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7
8 BEFORE THE LABOR COMMISSIONER
9 STATE OF CALIFORNIA

10 CARRIE A. ZANOLINE,) No. TAC 26-04
11)
Petitioner,)
12)
vs.)
13)
LOOK MODEL AGENCY, a California) DETERMINATION OF
corporation,) CONTROVERSY
14)
Respondent.)
15)

16 The above-captioned matter, a petition to determine
17 controversy under Labor Code §1700.44, came on regularly for
18 hearing on January 19, 2005, in San Francisco, California, before
19 the undersigned attorney for the Labor Commissioner, assigned to
20 hear the matter. Petitioner, CARRIE A. ZANOLINE, appeared
21 through her counsel, Sarah Wright; Respondent, LOOK MODEL AGENCY,
22 appeared through its president, George Kollock. Based on the
23 evidence presented at this hearing and on the other papers on
24 file in this matter, the Labor Commissioner hereby adopts the
25 following decision.

26 FINDINGS OF FACT

27 1. At all times relevant herein, LOOK MODEL AGENCY
28 (hereinafter "LOOK," or Respondent) was licensed by the State

1 Labor Commissioner as a talent agency located in San Francisco,
2 California.

3 2. CARRIE A. ZANOLINE (hereinafter "ZANOLINE," or
4 Petitioner) is a fashion model, and was represented by LOOK from
5 May 2001 to September 8, 2003, when LOOK received a letter from
6 her terminating the relationship. During the period of
7 representation, LOOK obtained many modeling jobs for ZANOLINE.

8 3. LOOK and ZANOLINE never entered into a written contract.
9 However, ZANOLINE understood that LOOK charged a 20% commission
10 on all of her earnings in connection with modeling jobs obtained
11 by LOOK.

12 4. On April 8, 1985, the Labor Commissioner approved LOOK's
13 schedule of fees, under which "the maximum rate of fees due this
14 talent agency for services rendered to the artist is 20% of the
15 total earnings paid to the artist managed by this talent agency."
16 This schedule of fees remained in effect at all times relevant
17 herein.

18 5. On September 5, 2003, LOOK issued a check to ZANOLINE in
19 the amount of \$2,640.00 in payment for a modeling assignment.
20 Three days later, LOOK received written notification from
21 ZANOLINE terminating representation. LOOK immediately placed a
22 stop payment on this check, without any sort of notice to
23 ZANOLINE. Ultimately, by letter dated September 18, 2003,
24 ZANOLINE's bank notified her that LOOK had stopped payment on
25 this check. Meanwhile, ZANOLINE had written several checks
26 against her own account that did not clear due to insufficient
27 funds as a result of not having the funds from LOOK's check in
28 her account. As a result of checks that ZANOLINE issued in

1 reliance on the check that LOOK had stopped payment on, ZANOLINE
2 incurred the following bank charges during the period from
3 September 17 to October 6, 2003: \$27 per check for NSF return
4 check fees for a total of 15 NSF checks, six separate overdraft
5 fees of \$30 each, three separate overdraft charges of \$5 each, a
6 \$5 check return fee, and \$4 in charges for phone banking calls to
7 discuss the problem, for a total of \$609.00.

8 5. On September 22, 2003, LOOK provided ZANOLINE with
9 another check in the amount of \$2,640.00, replacing the check on
10 which payment had been stopped. According to LOOK's president,
11 George Kollock, payment had been stopped on the previous check
12 because it was an advance of modeling fees for a job for which
13 the customer had not yet paid LOOK, and stopping payment was the
14 only way LOOK could protect itself if the customer were to fail
15 to pay LOOK for the work ZANOLINE had performed, in that since
16 ZANOLINE had terminated the representation agreement, there would
17 be no additional jobs in the future against which LOOK could
18 credit the advance. Kollock testified that as soon as LOOK
19 received the payment from this customer, LOOK issued the
20 replacement check to ZANOLINE.

21 6. LOOK's normal practice is to issue checks to the models
22 it represents, based on amounts received from customers less
23 LOOK's 20% commission on such earnings, twice a month, on the 5th
24 and the 20th day of each month. Kollock testified that LOOK's
25 standard practice is to pay the model her modeling earnings (less
26 LOOK's commission) within 30 days of receipt of these payments
27 from the customer of the modeling services, and that LOOK takes
28 appropriate steps to collect payment from any customer who fails

1 to make prompt payment for those services. Records presented at
2 the hearing show that there were some instances where modeling
3 fees were paid to ZANOLINE four or five months after completing a
4 modeling job, but no evidence was presented as to when the
5 customers actually paid LOOK for these modeling services.

6 7. LOOK issued advances to ZANOLINE, and other models upon
7 request, for work performed but for which LOOK had not yet
8 received payment. LOOK charged an additional 5% commission for
9 such advances. This 5% commission had never been approved by the
10 Labor Commissioner in a schedule of fees. There were many
11 occasions in which ZANOLINE requested, and received, an advance
12 from LOOK on her modeling earnings. Neither party at the hearing
13 presented records showing the exact number of times that such
14 advances were made, the amounts advanced, or the amounts
15 collected by LOOK based on its 5% commission charged in
16 connection with these advances.

17 8. As a supplement to standard modeling fees, LOOK's models
18 receive "travel charges" for bookings outside San Francisco, in
19 amounts that vary based on distance from San Francisco. For
20 example, models earn a \$35 supplement for work performed in
21 Oakland, and a \$150 supplement for work performed in Monterey.
22 LOOK treated these travel charges the same as standard modeling
23 fees, deducting a 20% commission on the travel charges as it does
24 with all other modeling earnings. At some point during the
25 period in which LOOK represented ZANOLINE, someone on LOOK's
26 staff told ZANOLINE that the travel charges were commissionable.

27 9. There are two specific modeling jobs for which ZANOLINE
28 only received partial pay from LOOK, by check dated August 20,

1 2003. First, LOOK still owes ZANOLINE \$15 (less its commission,
2 leaving \$12 owed) in connection with a modeling job on May 28,
3 2003 for Clotrain Conui, for which LOOK previously paid ZANOLINE
4 \$210, less its commission. Also, LOOK still owes ZANOLINE \$25
5 (less its commission, leaving \$20 owed) in connection with a
6 modeling job on June 14, 2003 for Nordstrom, for which LOOK
7 previously paid ZANOLINE \$325, less its commission. The \$12
8 shortfall for the first job is inexplicable, and appears to have
9 been the result of a clerical error. The \$20 shortfall for the
10 second job is tied to a dispute over whether ZANOLINE was
11 eligible, on that job, for a premium for work performed prior to
12 9AM. A rate sheet published by LOOK and distributed to all of
13 its models, showing standard fees charged to customers, indicates
14 that a \$25 premium is charged for modeling work performed prior
15 to 9AM. ZANOLINE testified that this job was performed prior to
16 9AM, and that she therefore was entitled to this premium.
17 Although Kollock testified that not every early morning job
18 included this premium, LOOK failed to rebut the inference that
19 the premium was charged, or but for LOOK's negligence would have
20 been charged to Nordstrom, and that it should have been paid,
21 less LOOK's commission, to ZANOLINE.

22 10. ZANOLINE filed this petition on August 4, 2004, seeking
23 a determination that the following amounts are owed: (1) interest
24 for the period from September 11, 2003 (the date LOOK stopped
25 payment on the \$2,640.00) to September 22, 2003 (the date LOOK
26 issued a replacement check), for a total of eleven days interest
27 at 10% per annum on the \$2,640.00, to wit, \$7.96; (2) damages
28 resulting from stopping payment on this check, based on the

1 various bank charges that resulted therefrom, plus interest on
2 those bank charges from September 2003 to the present; (3)
3 additional damages resulting from alleged severe emotional
4 distress occasioned by the stop payment order; (4) payment of
5 amounts still owed in connection with the two modeling jobs,
6 performed on May 28, 2003 and June 14, 2003, for which ZANOLINE
7 received partial payment from LOOK on August 20, 2003, with the
8 underpayments consisting of \$12 and \$20, respectively, for a
9 total of \$32 in underpayments; (5) reimbursement for all
10 commissions paid by ZANOLINE for the travel expenses that she
11 earned in connection with jobs outside of San Francisco; and
12 (6) reimbursement of the additional 5% commission that LOOK
13 charged ZANOLINE for any advances, with the amount to be
14 determined by ordering LOOK to provide an accounting of all such
15 sums deducted.

16 11. LOOK filed an answer on October 7, 2004, denying that
17 any amounts are owed.

18 LEGAL ANALYSIS

19 1. Labor Code §1700.4(b) includes "models" within the
20 definition of "artists" for purposes of the Talent Agencies Act
21 (Labor Code §§1700-1700.47). Petitioner is therefore an "artist"
22 within the meaning of Labor Code section 1700.4(b).

23 2. Labor Code §1700.4(a) defines a "talent agency" as any
24 person or corporation "who engages in the occupation of
25 procuring, offering, promising, or attempting to procure
26 employment or engagements for an artist." Respondent is
27 therefore a "talent agency" within the meaning of Labor Code
28 section 1700.4(a).

1 3. The Labor Commissioner has jurisdiction over this
2 controversy pursuant to Labor Code §1700.44(a).

3 4. Labor Code §1700.44(c) sets out a one year statute of
4 limitations for proceedings brought pursuant to the Talent
5 Agencies Act. This limitations provision precludes Petitioner
6 from recovering for amounts owed as to "any violation which is
7 alleged to have occurred" prior to August 4, 2003. A talent
8 agency's failure to pay an artist for work performed does not
9 ripen into a violation of the Act until the agency unlawfully
10 retains funds that it collected from the third party purchaser of
11 the artist's services (or until the agency fails to take
12 reasonable steps to timely collect such amounts on behalf of the
13 artist). In other words, the violation does not take place on
14 the date the work was performed, but rather, on the date that the
15 agency should have paid the artist for that work. Labor Code
16 §1700.25 provides that a talent agency that receives any payment
17 of funds on behalf of an artist shall disburse such funds to the
18 artist, less the agency's commission, within 30 days after
19 receipt. With these principles in mind, we find that
20 petitioner's claim is timely as to all amounts claimed, except
21 for reimbursement of any commissions that were paid by ZANOLINE,
22 or deducted from payments made by LOOK to ZANOLINE, prior to
23 August 4, 2003.

24 5. LOOK had little if any justification for stopping
25 payment on the September 5, 2003 check it had issued to ZANOLINE,
26 and absolutely no justification for failing to immediately notify
27 her of its action in stopping payment. LOOK violated its
28 fiduciary obligations to ZANOLINE by acting in this manner, and

1 was directly responsible for the ensuing \$609 in bank fees
2 incurred by ZANOLINE. Even if this check was an advance issued
3 prior to payment to LOOK from the third party customer, LOOK had
4 no authorization to stop payment. LOOK is therefore obligated to
5 reimburse ZANOLINE for the bank fees resulting from the stop
6 payment on this check, in the amount \$609, plus interest at 10%
7 per annum on these fees from September 25, 2003 to the present,
8 in the amount of \$121.80, plus interest owed for the eleven days
9 between the date of the stop payment until the issuance of the
10 replacement check, for an additional \$7.96 in interest.

11 6. Emotional distress damages are not awardable under the
12 Talent Agencies Act, and the Labor Commissioner has no
13 jurisdiction to rule on this aspect of ZANOLINE's claim.

14 7. ZANOLINE met her burden of proof with respect to her
15 claim that LOOK underpaid her by \$32 for work that she performed
16 on May 28 and June 14, 2003, for which she was partially paid on
17 August 20, 2003. She is therefore entitled to payment of this
18 \$32 underpayment, plus interest at 10% per annum, in the amount
19 of \$6.66.

20 8. ZANOLINE is not entitled to any reimbursement of the 20%
21 commissions taken on travel expenses, as travel expenses were
22 simply one component of ZANOLINE's modeling earnings, and LOOK
23 had the Labor Commissioner's approval to collect 20% commissions
24 on all modeling earnings.

25 9. ZANOLINE is entitled to reimbursement of the additional
26 5% commission that LOOK charged for advances (as to such
27 commissions that she paid to LOOK or that LOOK deducted from her
28 earnings after August 4, 2003), as this additional commission had

1 never been filed with and approved by the Labor Commissioner, as
2 required under Labor Code §§1700.23 and 1700.24. Consequently,
3 LOOK was not entitled to charge this additional commission to
4 ZANOLINE, or to any of the other models it represents. In order
5 to determine the amount owed to ZANOLINE as reimbursement for
6 these commissions, LOOK is obligated to provide ZANOLINE and the
7 Labor Commissioner with an accounting of all such amounts that it
8 it collected from ZANOLINE as commissions (either in the form of
9 direct payments from ZANOLINE or deductions from amounts that
10 LOOK paid to ZANOLINE) from August 4, 2003 to the present.

11 10. Although it is beyond the scope of this petitioner's
12 claim, it is appropriate for the Labor Commissioner, as the
13 official charged with licensing oversight over talent agencies,
14 to now hold, in no uncertain terms, that we cannot permit a
15 talent agency to charge the artists it represents any fees that
16 have not been approved or authorized by the Labor Commissioner.
17 We therefore expect the Respondent to immediately cease and
18 desist from charging any models any commissions or other fees
19 that have not been approved or authorized by the Labor
20 Commissioner as required under Labor Code §§1700.23 and 1700.24.
21 We take this occasion to warn the Respondent, in no uncertain
22 terms, that its license to operate as a talent agency may be
23 subject to revocation, and any application for renewal of its
24 license may be subject to denial, pursuant to Labor Code
25 §§1700.08 and 1700.21, unless it immediately discontinues the
26 unlawful practice of collecting fees that have not been approved
27 or authorized by the Labor Commissioner (including but not
28 limited to the practice of collecting "extra commissions" for

1 advances to models), and unless it provides the Labor
2 Commissioner with an accounting of any such commissions charged
3 to models within the one year period prior to the service of this
4 decision, and unless it takes all reasonable steps to reimburse
5 all such models for such commissions collected, with proof of
6 payment to be provided to the Labor Commissioner.

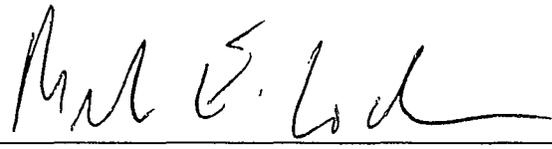
7 ORDER

8 For the reasons set forth above, IT IS HEREBY ORDERED that
9 Respondent LOOK MODEL AGENCY shall take the following steps
10 within 15 days of the date this decision is served:

11 1) Pay \$777.32 to petitioner CARRIE A. ZANOLINE (consisting
12 of reimbursement for \$609 in bank fees, \$32 in underpayments for
13 two modeling jobs, and \$136.32 interest for the bank fees,
14 underpayments, and unlawful withholding of payments), with proof
15 of payment to be provided to the Labor Commissioner;

16 2) Provide ZANOLINE and the Labor Commissioner with an
17 accounting of all amounts that it collected from ZANOLINE (in the
18 form of direct payments from ZANOLINE and withholdings from
19 payments made by LOOK to ZANOLINE) as 5% "extra commissions" for
20 advances, and any other commissions collected by LOOK that were
21 not authorized by the Labor Commissioner, at any time from August
22 4, 2003 to the present, and reimburse ZANOLINE for all such
23 commissions, with interest at 10% per annum from the date any
24 such commission was collected to the present.

25
26
27 Dated: 10/12/05

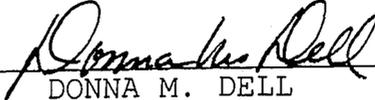


28 MILES E. LOCKER
Attorney for the Labor Commissioner

1 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:
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4 Dated:

11/20/05


DONNA M. DELL
State Labor Commissioner

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