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DIVISION OF LABOR STANDARDS ENFORCEMENT  
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8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

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SUSAN ODOM, as guardian ad litem	)	No. TAC 10-03
for HALEY ARTHUR SHINN, a minor	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
CMT TALENT AGENCY,	)	DETERMINATION OF
	)	CONTROVERSY
Respondent.	)	
	)	

18 The above-captioned matter, a petition to determine  
19 controversy under Labor Code §1700.44, came on regularly for  
20 hearing on June 18, 2003, in Los Angeles, California, before the  
21 Labor Commissioner's undersigned hearing officer. Petitioner  
22 appeared in propria persona; respondent failed to appear. Based  
23 on the evidence presented at this hearing and on the other papers  
24 on file in this mater, the Labor Commissioner hereby adopts the  
25 following decision.

26 FINDINGS OF FACT

27 1. CMT TALENT AGENCY (hereinafter "CMT" or "respondent" )  
28 was most recently licensed as a talent agency by the State Labor

1 Commissioner from July 25, 2001 to July 24, 2002. It was  
2 licensed as a partnership, owned by ALBERTA SELLERS and BYRON  
3 GARRETT, with a business address at 8344 ½ W. 3rd Street, Los  
4 Angeles, California. CMT has not been licensed at any time since  
5 July 24, 2002.

6 3. On or about July 30, 2002, petitioner HALEY ARTHUR  
7 SHINN, a minor, by and through her guardian ad litem SUSAN ODOM,  
8 entered into a written agreement with CMT, under which she  
9 engaged the services of CMT as a talent agency for a period of  
10 one year, to negotiate contracts for the petitioner in the  
11 rendition of professional services as a model and in all other  
12 fields in the entertainment industry, for which CMT would be  
13 entitled to commissions.

14 4. Through CMT's efforts, petitioner obtained a print  
15 modeling job for an Audi commercial. Petitioner performed  
16 modeling services in connection with the photo shoot on July 31,  
17 2002. Petitioner made repeated requests to CMT for payment for  
18 this job. In September 2002, CMT agent and accountant Philip  
19 Johnson told petitioner that payment hadn't arrived yet from Isle  
20 8 Pictures, the production company, and assured petitioner that  
21 she would be paid by CMT as soon as CMT received payment from  
22 Isle 8. Over the next few months, further calls and letter from  
23 petitioner to CMT went unanswered. In February 2003, the  
24 petitioner contacted Isle 8 and discovered that Isle 8 paid CMT  
25 \$480.00 on September 5, 2002 for petitioner's modeling services.

26 5. This petition was filed on February 27, 2003, and served  
27 on CMT at its business address on March 10, 2003. CMT did not  
28 file any answer. Notices of the hearing were sent to the parties

1 on May 12, 2003.

2 LEGAL ANALYSIS

3 1. Petitioner is an "artist" within the meaning of Labor  
4 Code section 1700.4(b). Respondent is a "talent agency" within  
5 the meaning of Labor Code section 1700.4(a). The Labor  
6 Commissioner has jurisdiction to issue this determination  
7 pursuant to Labor Code section 1700.44.

8 2. Labor Code section 1700.5 provides that "[n]o person  
9 shall engage in or carry on the occupation of a talent agency  
10 without first procuring a license . . . from the Labor  
11 Commissioner." By continuing to operate as a talent agency  
12 after the expiration of its license on July 24, 2002, and in  
13 particular, by entering into an agreement with petitioner to  
14 serve as her talent agency by procuring employment on her behalf,  
15 and by procuring such employment without a license, CMT violated  
16 Labor Code section 1700.5.

17 3. An agreement that violates the licensing requirement of  
18 the Talent Agencies Act is illegal and unenforceable. "Since the  
19 clear object of the Act is to prevent improper persons from  
20 becoming [talent agents] and to regulate such activity for the  
21 protection of the public, a contract between an unlicensed  
22 [agent] and an artist is void." *Buchwald v. Superior Court*  
23 (1967) 254 Cal.App.2d 347, 351. Having determined that a person  
24 or business entity procured, promised or attempted to procure  
25 employment for an artist without the requisite talent agency  
26 license, "the [Labor] Commissioner may declare the contract  
27 [between the unlicensed agent and the artist] void and  
28 unenforceable as involving the services of an unlicensed person

1 in violation of the Act." *Styne v. Stevens* (2001) 26 Cal.4th 42,  
2 55. "[A]n agreement that violates the licensing requirement is  
3 illegal and unenforceable . . . ." *Waisbren v. Peppercorn*  
4 *Productions, Inc.* (1995) 41 Cal.App.4th 246, 262. Moreover, the  
5 artist that is party to such an agreement may seek disgorgement  
6 of amounts paid pursuant to the agreement, and "may . . . [be]  
7 entitle[d] . . . to restitution of all fees paid the agent."  
8 *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626.

9 4. We therefore hold that CMT must disgorge to petitioner  
10 the entire \$480 received from Isle 8 for petitioner's modeling  
11 services, and that CMT is not entitled to retain any part of the  
12 \$480 as an agency fee or commission. Also, in accordance  
13 with Civil Code sections 3287 and 3289, we conclude that  
14 petitioner is entitled to interest on the wrongfully withheld  
15 funds, at the rate of 10% per annum, from September 5, 2002, the  
16 date the funds were received by CMT.

17 5. We note that even if CMT had been licensed when it  
18 procured this employment for petitioner, its failure to remit the  
19 funds received from Isle 8 on behalf of petitioner would  
20 constitute a violation of Labor Code section 1700.25. This  
21 statute provides that a licensed talent agency that receives any  
22 payment of funds on behalf of an artist shall immediately deposit  
23 that amount in a trust fund account maintained by him or her in a  
24 bank, and shall disburse those funds, less the agent's  
25 commission, to the artist within 30 days after receipt. Section  
26 1700.25 further provides that if, in a hearing before the Labor  
27 Commissioner on a petition to determine controversy, the  
28 Commissioner finds that the talent agency willfully failed to

1 disburse these amounts within the required time, the Commissioner  
2 may award interest on the wrongfully withheld funds at the rate  
3 of 10% per annum, and reasonable attorney's fees.

4 6. Respondent's failure to disburse the amounts paid by  
5 Isle 8 on behalf of petitioner for the Audi commercial  
6 constitutes a willful violation of Labor Code section 1700.25.

7 7. As a result of CMT's failure to pay amounts due to  
8 petitioner, she was forced to file this petition to determine  
9 controversy, and in order to prosecute this petition, she was  
10 forced to incur costs in the amount of \$35 in order to have a  
11 process server serve the petition on CMT. Petitioner is entitled  
12 to reimbursement for this cost.

13 8. The parties who are jointly and severally liable for the  
14 amounts owed to petitioner include CMT TALENT AGENCY, a  
15 partnership, and its owners, ALBERTA SELLERS and BYRON GARRETT.

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1 ORDER

2 For the reasons set forth above, IT IS HEREBY ORDERED that  
3 Respondents CMT TALENT AGENCY, a partnership; ALBERTA SELLERS;  
4 and BYRON GARRETT, shall pay the following amounts to petitioner  
5 SUSAN ODOM, guardian ad litem for HALEY ARTHUR SHINN, a minor:

- 6 1. \$480.00 for unlawfully withheld earnings;  
7 2. \$50.50 interest on the unlawfully withheld earnings;  
8 3. \$35.00 for reimbursement of costs;

9 for a total of \$565.50.

10  
11 Dated:

9/24/03

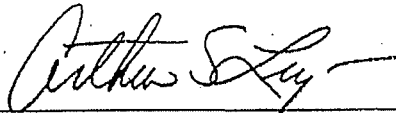


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MILES E. LOCKER  
Attorney for the Labor Commissioner

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14 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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17 Dated:

9-24-03



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ARTHUR S. LUJAN  
State Labor Commissioner

