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State of California  
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8 BEFORE THE LABOR COMMISSIONER

9

STATE OF CALIFORNIA

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11 ISMAEL "IZZY" DIAZ, ) No. TAC 12-03

12 )  
12 ) Petitioner, )

13 )  
13 ) vs. )

14 )  
14 ) PHILLIP JOHNSON, aka PHILIP JOHNSON; ) DETERMINATION OF  
CMT TALENT AGENCY, dba COLOURS MODEL & ) CONTROVERSY

15 )  
15 ) TALENT AGENCY, and/or CMT, )

16 )  
16 ) Respondents. )

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18 The above-captioned matter, a petition to determine  
19 controversy under Labor Code §1700.44, came on regularly for  
20 hearing on August 15, 2003, in Los Angeles, California, before  
21 the Labor Commissioner's undersigned hearing officer. Petitioner  
22 appeared in propria persona; respondents failed to appear. Based  
23 on the evidence presented at this hearing and on the other papers  
24 on file in this matter, the Labor Commissioner hereby adopts the  
25 following decision.

26

FINDINGS OF FACT

27

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

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

5 2. In the spring of 2002, CMT talent agent PHILLIP or  
6 PHILIP JOHNSON had a conversation with petitioner ISMAEL "IZZY"  
7 DIAZ, in which JOHNSON offered to represent DIAZ as a talent  
8 agent by attempting to obtain work for DIAZ as a television or  
9 film actor. Shortly thereafter, DIAZ executed a written contract  
10 with CMT under which he engaged the services of CMT as a talent  
11 agency to negotiate contracts for the petitioner in the rendition  
12 of professional services as an actor and in all other fields in  
13 the entertainment industry, for which CMT would be entitled to  
14 commissions.

15 3. As a result of CMT's efforts, DIAZ obtained employment  
16 for the three day period from December 17 through December 19,  
17 2002, as an actor for Warner Bros. Television Productions on an  
18 episode of "The George Lopez show", a television sitcom.

19 4. By check dated December 27, 2002, Warner Bros.  
20 Television Productions paid \$1,128.95 to CMT on behalf of DIAZ.  
21 This check was deposited into a "California Commercial Theatrical  
22 client trust account", maintained by JOHNSON in Santa Barbara,  
23 California, on January 6, 2003.

24 5. Starting in mid-January 2003, DIAZ made over 30 calls to  
25 CMT and to JOHNSON inquiring about payment. Neither JOHNSON nor  
26 CMT ever paid DIAZ any money for his acting services in  
27 connection with this sitcom.

28 //



1 in violation of the Act." *Styne v. Stevens* (2001) 26 Cal.4th 42,  
2 55.

3 4. We therefore hold that CMT and JOHNSON must disgorge to  
4 DIAZ the entire \$1,128.95 received from Warner Bros. Television  
5 Productions for DIAZ's services as an actor, and that CMT and  
6 JOHNSON are not entitled to retain any part of the \$1,128.95 as  
7 an agency fee or commission. Also, in accordance with Civil Code  
8 sections 3287 and 3289, we conclude that DIAZ is entitled to  
9 interest on the wrongfully withheld funds, at the rate of 10% per  
10 annum, from January 6, 2003, the date the funds were received by  
11 CMT and JOHNSON.

12 5. We note that even if CMT or JOHNSON had been licensed  
13 when it procured this employment for DIAZ, the failure to  
14 promptly remit the funds received from Warner Bros. Television  
15 Productions on behalf of DIAZ would constitute a violation of  
16 Labor Code section 1700.25. This statute provides that a  
17 licensed talent agency that receives any payment of funds on  
18 behalf of an artist shall immediately deposit that amount in a  
19 trust fund account maintained by him or her in a bank, and shall  
20 disburse those funds, less the agent's commission, to the artist  
21 within 30 days after receipt. Section 1700.25 further provides  
22 that if, in a hearing before the Labor Commissioner on a  
23 petition to determine controversy, the Commissioner finds that  
24 the talent agency willfully failed to disburse these amounts  
25 within the required time, the Commissioner may award interest on  
26 the wrongfully withheld funds at the rate of 10% per annum, and  
27 reasonable attorney's fees.

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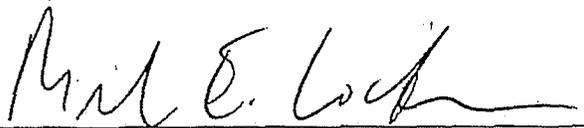
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ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Respondents PHILLIP JOHNSON, aka PHILIP JOHNSON; and CMT TALENT AGENCY, dba COLOURS MODEL & TALENT AGENCY, and/or CMT, are jointly and severally liable for the following amounts, which shall be paid to petitioner ISMAEL "IZZY" DIAZ:

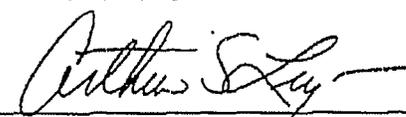
- 1. \$1,128.95 for unlawfully withheld earnings;
  - 2. \$94.08 for interest on the unlawfully withheld earnings, as of the date of this decision (with further interest accruing at the rate of 31 cents per day thereafter);
- for a total, as of the date of this decision, of \$1,223.03.

Dated: 10/9/03

  
MILES E. LOCKER  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 10-10-03

  
ARTHUR S. LUJAN  
State Labor Commissioner

