

1 ABDEL NASSAR (SBN 275712)
2 STATE OF CALIFORNIA
3 DEPARTMENT OF INDUSTRIAL RELATIONS
4 DIVISION OF LABOR STANDARDS ENFORCEMENT
5 320 W. 4TH St, Suite 600
6 Los Angeles, California 90013
7 Telephone: (213) 987-1511
8 Facsimile: (213) 897-2877

9 Attorney for the Labor Commissioner

10
11 BEFORE THE LABOR COMMISSIONER
12 OF THE STATE OF CALIFORNIA

13 CARMEN MERCADO, an Individual,

14 Petitioner,

15 vs.

16 CENTRAL ARTISTS, INC.; JEAN-MARC
17 CARRE, an Individual,

18 Respondents.

CASE NO. TAC 52745

DETERMINATION OF CONTROVERSY

19
20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code
22 section 1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned
23 attorney for the Labor Commissioner assigned to hear this case. Petitioner CARMEN
24 MERCADO (hereinafter "Petitioner") appeared and represented herself. Respondent JEAN-
25 MARC CARRE (hereinafter "Respondent Carre") appeared on behalf of himself and on behalf of
26 Respondent CENTRAL ARTISTS, INC. (hereinafter "Central Artists"), collectively (hereinafter
referred to as "Respondents").

27 Due consideration having been given to the testimony and documentary evidence
28 presented, the Labor Commissioner hereby adopts the following determination of controversy.

1 **II. BACKGROUND FACTS**

2 1. Petitioner is a commercial and theatrical actor.

3 2. Central Artists is a talent agency owned by Respondent Carre and Laura Walsh.

4 Respondent Carre has been a licensed talent agent for over thirty years.

5 3. On or about July 2016, Respondents became Petitioner’s sole and exclusive
6 representative and agent pursuant to a written Agency General Service Agreement (hereinafter
7 “Agreement”). Under the Agreement, Petitioner agreed to pay Respondents 10% of union jobs
8 and 20% of non-union jobs procured by Respondents. Petitioner also signed an Acknowledgment
9 of Agency Fee (hereinafter “Acknowledgment”), with the following description at the top of the
10 page: “A fee in addition to Artists’ Compensation and not intended for Artist”.

11 4. In 2019, Respondents procured seven non-union commercial acting jobs for
12 Petitioner. These seven non-union jobs are at issue in this Petition.¹ During the hearing,
13 Respondent Carre admitted receiving 20% commission from Petitioner’s gross earnings
14 (including any payments for fittings and travel) and a 20% agency fee from the production
15 companies for each of these projects.

16 5. On or about October 10, 2019, Petitioner informed Respondents she would no
17 longer pay them 20% from her gross earnings in addition to the 20% agency fee they received
18 from the production companies. Petitioner demanded Respondents return commissions she
19 believed had been unlawfully taken by Respondents, and terminated her Agreement with
20 Respondents.

21 6. In the Petition, Petitioner alleges Respondents violated the Talent Agencies Act
22 (hereinafter “the Act”) by taking 20% from her gross earnings while at the same time also
23 receiving a 20% agency fee from the production companies. Petitioner also alleges Respondents
24 violated the Act by taking 20% from payments she received for fittings and travel. Petitioner

25 _____
26 ¹ Petitioner could not provide specific details about these jobs during the hearing. She testified the
27 projects consisted of acting roles in commercials for pharmaceutical products Mayzent, Juice
28 Pharmacy, and Spirivia, and for Spectrum Mobile, Del Real Food Company, Amazon, and James
Avery Jewelry. Petitioner generally testified she performed the work on these projects between
June and September 2019.

1 seeks a refund of the commissions unlawfully taken, including any commissions from fittings and
2 travel payments she received. Petitioner also seeks penalties (unspecified) and restitution.

3 III. LEGAL DISCUSSION

4 **Issues**

5 1. Have Respondents violated the Act by taking 20% commission from Petitioner's
6 earnings, while also receiving a 20% agency fee from the production companies?

7 2. Did Respondents violate the Act by taking 20% commission from payments
8 Petitioner received for fittings and travel?

9 **Analysis**

10 Labor Code section 1700.23 vests the Labor Commissioner with jurisdiction over
11 "any controversy between the artist and the talent agency relating to the terms of the contract."
12 The Labor Commissioner's jurisdiction includes the resolution of contract claims brought by
13 artists or agents seeking damages for breach of a talent agency contract. *Garson v. Div. Of Labor*
14 *Law Enforcement (1949) 33 Cal.2d 86; Robinson v. Superior Court (1950) 35 Cal.2d 379.* The
15 Labor Commissioner has jurisdiction to determine this matter.

16 Labor Code section 1700.4, subsection (b), includes "actors and actresses" in the
17 definition of "artist." Petitioner is therefore an "artist" under the Act.

18 **A. Agency Fees**

19 The issue regarding Agency Fees was originally discussed by the Labor Commissioner in
20 *Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc., (Ali) TAC 14198.*
21 The Labor Commissioner concluded in *Ali*:

22 "[s]o long as said fees are not "registration fees" or fees charged for services
23 expressly listed in Labor Code §1700.40(b) (or similar services), **and are not**
24 **intended to be part of an artist's compensation** (even though they may be based
25 on a percentage of the artist's total earnings), we find that the Agency Fees are
26 between the talent agency and the third party companies and the Labor
27 Commissioner has no jurisdiction over such fee arrangements. *We note that the*
28 *evidence, however, must clearly establish that the Agency Fee is separate and*
apart from the fees the production company pays to the artist. There must be no
question that the fees are intended for the agency and are not meant for the artist.

26 *Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc., TAC 14198* at pg. 4
27 [emphasis added]. In *Ali* it was announced that as long as the "agency fee" was intended for the
28 agent by the production company and was not intended to be part of the artist's compensation, the

1 artist had no right to it. *Id.*

2 In *Cargle v. Howard, TAC 36595* (hereinafter “*Cargle*”), the Labor Commissioner
3 announced that where an “Agency Fee” was actually intended for the artist it was illegal for an
4 agent to collect it as their own. The Labor Commissioner concluded in *Cargle* that:

5 Here, unlike *Ali*, ample evidence that the “agency fees” were intended for Cargle
6 and not [the Agent] comes from the testimony of Mathew Coates, executive
7 producer for Kovel/Fuller Advertising Agency [the production company]. Coates
8 credibly testified that [the production company] was not aware the additional fees
9 were for the direct benefit of [the Agent]. Coates further testified that he believed
10 [the Agent] was only receiving 20% of the contract fee negotiated by [the Agent]
11 and not the 40% that [the Agent] was actually collecting. As such, the “agency
12 fee” was unlawfully collected by [the Agent] in excess of the 20% commission
13 rate approved by the Labor Commissioner pursuant to Labor Code §1700.24
14 which requires the Labor Commissioner to approve the maximum amount of fees
15 charged and collected by a talent agent.

16 Here, the evidence supports a finding that the “agency fees” were not intended to be part
17 of Petitioner’s compensation. The fees schedule introduced by Petitioner for the Mayzent
18 commercial states that the 20% agency fee is payable “...if the talent has [sic] agent.” (emphasis
19 added) Also, in an email to Petitioner from the production company for the Juice Pharma project,
20 the production company informs Plaintiff: “Yes, he [Respondent] would have been paid his 20%
21 agent fee at the same time you were paid your [Petitioner’s] fee.” This email supports a finding
22 that to the production company Petitioner’s fee was separate and apart from the agent fee it paid
23 Respondent.

24 The evidence supports a finding that the 20% “agency fees” were not intended by the
25 production companies to be part of Petitioner’s compensation.

26 **B. Commissions From Travel and Fittings Payments**

27 During the hearing, Petitioner explained that her allegation that Respondents had
28 unlawfully taken commission from payments she received for fittings and travel was based on her
understanding of the rules and/or regulations imposed on agents by SAG-AFRA. It was
undisputed that the jobs at issue in this case were non-union jobs not subject to SAG-AFRA
regulations. In addition, the travel and fitting fees at issue in this case were included as part of the
overall compensation earned by Petitioner, and not reimbursement of expenses actually incurred
by Petitioner. The fees schedule or audition ticket for the Spectrum Mobile project, for example,
provides that Petitioner is to be paid a flat rate of \$500.00 for fittings and \$500.00 for travel, per

1 day. Thus, based on the facts of this case, commissions taken by Respondent from Petitioner's
2 total compensation, which included flat upfront fees for fittings and travel, were not unlawful
3 under the Act.²


4 **IV. ORDER**

5 For the reasons set forth above, the Petition to Determine Controversy is
6 **DENIED.**

7
8 **IT IS SO ORDERED.**


9
10 Dated: October 13, 2021

Respectfully Submitted

11
12 By: 
13 Abdel Nassar
14 Attorney for the Labor Commissioner

15
16
17 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

18
19
20 Dated: October 13, 2021


21 By: _____
22 Lilia García-Brower
23 California State Labor Commissioner

24
25
26 _____
27 ² We would like to emphasize that this finding is limited to the specific facts of this case. It is not
28 intended, nor should it be construed, as a general rule or finding as to the legality under the Act of
commissions taken by agents from compensation received by artists for business expenses,
including for travel.