

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California

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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 SUZANNE GUTIERREZ, as Guardian Ad
12 Litem, for the Minor Children, EMILIO
JOSEPH FASSETT and JACK ALLEN
FASSETT,

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14 Petitioner,

15 v.

16 LISA MARIE SANTILLAN, an Individual
dba STUDIO KIDS CASTING,

17 Respondent.

Case No. TAC 43-03

**DETERMINATION OF
CONTROVERSY ON PETITION OF
SUZANNE GUTIERREZ, AS
GUARDIAN AD LITEM FOR THE
MINOR CHILDREN, EMILIO JOSEPH
FASSETT AND JACK ALLEN FASSETT**

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20 1.

21 **Introduction**

22 With her *Petition to Determine Controversy* filed pursuant to *Labor Code* section
23 1700.44, Petitioner SUZANNE GUTIERREZ, as guardian ad litem on behalf of her minor
24 children, EMILIO JOSEPH FASSETT and JACK ALLEN FASSETT, alleges Respondent
25 LISA MARIE SANTILLAN, an individual dba STUDIO KIDS CASTING, acted as an

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1 unlicensed talent agent in violation of *Labor Code* section 1700.5.¹ Ms. Gutierrez seeks a
2 determination voiding *ab initio* any agreement between the parties and disgorgement of any
3 commissions paid to Ms. Santillan in connection with that relationship. (*Petitioner to*
4 *Determine Controversy, supra*, at p. 2, lines 15-25.)

5 Ms. Santillan filed her response on December 29, 2003, claiming she did not act as
6 a talent agent; and, presumably, she requests the Labor Commissioner dismiss the petition
7 for lack of jurisdiction. (*Correspondence to State of [California] Labor Commissioner from*
8 *Lisa Marie Santillan*, dated December 29, 2003.)

9 A hearing was held on March 17, 2004 in Los Angeles, California, before the
10 undersigned counsel, specially designated by the Labor Commissioner to determine this
11 controversy.

12 Petitioner Suzanne Gutierrez appeared on behalf of her children, Emilio Joseph
13 Fassett and Jack Allen Fassett. Karen Sewell, the current agent for the minor children, also
14 appeared on their behalf. Michael Harrah of the Screen Actors Guild was present but did
15 not provide testimony. Respondent Lisa Marie Santillan appeared on her own behalf. Vince
16 Santillan was further present but also did not provide testimony.

17 Due consideration having been given to the testimony, documentary evidence and
18 arguments presented, the Labor Commissioner adopts the following determination of
19 controversy.

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22 **FINDINGS OF FACT**

23 Respondent LISA MARIE SANTILLAN is the owner of *Studio Kids Casting*
24 (hereinafter referred to as *Studio Kids*): As Ms. Santillan describes it, "Studio Kids Casting
25 is an Extra's casting / management company." (*Santillan Correspondence, supra*,
26 capitalization original; *Studio Kids Casting Extra Release / Release of Liability* ["Lisa Marie
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28 ¹ Ms. Gutierrez' *Petition to Determine Controversy* was received by the Labor
Commissioner's office on November 10, 2003.

1 Santillan, owner of Studio Kids Casting”) *Studio Kids* specializes in the casting of
2 minor children for employment within the entertainment industry; and particularly, focused
3 on finding work for “multiples,” twins and triplets. (*Correspondence to Mom of Multiples*
4 *from Lisa Marie Santillan*, undated; *Studio Kids Casting - Newsletter* (Summer 2003); *see*
5 *Correspondence to Studio Kids Casting from Teri Howland, Talent Liaison of the Lakewood-*
6 *Long Beach Mothers of Twins Club*, dated October 27, 2003.) Ms. Santillan, herself a
7 mother of twins, offered a waiver of processing fees for those multiples who signed with
8 *Studio Kids*. (*Mom of Multiples Correspondence, supra.*)

9 On February 21, 2003 Petitioner SUZANNE GUTIERREZ, as Guardian Ad Litem to
10 her minor children, EMILIO JOSEPH FASSETT and JACK ALLEN FASSETT, executed
11 *Letter(s) of Agreement* on their behalf for representation by *Studio Kids*. Each agreement
12 contained identical provisions relative to the fees due to and representation provided by
13 *Studio Kids*:

14 This letter will confirm that . . . Emilio Joseph Fassett [and / or]
15 ~~Jack Allen Fassett is represented by Lisa Marie Santillan of~~
16 ~~STUDIO KIDS CASTING and that casting fee / commission’s~~
17 ~~[sic] payments of fifteen percent (15%) will be due and payable~~
18 ~~on all gross monies or other compensation received as a result~~
19 ~~of employment performed and derived from the efforts of Lisa~~
20 ~~Marie Santillan of STUDIO KIDS CASTING under this~~
21 ~~Agreement when work is completed. It is noted that STUDIO~~
22 ~~KIDS CASTING / Lisa Marie Santillan can not guarantee work,~~
23 ~~but will seek employment through services provided.~~

24 It is understood that Lisa Marie Santillan of STUDIO KIDS
25 CASTING is working as [an] Extra Casting Agent and / or
26 Manager in the Entertainment Industry, which will provide
27 counseling, advising and scheduling of client’s career, covering,

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1 but not limited to movies, televisions, commercials, print work
2 and extra casting work.

3 (*Letter(s) of Agreement* [Emilio Joseph Fassett and Jack Allen Fassett], dated February 21,
4 2003, emphasis added; *see Mom of Multiples Correspondence, supra* ["We represent many
5 twins, triplets"]; *Newsletter, supra* [*Studio Kids* "invited and they [*Entertainment*
6 *Tonight*] had interviewed about 14 sets of twins and triplets babies and their parents that are
7 on recurring shows represented by us."].) Further, Ms. Santillan's duties included "traveling
8 to Studio's [sic], Casting Director's [sic] office's [sic] (to drop off photo's [sic] and books)
9 which I do-a [sic] couple nights a week." (*Newsletter, supra.*)

10 And *Studio Kids* was indeed successful in obtaining employment for Ms. Gutierrez
11 on behalf of her children. Seemingly *prior* to the execution of the *Letter Agreements*, Emilio
12 and Jack were employed for work on such television and movie projects as *Boomtown*,
13 *Raising Helen* and *Miss Match*. This work generally occurred in February through August
14 of 2003.

15 Unhappiness, however, arose over *Studio Kids*' untimely remission of payment to Ms.
16 Gutierrez for work performed by Emilio and Jack. With few exception, *Studio Kids* failed
17 to provide payment for work performed within a thirty-day time frame from when funds were
18 received from production companies. (Undated *Excel Spreadsheet*, introduced into evidence
19 as Petitioner's *Exhibit O*.)² In November, 2003 Ms. Gutierrez demanded payment of
20 outstanding funds then owing in the amount of \$4,118.40 for work performed as early as
21 March, 2003: Concomitantly, Ms. Gutierrez further filed a *Petition to Determine Controversy*
22 with the Labor Commissioner. (*Correspondence to Lisa Marie Santillan from Lloyd Fassett*
23 *///*

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25 ² With the exception of check number 52048456, payable to Jack Fassett for the
26 *Boomtown Interview*, each payroll issue date and the date each check was cashed by *Studio Kids*
27 were confirmed via copies of the physical checks submitted as evidence, with the appropriate
28 endorsements. As noted within *Exhibit O*, the "Date Cashed by SKC" column generally differed
from the bank documentation of "Paid Date(s)" by two to three days; however, the later dates
were considered in determining the untimeliness of *Studio Kids*' payments. (Petitioner's
Exhibit(s) L, M, N and O.)

1 and Suzanne Gutierrez, dated November 3, 2003; *Petition to Determine Controversy, supra*;
2 see *Lab. Code* § 1700.25(a).)

3 At this juncture, the parties concede all payments from *Studio Kids* have now been
4 made to Ms. Gutierrez for Emilio and Jack. However, Ms. Gutierrez seeks disgorgement of
5 all commissions paid to *Studio Kids* and Ms. Santillan. (*Petition to Determine Controversy*,
6 at p. 2, lines 23-27.)

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9 **CONCLUSIONS OF LAW**

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11 A.

12 **Ms. Santillan and *Studio Kids Casting* are Agents,**
13 **Falling Within the Ambit of the *Talent Agencies Act***

14 There is no dispute that Emilio and Jack Fassett were employed as “artists,” as that
15 term is defined within the *California Talent Agencies Act*. (*Lab. Code* section 1700.4(b).)³
16 However, the primary issue is whether Ms. Santillan, through *Studio Kids*, functioned as a
17 “talent agent” or “talent agency,” as those terms are recognized under California law. *Labor*
18 *Code* section 1700.4(a) provides us with the operative definition:

19 ‘Talent Agency’ means a person or corporation who engages in
20 the occupation of **procuring, offering, promising, or**
21 **attempting to procure employment** of engagements for an
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27 ³ *Labor Code* section 1700.44(a) grants the Labor Commissioner authority to hear
28 and determine matters falling within the *Talent Agencies Act*, such that the Labor
Commissioner may determine the controversy here. (*Lab. Code* § 1700.44(a).)

1 artist Talent agencies may, in addition, counsel or direct
2 artists in the development of their professional careers.

3 (*Id.*, emphasis added.) The California courts have also provided some instruction regarding
4 the type of work performed by a “talent agent:”

5 To ‘procure’ means ‘to get possession of: obtain, acquire, to
6 cause to happen or be done: bring about.’

7 (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628 [16 Cal.Rptr.2d 496], citing *Webster’s New*
8 *International Dict.* (3rd ed. 1981) at p. 1560.) And relative to the scope of an agent’s work,
9 the Courts have broadly found any single act of procurement requires a would-be agent to
10 be licensed under the *Labor Code*. (*Waisbren v. Peppercorn Production, Inc.* (1995) 41
11 Cal.App.4th 246, 255-256 [48 Cal.Rptr.2d 437].)

12 Finally, *Labor Code* section 1700.5 mandates “No one shall engage in or carry on the
13 occupation of a talent agency without first procuring a license therefor from the Labor
14 Commissioner.” (*Id.*) The contract between an unlicensed artists’ manager and an artist is
15 void *ab initio* and is unenforceable for all purposes. (*Waisbren, supra*, at p. 261; *Buchwald*
16 *v. Superior Court (Katz)* (1967) 254 Cal.App.2d 347, 351 [62 Cal.Rptr. 364].)

17 There is no question in this instance Ms. Santillan, through *Studio Kids*, was acting
18 as an unlicensed talent agent. Ms. Santillan’s work in actually procuring multiple parts for
19 Emilio and Jack clearly exceeded that of the mere “counseling, advising and directing” of a
20 “management services” business. Her own representations in offering to “seek employment”
21 and “find work for” children in the entertainment industry, including “traveling to Studio’s
22 [sic], Casting Director’s [sic] office’s [sic] (to drop off phono’s [sic] and books) which I do-a
23 [sic] couple nights a week,” clearly places Ms. Santillan within the ambit of California’s
24 *Talent Agencies Act*.

25 Ms. Santillan’s argument that the scope of a talent agent’s work is limited to only
26 finding artists to fill the “speaking parts in the entertainment industry” is without merit and

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1 unsupported within the statutory language of the *Talent Agencies Act* and the applicable case
2 authority. (See *Santillan Correspondence, supra*, emphasis original.)⁴

3 Ms. Gutierrez seeks disgorgement of all commissions paid to Ms. Santillan and *Studio*
4 *Kids* during the relationship between the parties. Insomuch as Ms. Gutierrez filed the
5 *Petition to Determine Controversy* within the same year as Emilio and Jacks' representation
6 by *Studio Kids*, she is entitled to \$1,351.46 requested. (*Lab. Code* § 1700.44(c); Petitioner's
7 *Exhibit O.*)

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10 ORDER

11 Accordingly, it is hereby determined and declared under the provisions of the *Talent*
12 *Agencies Act* that:

13 1. The written *Letter(s) of Agreement* between Petitioner SUZANNE
14 GUTIERREZ, as Guardian Ad Litem, for the Minor Children, EMILIO JOSEPH FASSETT
15 and JACK ALLEN FASSETT, and Respondent LISA MARIE SANTILLAN, an individual
16 dba STUDIO KIDS CASTING are deemed unlawful and void *ab initio*. Respondent has no
17 enforceable rights under those contracts.

18 2. Ms. Gutierrez has made a showing Respondent collected \$1,351.46 in
19 commissions within the one year statute of limitations set forth by *Labor Code* section
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27 ⁴ Given the instant holding, the Labor Commissioner need not make a finding relative to
28 the tardiness of Ms. Santillan's payments. However, it is interesting to note a majority of the
payments made by *Studio Kids* to Emilio and Jack were dated more than 60 days following
Studio Kids' cashing of the checks provided by the production companies. (Petitioner's *Exhibit*
O, with supporting documentation; see *Lab. Code* § 1700.25(a).)

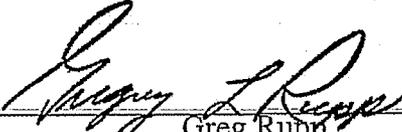
1 1700.44 (c). Respondent shall disgorge and provide payment of that amount to Ms. Gutierrez
2 on behalf of Emilio and Jack Fassett forthwith.

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6 Date: August 23, 2004


7 Johanna Y. Hsu
8 Attorney for the State Labor Commissioner

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10 ***THE ABOVE DETERMINATION IS ADOPTED IN ITS ENTIRETY***
11 ***BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA***

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15 Dated: 8.23.4


16 Greg Rupp
17 Acting Chief Deputy Labor Commissioner

