BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

Corey Alan Campbell, an individual,
   Petitioner,
vs.
NEXT Management, LLC.,
   Respondent.

CASE NO. TAC-52723

DETERMINATION OF CONTROVERSY

I. INTRODUCTION

This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed on July 5, 2019 by COREY ALAN CAMPBELL, an individual (“Petitioner”), alleging that NEXT MANAGEMENT, LLC. (“Respondent”), failed to put Petitioner on notice that Respondent was a Talent Agency and Respondent used an unapproved contract, despite having a contract approved by the Labor Commissioner on file. Petitioner seeks disgorgement of commissions withheld by Respondent and to void the contract between the parties ab initio. Respondent filed an Answer in response to the Petition to Determine Controversy emailed to Petitioner and the Hearing Officer on January 28, 2020.

On January 29, 2020, a hearing was held by the undersigned attorney specially designated by the Labor Commissioner to hear this matter. Petitioner and Respondent both appeared. Petitioner appeared in pro per and gave sworn testimony. Respondent was represented by Jeffrey
S. Whittington and Brett B. McMurdo of KAUFMAN BORGEEST & RYAN LLP. Alexis Borges testified on behalf of Respondent. Both parties provided documents, and all documents were taken under submission as evidence herein. Due consideration having been given to the testimony of all parties present, documentary evidence and oral argument presented, the Labor Commissioner adopts the following determination of controversy.

II. BACKGROUND FACTS

1. Petitioner is a model in commercials.

2. Respondent is a licensed talent agent registered with the State Labor Commissioner.

3. As a Talent Agency licensed by the State of California, Respondent had submitted a Talent Agency Contract for approval, which was approved by the Labor Commissioner in 2005 ("approved contract").

4. At hearing, Respondent admitted it discontinued the use of the approved contract. Respondent’s counsel explained that this was due to the business’s need to have exclusivity with talent on an international basis.

5. On July 18, 2018, the Parties entered into a “Management Agreement” in which “Respondent agreed to provide Petitioner with representation services in connection with Petitioner’s career: advise Petitioner with respect to career opportunities and advertising, among other things, develop brand and other opportunities for Petitioner, invoice Petitioner’s clients and customers, collect fees for Petitioner, evaluate requests to use Petitioner’s likeness, and direct Petitioner to other model management companies. Petitioner, in return, agreed that Respondent was Petitioner’s exclusive personal manager. Petitioner agreed to a three (3) year contract with Respondent and agreed that Respondent would receive a commission equal to twenty percent (20%) of the gross income paid by others to Petitioner directly or indirectly, as a result of arrangements/opportunities developed by Respondent.” (Respondent’s Answer).

6. The plain language of the Management Agreement clearly contemplated Respondent procuring modeling gigs for Petitioner. For example, Page 1, Paragraph 1, provides: ....
(b) develop, negotiate, organize, and administer income-producing opportunities in the following areas: (i) modeling, … (iii) personal appearances, …

(c) invoice Talent’s clients and customers;

(d) collect fees for Talent…;

…

Management Agreement page 1.

7. The Management Agreement, at page 2 subsection (d), discusses the use of a Talent Agency for film and television jobs, AC Talent, but makes no mention of a Talent Agent for modeling jobs which the contract mostly contemplates Petitioner getting. Petitioner testified that AC Talent was located in the same building as Respondent’s Los Angeles office.

8. The Management Agreement at page 5 also has a section contemplating “Chargebacks” as expenses Talent may be charged for by Management to include:

Messenger/FedEx (to send clients your book); Cards (ordered as needed); Laser & Prints (images for portfolio); Promotional packages (i.e. show packages); Portfolio Books; … Imaging & Media Fee (quarter-annual flat fee for: web presence/design, image hosting/maintenance, social media, scanning, scheduling, electronic messenger service, & electronic voucher/receipt submission).

Management Agreement page 5.

9. In June 2019, Petitioner asked to be released from the Management Agreement. Petitioner advised Respondent that the Management Agreement was void because the Agreement did not comply with California Labor Code requirements specifying that talent agency contracts must disclose regulation by the Labor Commissioner, and specifying that the talent can request a contract be voided if the talent agency does not secure employment for the talent for four (4) consecutive months.

10. Respondent points out that there was no period in which four consecutive months went without Respondent procuring a job for Petitioner. In fact, Respondent procured quite a bit of employment as a model for Petitioner.
11. While Respondent did not initially let Petitioner out of the Management Agreement when he demanded so in June 2019, Respondent did let Petitioner out of the Management Contract in an email sent on July 9, 2019.

12. Alexis Borges, President of West Coast Office of Respondent NEXT MANAGEMENT, LLC., has worked for Respondent for nearly 25 years. Borges testified that Respondent was trying to get Petitioner jobs, but his lack of regular presence in Los Angeles made this hard, as Petitioner only worked there full time. Respondent procured bookings for modeling jobs for Petitioner.

13. Respondent submitted an Income and Expense Report for Corey Alan Campbell for 2019 as Exhibit D. The spreadsheet lists all transactions between the parties from October 18, 2018 until the end of the Parties’ relationship. This log presented by Respondent shows charges for “Imaging & Web Promo” totaling $360.00, and charges for “Cards-Bunkers” totaling $65.23.

III. LEGAL ANALYSIS

1. Labor Code section 1700.44(a) provides the Labor Commissioner with the power and jurisdiction to hear and determine matters falling under the Talent Agencies Act (Labor Code §1700.00 et seq.), therefore the Labor Commissioner has jurisdiction to hear and determine this matter.

2. Labor Code section 1700.4, subsection (b), includes “models” in the definition of “artist” and Petitioner is therefore an “artist” thereunder.

3. At all times relevant, Respondent was a licensed talent agency.

4. Labor Code section 1700.40(a) defines “talent agency” as, “a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists.” While Respondent failed to properly hold themselves out as a Talent Agency to Petitioner, they acted on his behalf in that capacity by procuring him employment in the modeling industry, and were in fact licensed.

5. Labor Code section 1700.2, subsection (b) defines “registration fees” as any charge made to an artist for registering or listing an applicant for employment, letter writing, photographs … or other reproductions, costumes or any activity of a like nature. Those charges
for “Imaging & Web Promo” totaling $360.00, and charges for “Cards-Bunkers” totaling $65.23 were improper “registration fees” and must be disgorged in the total amount of $425.23.

6. Labor Code section 1700.23 requires that every talent agency submit their form talent agency contract to the Labor Commissioner for approval and then use that agreement. The approved agreement must state in prominent type on its face: “This talent agency is licensed by the Labor Commissioner of the State of California.” As discussed, Respondent had an approved Talent Agency contract on file with the Labor Commissioner, and instead used the instant Management Agreement to sign Petitioner. While Respondent may have been acting as talent management, it procured Petitioner modeling work, and thus also acted as Petitioner’s talent agent.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the Management Agreement entered into by Petitioner and Respondent on July 18, 2018 was terminated by the parties on July 9, 2019. Prior to that mutual termination Respondent collected “registration fees” unlawfully from Petitioner in the amount of $425.23, which must be disgorged here and paid back to Petitioner.

IT IS SO ORDERED.

Dated: April 28, 2020

Respectfully Submitted,

By: ___________________________

MAX D. NORRIS
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: April 27, 2020

By: ___________________________

Lilia Garcia-Brower,
California Labor Commissioner

DETERMINATION OF CONTROVERSY
PROOF OF SERVICE

(Code of Civil Procedure § 1013A(3))

STATE OF CALIFORNIA  )
COUNTY OF LOS ANGELES  ) S.S.

I, Lindsey Lara, declare and state as follows:

I am employed in the State of California, County of Los Angeles. I am over the age of eighteen years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, CA 90802.

On April 28, 2020, I served the foregoing document described as: DETERMINATION OF CONTROVERSY, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Corey Alan Campbell

Jeffrey S. Whittington, Esq.
KAUFMAN BORGEEST & RYAN LLP
23975 Park Sorrento, Suite 370
Calabasas, CA 91302
Tel: (818) 880-0992 Fax: (818) 880-0993
jwhittington@kbrlaw.com

✓ (BY CERTIFIED MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

✓ (BY E-MAIL SERVICE) I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth above.

✓ (STATE) I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed this 28th day of April 2020, at Long Beach, California.

Lindsey Lara
Declarant