

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
2 State of California  
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6 BEFORE THE LABOR COMMISSIONER  
7 OF THE STATE OF CALIFORNIA

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9  
10 ALICIA Y. WOODS, ) Case No. TAC 22-00  
Petitioner, )  
11 vs. ) DETERMINATION OF  
CONTROVERSY  
12 )  
13 COLOURS MODEL and TALENT AGENCY, )  
Respondent. )  
14 )  
15 )

16 INTRODUCTION

17 The above-captioned petition was filed on July 14, 2000,  
18 by ALICIA Y. WOODS, (hereinafter "Woods" or "Petitioner"), alleging  
19 that COLOURS MODEL & TALENT AGENCY, (hereinafter "Respondent" or  
20 "Colours"), collected double the amount of commissions legally due  
21 the respondent. Moreover, the petitioner maintains the respondent  
22 charged Woods taxes on not only petitioner's earnings, but the  
23 respondent's commissions as well. Petitioner seeks a determination  
24 from the Labor Commissioner requiring the respondent to separate  
25 their earnings from respondent, pay their own taxes, and be limited  
26 to 10% commissions. Finally, petitioner alleges she was not paid  
27 for a modeling engagement and is entitled to \$50.00.

1 Respondent did not file an answer, but appeared at the  
2 hearing. The hearing was held on May 11, 2000, before the  
3 undersigned attorney for the Labor Commissioner. The petitioner  
4 and respondent appeared in propria persona. Based upon the  
5 testimony and evidence presented at this hearing, the Labor  
6 Commissioner adopts the following Determination of Controversy.

7  
8 FINDINGS OF FACT

9 1. In January of 2000, the parties entered into a  
10 representation agreement whereby the respondent would procure  
11 modeling and acting engagements for the petitioner, in exchange for  
12 20% of Wood's gross earnings as Colours' commission. In  
13 preparation for anticipated modeling and commercial engagements,  
14 Woods spent \$200.00 on photographs of herself (Zed cards) and  
15 supplied Colours with the cards. Colours would ostensibly, forward  
16 the photos to production companies and casting directors on behalf  
17 of Woods.

18 2. On May 17, 2001, Woods was sent on a two-hour photo  
19 shoot which paid a flat rate of \$50.00. Despite requesting payment  
20 from Colours, Woods was never paid for this engagement.

21 3. On May 11, 2001, Colours arranged a commercial  
22 opportunity for Woods, whereby Woods was participate in the filming  
23 of the commercial and be compensated at \$3,500.00 for her efforts.  
24 In addition to the 20% commission (booking fee) on Woods' gross  
25 earnings, the respondent arranged for the production company to pay  
26 an additional 20% referral fee to Colours for providing the artist  
27 for the production.

4. The commercial was completed and on June 30, 2001,

1 and Woods was provided a check for her earnings in the following  
2 format:

3	<u>Gross pay</u>	<u>\$4,200.00</u>
4	Federal Tax	\$-529.55
5	Social Security	\$-260.40
6	Medicare	\$-60.00
7	CA State Income	\$-129.87
8	<u>SDI</u>	<u>\$-29.40</u>
9	Net Pay	\$3,189.88

10 Your federal taxable wages this period are \$4,200.00

11 5. Apparently, Colours had added their 20% referral fee  
12 to Woods \$3,500.00 total earnings and then proceeded to tax Woods  
13 on the entire \$4,200.00 amount. Then shockingly, Colours required  
14 Woods to deduct their \$700.00 commission and the \$700.00 referral  
15 fee and remit \$1,400.00 to Colours leaving Woods net earnings of  
16 \$1,789.88.

17 6. Upon receipt of the \$3,189.88 and subsequent  
18 request by Colours for Woods to remit \$1,400.00, Woods contacted  
19 the production company's payroll department and instructed the  
20 accountant to remit a new check. As requested by Woods, the new  
21 check must not include the 20% referral fee which should be sent  
22 directly to Colours and must only reflect \$3,500.00 in gross  
23 earnings, subtract the appropriate taxes. Wisely, the accountant  
24 complied with Woods request and reissued the check, separating  
25 \$700.00 and sending that amount directly to Colours. Woods was  
26 then reissued a check for \$3,500.00 subtract the appropriate taxes.

27 7. Woods produced a taped phone message, whereby  
Colours then contacted Woods and requested that she remit an  
additional \$700.00 to Colours directly to cover the commission

1 (booking fee) for the agent who procured the job. Woods wisely  
2 refused.

3 8. Woods immediately terminated the relationship and  
4 requested Colours return all of Woods Zed cards in the possession  
5 of Colours. Colours acknowledged possession of the cards, but when  
6 Woods attempted to retrieve her photographs, a Colours employee  
7 admittedly discarded all of Woods photos.

8 9. Petitioner seeks the \$50.00 fee for the May 11, 2000  
9 photo shoot, \$200.00 for the discarded photographs and seeks  
10 \$7,500.00 in punitive damages.

11  
12 LEGAL ANALYSIS

13 1. Labor Code 1700.4(b) includes "models" in the  
14 definition of "artist". Petitioner's is an "artist" within the  
15 meaning of Labor Code §1700.4(b).

16 2. Respondent is a licensed California talent agent  
17 pursuant to Labor Code §1700.5. Consequently, the Labor  
18 Commissioner has jurisdiction to hear this matter pursuant to Labor  
19 Code §1700.44.

20 3. Labor Code §1700.24 states,  
21 "Every talent agency shall file with the Labor  
22 Commissioner a schedule of fees to be charged (to the  
23 artist) and collected in the conduct of that occupation,  
24 and shall keep a copy of the schedule posted in a  
conspicuous place in the office of the talent agency..."

25 4. The respondent filed his schedule of fees with the  
26 Labor Commission on June 03, 1999. Respondent's schedule of fees

1 contained the following provision. "The maximum rate of fees due  
2 this agency for services rendered to the artist is ten percent  
3 (10%) of the total earnings paid to the artist managed by this  
4 talent agency."

5           5. Respondent charged their client double their posted  
6 schedule of fees. This violation of the Talent Agencies Act which  
7 prohibits an agency from charging their clients more than the pre-  
8 approved percentage filed with the Labor Commissioner established  
9 a clear breach of Colours fiduciary duty toward their client. The  
10 California Code of Regulation Title 8 §12003.2 provides that,

11  
12           "No form of contract which incorporates substantial  
13 changes in the form of the contract previously approved  
14 shall be produced again unless the same shall be  
15 submitted to the Labor Commissioner for approval...."

16  
17           6. The respondent charged their client more than double  
18 the amount of commission which had been previously approved by the  
19 Labor Commissioner. They did not seek approval to double their  
20 commissions and as a result will be liable for any benefits  
21 incurred through the employment of Ms. Woods. These unapproved  
22 changes operated to the detriment of the artist and clearly,  
23 Colours had only their interest at heart and not the interest of  
24 their client.

25           7. Additionally, Colours breach of their fiduciary duty  
26 toward Woods created further liability for the respondent. By  
27 charging double the amount of commissions and attempting to have

1 the artist pay respondent's taxes, they breached the contract with  
2 the petitioner and their common law duty to act with good faith and  
3 fair dealing. It is well established in contract law that expenses  
4 incurred in anticipation of, or preparation for performance,  
5 ordinarily are a recoverable element of damage for breach of  
6 contract. Buxbom v. Smith, 23 Cal.2d 535 at 541. Petitioner's  
7 expenses of photography costs are a direct result of petitioner  
8 preparing to perform her contractual duties. Petitioner did not  
9 receive her photos after requesting them and indeed, admittedly,  
10 Colours discarded them. These damages are foreseeable and  
11 recoverable.

12 8. The respondent benefitted from his breach. The  
13 respondent has been unjustly enriched and the law must impose  
14 protections on behalf of the public. Accordingly, respondent has  
15 no right to commissions collected from the petitioner.

16 9. Petitioner is entitled to recover all commissions  
17 paid to the respondent for the one-year period preceding filing of  
18 the petition pursuant to labor Code §1700.44(c). The evidence  
19 produced at the hearing established respondent collected \$700.00 on  
20 behalf of the petitioner within one year from the filing of this  
21 petition. Further the petitioner is entitled to collect \$50.00 for  
22 the nonpayment of earnings in connection with her May 11, 2000  
23 photo shoot. Further, Labor code §1700.40 provides,

24 "In the event a talent agency shall collect from an  
25 artist a fee or expenses for obtaining employment for the  
26 artist, ...and the artist shall fail to be paid for the  
27 employment, the talent agency shall, upon demand

1 therefore, repay to the artist the fee...Unless repayment  
2 is made within 48 hours after demand therefor, the talent  
3 agency shall pay to the artist an additional sum equal to  
4 the amount of the fee."

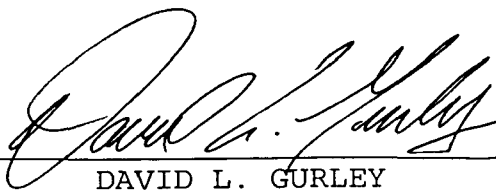
5 10. The respondent collected on behalf of the artist  
6 and the artist was not paid after a demand was made. Consequently,  
7 the artist is entitled to an additional penalty of \$50.00.  
8 Finally, Colours shall reimburse Woods the \$200.00 for the cost of  
9 her photos. The talent agency is on notice that the Labor  
10 Commissioner will seek additional information from the respondent,  
11 including, *inter alia*, all books and records for inspection,  
12 pursuant to Labor Code §1700.27 to further inquire as to the  
13 agencies business practices.

14  
15 ORDER

16 For the above-stated reasons, respondent illegally  
17 collected commissions, attempted to have their clients pay their  
18 taxes, converted their client's property, and consequently  
19 materially breached their fiduciary duties. Consequently, the  
20 Respondent, COLOURS MODEL & TALENT AGENCY, shall remit to the  
21 petitioner, ALICIA Y. WOODS, within 10 days of receipt of this  
22 determination, \$700.00 in illegally collected commission; \$50.00  
23 for nonpayment; a \$50.00 penalty pursuant to Labor Code  
24 §1700.40(a); \$200.00 for converted photos and interest at 10% per  
25 annum totaling \$1,100.00. The petitioner's request for punitive  
26 damages is denied, as the Labor Commissioner does not have the  
27 authority to award punitive damages. **IT IS SO ORDERED.**

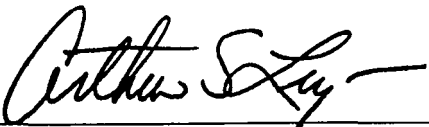
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Dated: September 26, 2001

  
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DAVID L. GURLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 9-26-01

  
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ARTHUR S. LUJAN  
State Labor Commissioner



