

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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12 BEFORE THE LABOR COMMISSIONER
13 OF THE STATE OF CALIFORNIA

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15 SHAWN ASSELIN,)	No. TAC 14-97
)	
16 Petitioner,)	
)	
17 vs.)	
)	
18 ANDY ANDERSON, an individual)	DETERMINATION OF CONTROVERSY
19 dba ANDY ANDERSON AGENCY,)	
)	
20 Respondent.)	

21 INTRODUCTION

22 The above-captioned petition was filed by Shawn Asselin
23 (hereinafter "petitioner") on March 25, 1997, seeking
24 reimbursement of the \$350 that Andy Anderson, an individual dba
25 The Andy Anderson Agency (hereinafter "respondent") had allegedly
26 charged the petitioner for photographs. Respondent was
27 personally served with a copy of the petition on April 28, 1997
28 and filed an answer to the petition on May 9, 1997, denying that
he sold any photographs to the petitioner.

 A hearing was scheduled before the undersigned attorney,
specially designated by the Labor Commissioner to hear this
matter, and the hearing commenced as scheduled on August 6, 1997,

1 in San Diego, California. Both the petitioner and the respondent
2 appeared in propria persona.

3 Based upon the testimony and evidence received at this
4 hearing, the Labor Commissioner adopts the following determination
5 of controversy.

6 FINDINGS OF FACT

7 Petitioner first came into contact with the Respondent
8 in September 1996, after seeing an advertisement respondent had
9 placed in a local newspaper for modeling opportunities.
10 Petitioner visited respondent's office for an audition, and
11 brought samples of photographs from a recent photo shoot.
12 Respondent told petitioner that he had "passed the audition", and
13 that he was "willing to represent [petitioner] as a talent agent",
14 but that first, petitioner needed to obtain "better photos."
15 Respondent advised the petitioner that he could get photographs
16 from any photographer, but recommended the services of Karen
17 Martin "because she knows exactly what I need for my agency."
18 Respondent did not give the petitioner the names of any other
19 photographers. Petitioner decided to use Karen Martin's services,
20 deciding that using another photographer would pose a risk of
21 Respondent's rejection of another set of photographs.

22 The respondent never provided the petitioner with Karen
23 Martin's address or telephone number; instead, the petitioner was
24 told that he could meet Karen Martin at a later date in
25 Respondent's office. The Respondent informed petitioner that the
26 photo shoot and prints would cost \$340 total, of which \$100 in
27 cash would have to be paid to the Respondent as an advance
28 deposit. Respondent then gave \$100 in cash to the respondent as a

1 deposit. Shortly thereafter, petitioner returned to Respondent's
2 office to deliver a check for the \$240 balance. The check was
3 made out to Karen Martin. According to the petitioner, he gave
4 this check to the Respondent, who then transmitted it to Ms.
5 Martin. According to the respondent, the petitioner gave this
6 check to Ms. Martin directly.¹

7 The check was subsequently cashed by Ms. Martin, but on
8 the reverse side of the check, Ms. Martin listed her address as
9 7801 Mission Center Court, San Diego - - the business address of
10 the Respondent. According to Respondent, Ms. Martin does not have
11 a separate office address, and she does not have her own
12 photography studio, but instead uses his agency as a "mailing
13 station" and that she shows up at his agency about once a day to
14 pick up money and checks and to set up photo shoots. Respondent
15 testified that Ms. Martin has no prior experience as a
16 professional photographer and that he set Ms. Martin up in the
17 photography business, by introducing her to a photographer named
18 Manuel, and suggesting that she ask Manuel if he would be willing

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20 ¹ In general, we find the petitioner to be a far more credible witness than the respondent,
21 and faced with these two conflicting accounts of this transaction, we credit petitioner's testimony
22 over that of the respondent. For one thing, the testimony of four other witnesses - - Sandra
23 Tillman, Hadas Tepman, Karen Oyanguren and Danny Morris - - all of whom are actors or models
24 who sought representation from the respondent, establishes that the respondent engaged in a
25 pattern and practice of referring artists to Karen Martin for photographic services, that respondent
26 himself informs the artists of the amount they must pay for the photographs, that respondent always
27 advises the artists that a portion of this amount must be paid in cash as a deposit and the balance
28 paid by check, and that respondent himself collects the cash and checks from the artists in payment
for these photographs. In some instances, the checks are made out to Karen Martin; in other
instances they are made out to Andy Anderson, but in all instances, the checks (and cash) are
collected by Anderson. This is consistent with petitioner's testimony. Moreover, respondent's
testimony that he "did not know that an agent can't collect money for photographs" if the agent has
no financial interest in the photography business is patently false, in that respondent was told
exactly that in a Determination served on the respondent on August 11, 1995 in a matter entitled
Rezin v. Anderson (No. TAC 7-94). Respondent's obvious lie concerning his knowledge of the
Talent Agency Act's requirements compels us to view the truthfulness of other areas of his
testimony as suspect.

1 to work for her. Manuel agreed to work for Ms. Martin, so she
2 uses his services as a photographer and then has the photos
3 printed by a processing lab in Los Angeles. Respondent testified
4 that he tries to help Ms. Martin by "throw[ing] as much business
5 as [he] can" to her. However, Respondent testified that he
6 doesn't have any financial interest in Ms. Martin's photography
7 business, and that although he collects cash or checks on Ms.
8 Martin's behalf, he doesn't keep any of this money and does not
9 make any money from these photographs.

10 Petitioner had his photographs taken three weeks after
11 he paid for the photos. Petitioner signed a printed statement on
12 September 24, 1996, that had been prepared and provided to him by
13 Respondent. This statement asserts that "this Agency did not sell
14 you any pictures or accept any money for fees." Petitioner
15 testified that when he signed this, he knew it was false but that
16 he had believed that his signature was needed in order to obtain
17 Respondent's services as a talent agent. The statement also
18 provides that "[w]e agree to represent you in the field of T.V.
19 commercials and or modeling. . . .we are a talent agency and
20 operate on a 10% commission basis."

21 Respondent never obtained any work for petitioner. In
22 petitioner's view, the reason for this is that Respondent failed
23 to make any attempts to procure employment on his behalf, as
24 evidenced by the fact that he never got called to any auditions or
25 "go sees". Respondent testified that he didn't have a sufficient
26 opportunity to try to obtain work for the petitioner, as a result
27 of petitioner's failure to return a completed personal information
28 card until November 12, 1996, which respondent asserts he needed

1 before he could start representing petitioner. Six weeks later,
2 on December 26, 1996, petitioner advised respondent that on
3 November 19, 1996 he had joined the Screen Actors Guild ("SAG") in
4 order to qualify for work which required SAG membership.
5 Respondent rebuked the petitioner for having joined SAG without
6 consulting him, as this essentially prohibited respondent from
7 providing further representation to the petitioner, in that
8 Respondent is not a SAG franchised agent, and thus, under SAG
9 rules, cannot represent a SAG member. But respondent failed to
10 present any evidence that he had ever warned petitioner, prior to
11 December 26, 1996, of the fact that he was not authorized to
12 represent SAG members. Respondent should have warned petitioner
13 of this at the inception of his representation, precisely to avoid
14 this sort of problem, and to allow petitioner to make an informed
15 choice as to whether to engage the services of a non-franchised
16 agent. We therefore find that petitioner is not to blame for
17 respondent's ultimate inability to procure employment for the
18 petitioner.

19 After being informed that as a SAG member, he could no
20 longer be represented by respondent, Petitioner demanded that
21 Respondent reimburse him for the \$340 he had spent for the
22 photographs. Respondent refused and this petition followed.

23 CONCLUSIONS OF LAW

24 1. Respondent is a "talent agency" within the meaning
25 of Labor Code section 1700.44(a). Petitioner is an "artist"
26 within the meaning of Labor Code section 1700.4(b). The Labor
27 Commissioner has jurisdiction to determine this controversy
28 pursuant to Labor Code section 1700.44(a).

1 2. Labor Code section 1700.40 provides that "no talent
2 agency shall collect a registration fee." The term "registration
3 fee" is defined at Labor Code section 1700.2(b) as "any charge
4 made, or attempted to be made, to an artist for photographs,
5 film strips, video tapes, or other reproductions of the applicant
6 [or] . . . any activity of a like nature." It is well
7 established, pursuant to section 1700.40, that a talent agency
8 cannot charge an artist for a photo shoot or for the printing of
9 photographs. To quote from the Labor Commissioner's Determination
10 that issued on August 10, 1995 in Valerie Rezin v. Andy Anderson
11 (No. TAC 7-94), "Such charges are unlawful irrespective of whether
12 the agent profits from these charges. The statute is violated
13 anytime an agent collects such fees from an artist, even if the
14 agent transmits the entire fee to another person without retaining
15 any portion as a profit, and even if the agent is not yet
16 representing the artist at the time the fees are collected." The
17 purpose of this statute was to create a firewall between agents
18 and photographers, and to prevent agents from running "photo mill"
19 operations using ostensibly "independent" photographers, who are,
20 in reality, dependent on the agent for their economic livelihood.
21 Whether or not Respondent has a financial interest in Karen
22 Martin's photography business (and we find it almost
23 inconceivable that he does not, in view of the extent to which her
24 business is tied to his office, and in view of the fact that a
25 significant portion of the payments which he collects are on a
26 cash basis), the fact is that merely by collecting cash or checks
27 on behalf of this photography business, Respondent violated Labor
28 Code section 1700.40.

1 under Labor Code section 1700.40, for a total of \$711.45.

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4 Dated:

8/19/97

Miles E. Locker

MILES E. LOCKER
Attorney for the Labor Commissioner

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8 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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11 Dated:

8/22/97

Jose Millan

JOSE MILLAN
State Labor Commissioner

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