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7
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 JOYCE SALEH, guardian ad litem) No. TAC 35-02
for ASHFORD KNEITEL, a minor,)
12)
Petitioner,)
13)
vs.)
14)
ALBERTA SELLERS and BYRON GARRETT, both) DETERMINATION OF
15 individually and dba CMT TALENT AGENCY;) CONTROVERSY
GEORGIA TRIPLETT, an individual;)
16 COLOURS MODEL AND TALENT AGENCY, INC.,)
17 Respondents.)
18

19 The above-captioned matter, a petition to determine
20 controversy under Labor Code §1700.44, came on regularly for
21 hearing on January 14, 2003, in Los Angeles, California, before
22 the Labor Commissioner's undersigned hearing officer. Petitioner
23 appeared in propria persona; none of the respondents appeared.
24 Based on the evidence presented at this hearing and on the other
25 papers on file in this mater, the Labor Commissioner hereby
26 adopts the following decision.

27 FINDINGS OF FACT

28 1. CMT TALENT AGENCY (hereinafter "CMT") was most recently

1 licensed as a talent agency by the State Labor Commissioner from
2 July 25, 2001 to July 24, 2002. It was licensed as a
3 partnership, owned by ALBERTA SELLERS and BYRON GARRETT, with a
4 business address at 8344 ½ W. 3rd Street, Los Angeles,
5 California.

6 2. COLOURS MODEL & TALENT MANAGEMENT AGENCY, INC.,
7 (hereinafter "COLOURS") was most recently licensed by the Labor
8 Commissioner as a talent agency from June 9, 2000 to March 26,
9 2001. It was licensed as a corporation, and ALBERTA SELLERS and
10 BYRON GARRETT were listed on the license application form as
11 corporate officers, with a business address at 8344 ½ W. 3rd
12 Street, Los Angeles, California.

13 3. By letter dated December 11, 2001 to Labor Commissioner
14 attorney David Gurley, GEORGIA TRIPLETT stated that COLOURS
15 ceased operations in September 2001 and that she had assumed all
16 debts incurred by COLOURS prior to its closing.

17 4. On November 11, 2001, petitioner JOYCE SALEH, as guardian
18 ad litem for her minor daughter, ASHFORD KNEITEL, executed a
19 written "General Contract and Model Representation Agreement"
20 with "COLOURS INTERNATIONAL MODEL AND TALENT AGENCY", the name
21 that CMT was then using, under which she engaged the services of
22 CMT as a talent agency for a period of one year, to negotiate
23 contracts for the petitioner in the rendition of professional
24 services as a model and in all other fields in the entertainment
25 industry, for which CMT would be entitled to commissions.
26 Petitioner was also asked to sign a "payment authorization
27 request", authorizing COLOURS MODEL & TALENT MANAGEMENT AGENCY to
28 accept checks which are payable from employers to the petitioner,

1 so that the agency could bill employers directly for petitioner's
2 modeling services, deposit checks received, and then forward
3 amounts owed to petitioner while retaining the commissions owed
4 to the agency. Petitioner signed this authorization on or about
5 November 27, 2001, and it was also signed by BYRON GARRETT on
6 behalf of the agency.

7 5. In April 2002 petitioner received a telephone call from
8 Nicole Connor, a CMT agent, informing petitioner about an acting
9 or modeling job on a WB Television Network promotional
10 commercial. ASHFORD KNEITEL performed acting or modeling work in
11 connection with the filming of this commercial on April 13 and
12 April 14, 2002, for which CMT (using an invoice bearing the name
13 COLOURS MODEL & TALENT MANAGEMENT AGENCY) billed \$2,152.50 to WB
14 Television Network for petitioner's services, plus an additional
15 \$400 for CMT's commissions. WB paid the entire invoiced amount
16 to CMT (or COLOURS) on or about June 19, 2002.

17 6. Starting in August 2002, Neil Kneitel, Ashford Kneitel's
18 father, made various telephone calls to CMT, and to CMT's
19 accountant, Philip Johnson, seeking payment of the amount owed to
20 Ashford for her work on the WB commercial. First, Kneitel was
21 told that "we are getting the check out". Next, he was told the
22 "check must have been lost" but that "it is being processed".
23 Finally, on December 5, 2002, Philip Johnson told Kneitel, "Since
24 you have filed with the State, we have decided not to pay you."
25 Petitioner still has not been paid any amount for the work she
26 performed on this commercial.

27 7. This petition was filed on October 15, 2002, and served
28 on CMT at its business address in Los Angeles on November 13,

1 2002. Notices of the hearing were sent to the parties on
2 December 19, 2002.

3 LEGAL ANALYSIS

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

8 2. Labor Code section 1700.25 provides that a licensed
9 talent agency that receives any payment of funds on behalf of an
10 artist shall immediately deposit that amount in a trust fund
11 account maintained by him or her in a bank, and shall disburse
12 those funds, less the agent's commission, to the artist within 30
13 days after receipt. Section 1700.25 further provides that if, in
14 a hearing before the Labor Commissioner on a petition to
15 determine controversy, the Commissioner finds that the talent
16 agency willfully failed to disburse these amounts within the
17 required time, the Commissioner may award interest on the
18 wrongfully withheld funds at the rate of 10% per annum.

19 3. Petitioner was entitled to payment of \$2,152.50 no later
20 than July 19, 2002, thirty days after it was paid to CMT (or
21 COLOURS). The failure to disburse this amount to petitioner was
22 willful, therefore entitling the petitioner to interest on this
23 amount at the rate of 10% per annum, commencing on July 19, 2002.

24 4. The parties who are liable for the amounts owed to
25 petitioner include CMT TALENT AGENCY, a partnership, and its
26 owners, ALBERTA SELLERS and BYRON GARRETT. These owners were
27 also the corporate officers of COLOURS, and although COLOURS was
28 no longer licensed by the Labor Commissioner, and allegedly out

1 of business by September 2001, the evidence reveals that SELLERS
2 and GARRETT were continuing to operate COLOURS as an alter ego of
3 CMT. Consequently, we conclude that COLOURS is jointly liable
4 with CMT and SELLERS and GARRETT for the amounts owed. As to the
5 remaining respondent, GEORGIA TRIPLETT, no evidence was presented
6 that she had any involvement with CMT, or with COLOURS after
7 December 2001, or that she had any involvement whatsoever with
8 the petitioner. Consequently, we conclude that TRIPLETT is not
9 liable for any amount owed to petitioner.

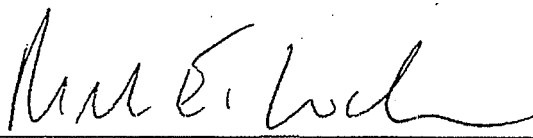
10 ORDER

11 For the reasons set forth above, IT IS HEREBY ORDERED that:

12 1. Respondents CMT TALENT AGENCY, a partnership; ALBERTA
13 SELLERS; BYRON GARRETT; and COLOURS MODEL & TALENT AGENCY, INC.,
14 are jointly and severally liable for \$2,152.50 owed to
15 petitioner, plus interest in the amount of \$130.92, for a total
16 of \$2,283.42. For each additional day after February 26, 2003
17 until payment is made, additional interest shall accrue at the
18 rate of 59 cents per day;

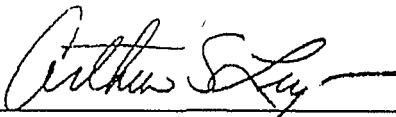
19 2. The petition is dismissed as to respondent GEORGIA
20 TRIPLETT.

21
22 Dated: 2/26/03


MILES E. LOCKER
Attorney for the Labor Commissioner

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24
25 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

26
27 Dated: 2/26/03


ARTHUR S. LUJAN
State Labor Commissioner

