitioner further alleges respondent
breached an oral contract between the parties, in that respondent
did not fulfill the promise to procure employment engagements for
petitioner's daughter. Petitioner seeks reimbursement for the
costs of the photo session and workshops.

Respondent was personally served with a copy of the
petition on July 22, 1999. Respondent failed to file a response.

1 A hearing was scheduled before the undersigned attorney, specially
2 designated by the Labor Commissioner to hear this matter, and the
3 hearing commenced as scheduled on December 13, 1999, in Los
4 Angeles, California. Both petitioner and respondent appeared in
5 propria persona.

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

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10 FINDINGS OF FACT

11 1. In May of 1998, petitioner and her twelve year-old
12 daughter, Stephanie, were visiting the Glendale Galleria, a local
13 shopping mall when they passed respondent's table. Respondent's,
14 doing business as Soundstage Studios, had set up a table
15 advertising their business which provides photo sessions, offers
16 acting and modeling workshops, and directs and guides aspiring
17 artists in pursuit of their entertainment industry dreams.
18 Petitioner intrigued by the "RECRUITING MODELS" sign stopped to
19 inquire. Soundstage's representative stated they were actively
20 recruiting new faces and that Stephanie was beautiful and "had an
21 good chance at a modeling career."

22 2. The following Monday, respondents contacted the
23 petitioner and set up an interview. On May 31, 1998, respondent's
24 Talent Director, Steve Bowers, conducted the interview and told
25 petitioner, "if she [Stephanie] had experience, we could get you
26 something, a commercial or something." This testimony was aptly
27 supported by petitioner's witness Marga Mayorca, whose daughter

1 also attended the classes. Ms. Mayorca testified that Mr. Bowers
2 stated, "her daughter will be a model and receive a big contract."
3 Bowers also asserted, "We are going to get a job for your girl."
4 Regretfully, Milano added that Bowers stated in front of
5 Stephanie, "if you loved your daughter you will give her this
6 opportunity." The testimony left no doubt that respondent had
7 promised future employment to both girls. Respondent testified
8 that he never promised a job. As to this conflict in testimony,
9 there is no doubt it is the petitioner's account that is truthful.
10 Respondent sold petitioner a photo shoot (four 8 x 10's) and eight
11 weeks of modeling and talent workshops for \$1,495.00.

12 3. That same day petitioner charged \$400.00 on her
13 credit card as a deposit with the remaining balance to be paid on
14 or before June 6, 1998. The next day, June 1, 1998, respondent
15 sent, via certified mail, a request expressing her reservation
16 about the classes and seeking reimbursement. Respondent's letter
17 expressed the following:

18 "[W]e didn't have enough time to think about the new
19 business [acting and modeling], and also the cost for
20 those classes and pictures are way far more than what I
21 can afford, the truth is, we were pressured into making
22 a quick decision, because it was the end of the month and
you needed an answer right away."

23 4. When "SS" received the letter, it was emphatically
24 expressed to petitioner that the agreement for classes and photos
25 contained a no refund clause, all deposits were equally non-
26 refundable and therefore petitioner would not be entitled to a
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1 agency" within the meaning of Labor Code §1700.40(a)? Labor Code
2 §1700.40(a) defines "talent agency" as, "a person or corporation who
3 engages in the occupation of procuring, offering, **promising**, or
4 attempting to procure employment or engagements for an artist or
5 artists..." (See Waisbren v. Peppercorn Productions, Inc. (1995) 41
6 Cal.App.4th 246.)

7 3. Respondents point to a clause in the contract that
8 states, "the act of participating in the above services does not
9 imply or guarantee placement or employment". This exculpatory
10 clause is not dispositive, nor particularly significant, as to the
11 issue of whether respondent did, in fact, do or promise to do any
12 of the things that fall within the definition of "talent agency"
13 under Labor Code §1700.4(a). In Buchwald v. Superior Court (1967)
14 254 Cal.App.2d 347, the court rejected the argument that
15 contractual language established, as a matter of law, that the
16 manager was not subject to the Act's requirements. The court
17 stated, "The court or as here, the Labor Commissioner, is free to
18 search out illegality lying behind the form in which a transaction
19 has been cast for the purpose of concealing such illegality.
20 [citation omitted.] The court will look through provisions, valid
21 on their face, and with the aid of parol evidence, determine that
22 the contract is actually illegal or part of an illegal
23 transaction."

24 4. The testimony of Milano and Mayorca proved availing
25 as to respondent's business practices. It was clear that respondent
26 promised a modeling job and asserted that Soundstage Studios would
27 be instrumental in creating this opportunity for petitioner.

1 Therefore, respondent is a talent agency within the meaning of
2 Labor Code §1700.4(a).

3 5. The Labor Commissioner has jurisdiction to hear and
4 determine this controversy pursuant to Labor Code section
5 1700.44(a).

6 6. Labor Code §1700.40(a) provides that "no talent
7 agency shall collect a registration fee." The term "registration
8 fee" is defined at Labor Code §1700.2(b) as, "any charge made, or
9 attempted to be made, to an artist for ... photographs,... or other
10 reproductions of the applicant [or]...any activity of a like
11 nature." It is well established that a talent agency cannot charge
12 artists for photos. Consequently, "SS" violated Labor Code
13 1700.40(a) by collecting \$850 from the petitioner for the photos,
14 which notably were not received by petitioner.

15 7. Labor Code §1700.40(b) provides "[n]o talent agency
16 may refer an artist to any person,...in which the talent agency has
17 a direct or indirect financial interest for other services to be
18 rendered to the artist, including, but no limited to,...coaching,
19 dramatic school." Consequently, respondent violated Labor Code
20 §1700.40(b).

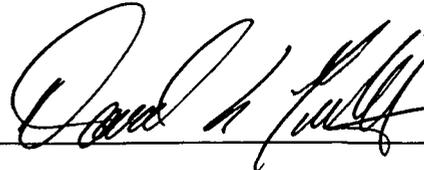
21 8. Labor Code §1700.40(a) further provides that if a
22 talent agency collects any fees or expenses from an artist in
23 connection with the agency's efforts to obtain employment for the
24 artist, and the artist fails to procure or to be paid for the
25 employment, the agency must, upon demand, reimburse the artist for
26 such fees and expenses. If reimbursement is not made within 48
27 hours of the demand, "the talent agency shall pay to the artist an

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those fees, and \$850.00 as a penalty pursuant to Labor Code section 1700.40(a), for a total of \$1855.80.

Dated:

4/5/00



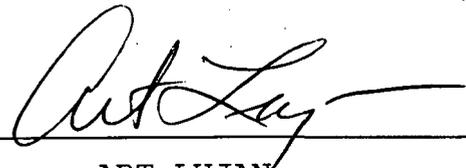
DAVID L. GURLEY

Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated:

4/5/00



ART LUJAN

State Labor Commissioner

