

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
2 State of California
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5
6 BEFORE THE LABOR COMMISSIONER
7 OF THE STATE OF CALIFORNIA
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10 STACEY HARTMAN,)	Case No. TAC 20-01
)	
11 vs. Petitioner,)	
)	DETERMINATION OF
12)	CONTROVERSY
)	
13 MODELS INTERNATIONAL,)	
)	
14 Respondent.)	
)	
15)	

16 INTRODUCTION

17 The above-captioned petition was filed on July 12, 2001,
18 by STACEY HARTMAN, an individual, (hereinafter "HARTMAN" or
19 "Petitioner") alleging MODELS INTERNATIONAL, (hereinafter
20 "Respondent" or "MODELS"), acted as a licensed talent agency by
21 promising and/or attempting to procure modeling jobs for Hartman
22 without securing the required talent agency license pursuant to
23 Labor Code §1700.5. Petitioner seeks a refund from Models for
24 monies spent on photographs. Respondent did not file a response.

25 A hearing was scheduled before the undersigned attorney,
26 specially designated by the Labor Commissioner to hear this matter.

1 The hearing commenced on October 12, 2001, in San Jose, California.
2 Petitioner appeared in propria persona; respondent appeared through
3 her attorney. Due consideration having been given to the
4 testimony; documentary evidence and arguments presented, the Labor
5 Commissioner adopts the following determination of controversy.

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7 FINDINGS OF FACT
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9 1. The parties stipulated that respondent had never
10 been licensed by the State Labor Commissioner as a talent agency.

11 2. By this petition, petitioner seeks reimbursement
12 for the cost of photographs, and zed cards in the amount \$2,195.00.

13 3. The petitioner sought a career in modeling. She
14 contacted Models International seeking an audition for
15 representation. On May 6, 2000, Hartman had an audition, which
16 included a runway walk and "test-shoot". At the audition, Models
17 representative, Destinee Devaroe, discussed with Hartman the
18 philosophy of Models International. Devaroe explained that only a
19 few select applicants were selected and if Hartman was selected,
20 Models would represent her to agents and clients, provide six weeks
21 of professional coaching and training, and provide counseling and
22 career direction. In addition to those services, Models would
23 create a portfolio utilizing the industries' top professionals.
24 Devaroe indicated that the services would be free of charge with
25 the exception of the portfolio. The cost for the portfolio was
26 \$2,195.00.

27 4. Hartman, contacted Models the next day to see

1 whether she was chosen as a candidate for Models representation.
2 Devaroe advised Hartman that she had been selected and that Hartman
3 needed to schedule the photo-shoot as quickly as possible. On
4 Monday, May, 8, 2000, Hartman signed a "Models International
5 Agreement". The "Agreement" provided:

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7 "Models International" agrees to provide a professional
8 photo-shoot that will include a photographer, make-up
9 artist, hair stylist, four color photos for a portfolio,
10 four color photos for zed cards, and one hundred colored
11 zed cards. "Models International" will also provide at
12 "no cost" to Model (sic) representation to agents,
13 **clients**, (emphasis added) and industry professionals.

14
15 5. Upon signing the contract Devaroe supplied Hartman
16 with a large quantity of materials purporting to explain the
17 various informative facts about the modeling industry, and Models
18 International's involvement in that process. Contained within
19 those materials, included an information sheet which expressed that
20 respondents' goal was to introduce the aspiring models to as many
21 Agents, and **clients** as possible. Models stressed that they would
22 only charge the client or agent a fee for the models services and
23 not the model. Models also indicated on the information sheet that
24 the respondent's clients included *Teen Magazine, Sears, Gianni*
25 *Versace, Bride magazine, Macy's and Bay Magazine.*

26 6. Also included in the handout materials was a
27 "frequently asked questions" sheet. Interestingly, one question on
the sheet was, "will you guarantee work?" Models answered, "[a]ny
legitimate management office or its directors 'cannot' guarantee

1 placement or work. 'However' we do not select anyone if we do not
2 feel they have a chance to be successful." This answer is telling,
3 in that Models does not state that they are not allowed to secure
4 or procure modeling engagement for the model because they are not
5 licenced as an agent. Models uses the words "guarantee" and
6 "however". And indeed places emphases on the word "however" and
7 places it in quotations. The vague answer to the question implies
8 that modeling engagements are clearly a possibility through Models
9 International. Moreover, the repeated reference to "clients"
10 illustrates the devious method in which Models seeks to deceive the
11 client. Either one, the respondent has signed their models
12 directly with the clients (i.e., *Macy's* and *Sears*), without the
13 use of a talent agency license or two, they mislead the model into
14 believing that Models may engage a model directly with a production
15 company.

16 7. In short, the material provided suggests that
17 modeling engagements were available through Models International.
18 Models even provided a blank "Models International" receipt or
19 voucher within the handed out materials. These vouchers were to be
20 supplied to a client if the model received work. This was simply
21 another calculated effort to mislead the model into believing that
22 Models International could obtain work for the model. Of course,
23 without possessing a talent agency license supplied by the State of
24 California, Division of Labor Standards Enforcement, they are
25 precluded from conducting this activity. Alarminglly, Mr. Valencia,
26 testified at the hearing that she had been in the modeling
27 industry for a very long time and clearly understood the talent

1 agency license requirements.

2 8. Hartman's photo shoot took place on June 24, 2000.
3 Hartman made two payments to Models totaling \$2,195.00. Hartman
4 received her photos and zed cards and admittedly, Models
5 International, kept a few zed cards for distribution, ostensibly
6 for seeking employment opportunities.

7 9. The respondent's owner, Reje Valencia, testified
8 and admitted signing many of her models over the years directly to
9 production companies. Specifically, the respondent maintained that
10 a select group of models annually attended an International
11 Modeling and Talent Association (IMTA) showcase located in New
12 York. The showcase would highlight specific talent in an attempt
13 to sign on with a licenced talent agency and/or sign a contract
14 directly with a production company. Valencia, again admitted that
15 in several case Models signed children directly with a children's
16 production company.

17 10. In conclusion, there is no doubt that Models
18 International, through actual express provisions contained within
19 the literature provided to all hopeful models and Valencia's
20 testimonial admissions, made promises and implied that the
21 respondent could obtain work for the models.

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2 CONCLUSIONS OF LAW
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4 1. Labor Code §1700.4(b) includes "models" in the
5 definition of "artist". Petitioner's is an "artist" within the
6 meaning of Labor Code §1700.4(b).

7 2. The primary issue is whether based on the evidence
8 presented at this hearing did the respondent operate as a "talent
9 agency" within the meaning of Labor Code §1700.40(a).

10 3. Labor Code §1700.40(a) defines "talent agency" as,
11 "a person or corporation who engages in the occupation of
12 procuring, offering, **promising** (emphasis added), or attempting to
13 procure employment or engagements for an artist or artists."

14 4. There was satisfactory evidence that the respondent
15 held Models International out to the public as a business engaged
16 in the training of Models, and that if the training was completed,
17 the respondent could obtain work for the model. It is clear
18 respondent acted in the capacity of a talent agency within the
19 meaning of Labor Code §1700.4(a).

20 5. Labor Code §1700.40(a) provides that "no talent
21 agency shall collect a registration fee." The term "registration
22 fee" is defined at Labor Code §1700.2(b) as, "any charge made, or
23 attempted to be made, to an artist for ... photographs, ... or other
24 reproductions of the applicant [or]...any activity of a like
25 nature." It is well established that a talent agency cannot charge
26 artists for photos or the production of zed cards.
27

1 6. Labor Code §1700.40(b) provides that, "[n]o talent
2 agency may refer an artist to any person, firm, or corporation in
3 which the talent agency has a direct or indirect financial interest
4 for other services to be rendered to the artist, including, but not
5 limited to, photography... or other printing." Respondent
6 stipulated that the payments for photographs went directly to
7 Models International. Respondent has therefore violated both Labor
8 Code §§1700.40(a) and (b) by referring petitioner for photographs
9 where Models financially benefitted from the purchase of those
10 photographs.

11 7. Having determined that the amounts for photographs
12 and zed cards were unlawfully collected by respondent, and
13 consequently, a clear violations of Labor Code §§1700.40(a) and (b),
14 petitioner is entitled to reimbursement for the amounts paid to the
15 respondent. Additionally, petitioner is entitled to interest at 10
16 percent per annum from the date these amounts were unlawfully
17 collected from respondent, in accordance with the provisions of
18 Civil Code sections 3287 and 3289.

19 8. Finally, Labor Code 1700.40(a) states,

20 No talent agency shall collect a "registration fee"¹. In
21 the event that a talent agency shall collect from an a

22
23 ¹ "Registration Fee" is defined at Labor Code §1700.2(b)(3),
24 stating in pertinent part: "means any charge made or attempted to
25 be made, to an artist for any of the following purposes: (3)
26 **Photographs...**(emphasis added)"

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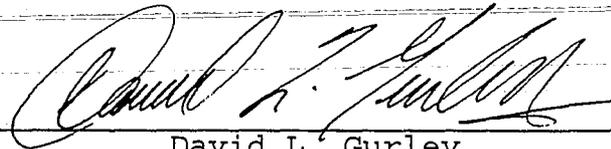
artist a fee or expenses for obtaining employment for the artist ..., and the artist shall fail to be paid for the employment, that agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand thereof, the talent agency shall pay to the artist an additional sum equal to the amount of that fee."

9. As discussed, the respondents collected a registration fee within the meaning of Labor Code §1700.2(b)(3). The respondents failed to remit that fee to the artist (models) within 48 hours after a refund was requested. As a result, the artist is entitled to a penalty, equal to the amount of monies improperly withheld.

ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that the respondent MODELS INTERNATIONAL, pay the petitioner, STACEY HARTMAN, \$2, 195.00 for unlawfully collected fees, and \$328.25 for interest on these fees, \$2,195.00 in a penalty, for a total of \$4,718.25.

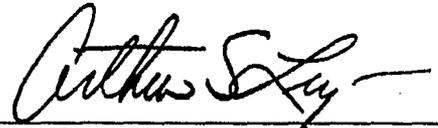
Dated: 2-20-02



David L. Gurley
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 2-20-02



ARTHUR S. LUJAN
State Labor Commissioner

