§ 1038. Violations, penalties and procedures. 1. Any model management company or model management group that has failed to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

2. Any model management company or model management group that has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

3. (a) The commissioner may impose a civil penalty upon a model management company, model management group, or client that has been deemed to have violated this article, for three thousand dollars for the initial violation, and for five thousand dollars for a second or subsequent violation.

(b) The order imposing such civil penalty may be served personally or by certified mail in accordance with section thirty-three of this chapter. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivisions one, two and three of this section alleged to have been violated.

4. An order issued under this section shall be final and not subject to review by any court or agency unless a review is had pursuant to section one hundred one of this chapter. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the person against whom the penalty has been imposed has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

5. If any model management company has failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

6. The attorney general may bring and maintain an action in a court of competent jurisdiction to enforce the provisions of this article when the attorney general has determined there is reasonable cause to believe that a model management company, model management group, or client has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transacting of business.

7. (a) A model who is aggrieved by a violation of this article may file a complaint with the commissioner within six years after the acts alleged to have violated this article occurred. The commissioner shall prescribe the form of the complaint, which shall include, at a minimum:

(i) the name and mailing address of the model and of the person or entity alleged to have violated this article;

(ii) a statement detailing the terms of the model's contract, including a copy of such contract if available;

(iii) the model's occupation;

(iv) a statement detailing the alleged violations of this article; and

(v) a signed affirmation that all facts alleged in the complaint are true.

(b) (i) Upon receiving a complaint alleging a violation of this article, the commissioner shall send the person or entity named in the complaint a written notice of complaint. The commissioner shall send such notice by certified mail in accordance with section thirty-three of the labor law and shall bear the cost of sending such notice.

(ii) Notice shall include:

(1) a copy of the complaint;

(2) materials of remedies available to the model for the violations of said article by the person or entity named in the complaint;

(3) materials informing the person or entity that twenty days after receiving the notice of complaint, the person or entity identified in the complaint must answer; and

(4) materials informing the person or entity that failure to respond to the complaint will create a rebuttable presumption in any civil action commenced pursuant to this article that such person or entity committed the violations alleged in the complaint.

(c) The response shall include:

(i) a written statement that the model has been paid in full and proof of such payment;

(ii) a written statement that the model has not been paid in full and the reasons for the failure to provide such payment; or

(iii) a written statement and any proof responding to the violations alleged in the complaint.

(d) (i) Upon receiving the written response, the commissioner shall send the model a copy of:

(1) the response;

(2) any enclosures submitted to the commissioner with the response; and

(3) any other information about the status of the complaint.

(ii) If the commissioner receives no response from the person or entity alleged to have violated this article to the notice of complaint within the time provided by this subdivision, then there shall be a determination that such person or entity committed the violations alleged in the complaint. The commissioner shall mail a notice of non-response to both the model and the person or entity named in the complaint by regular mail and shall include with such notice proof that the commissioner previously mailed the notice of complaint to the person or entity named in the complaint by certified mail.

8. An aggrieved model may bring and maintain an action in a court of competent jurisdiction to enforce the provisions of sections one thousand thirty-four and one thousand thirty-five of this article. A model management company or model management group that violates these sections shall be liable for actual damages to any model that has suffered damages due to such violation, reasonable attorneys' fees and costs, and, unless the model management company or group proves a good faith basis to believe that its actions were in compliance with the law, an additional amount as liquidated damages in an amount of no more than one hundred percent of the total amount of actual damages, except such

liquidated damages may be up to three hundred percent if found that the actions were willful.

9. No client, model management company, or model management group shall be permitted to retaliate against a model for exercising any of such model's rights under this article, including the right to raise complaints with the client, model management company, model management group, commissioner, or attorney general. Any violation of this section shall be subject to enforcement in the same manner as prescribed in section two hundred fifteen of this chapter.