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Department of Industrial Relations  
2 Division of Labor Standards Enforcement  
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8 **BEFORE THE LABOR COMMISSIONER**

9 **STATE OF CALIFORNIA**

10 CISSY SZETO-WONG, as guardian ad litem ) NO. TAC 2300  
for FAITH WONG, a minor )

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**DETERMINATION OF  
CONTROVERSY**

vs.

UNIQUE ARTISTS;  
KAREN SEWELL;  
KARE' N MANAGEMENT,

Respondent.

The above-captioned matter, a Petition to Determine Controversy under Labor Code section 1700.44, came on regularly for hearing on September 26, 2007 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner, CISSY SZETO-WONG, as guardian ad litem for FAITH WONG, a minor, (hereinafter, "Petitioners"), appeared in propria persona. UNIQUE ARTISTS; KAREN SEWELL; KARE' N MANAGEMENT, (hereinafter, "Respondent"), who was properly served with the Petition and Notice of Hearing, failed to answer said Petition and failed to appear at this Hearing.

Petitioners allege that Respondent acted in the capacity of a talent agency without being licensed as required by the laws of the State of California. Petitioners also allege that Respondent unlawfully withheld funds generated by employment services rendered by Petitioner, FAITH WONG. Petitioners seek Determination of the California Labor Codes and California Code of Regulations that

1 were violated, if any, by Respondent and payment of sums owed, plus interest and expenses.

2 Based on the evidence presented, the Labor Commissioner hereby adopts the following  
3 decision.

4 **FINDINGS OF FACT**

5 1. Petitioner, FAITH WONG, is an actor who performed in commercials that  
6 generated payments from third parties for the period July 2006 through September 2006.

7 2. The Division of Labor Standards Enforcement's Licensing & Registration Unit shows  
8 that Respondent was not licensed as a talent agent with the State of California for a period of the time  
9 out of which this dispute arises. At all times relevant, Respondent has been a resident of the State of  
10 California.

11 3. The parties entered into a personal management agreement, (hereinafter,  
12 "Agreement"), on February 4, 2005 for a period of one year. A provision of the Agreement stated,  
13 "This Agreement automatically renewed for each year thereafter for one year, unless one of the parties  
14 provides written notice to the contrary within thirty days prior to the anniversary date of renewal."  
15 Pursuant to the Agreement, Respondent agreed to provide the following services: manage, guide,  
16 advise, direct, and promote the professional career of the client. The Agreement authorized  
17 Respondent to process client's compensation by, but not limited to, receiving, endorsing and  
18 depositing all payments and deducting a sum equal to fifteen percent and forwarding the remainder  
19 to client.

20 4. Further, in exchange for Respondent's agreement to provide the aforementioned  
21 services, Petitioner agreed to pay Respondent a fee in the sum equal to fifteen percent of all things of  
22 value received by the client directly or indirectly as compensation for the client's professional services  
23 rendered during the term of this contract, and any extensions, renewals, modifications, or substitutions  
24 thereof.

25 5. In approximately December 2006, Petitioners received information that Respondent  
26 had received several payments for work performed by Petitioner, FAITH WONG. Although this was,  
27 in part, consistent with the Agreement which allowed the Respondent to receive such payments and  
28 deduct a sum equal to fifteen percent, to date the Respondent has failed to forward a substantial

1 portion of the funds to the Petitioners. The Petitioners were not aware of the exact amount in question  
 2 until approximately January of 2007 when they received an accounting from an independent source.  
 3 The documentation substantiates that the Respondent has received approximately eighteen payments  
 4 or checks for the time period ending approximately December 19, 2006 and has, to date, failed to  
 5 forward these payments to the Petitioners. The payments in question arise out of Petitioner's work  
 6 performed in commercials for PetSmart, Sheen Kidz, Disneyland Resort, and United Way PSA and  
 7 are as follows:

THIRD PARTY	DATE OF PAYMENT FROM THIRD PARTY	PAYMENT FROM THIRD PARTY
PetSmart	2/3/06	\$2,581.00 <sup>1</sup>
Disneyland Resort	2/24/06	\$300.00 <sup>2</sup>
PetSmart	3/17/06	\$901.50
PetSmart	3/23/06	\$535.00
PetSmart	4/17/06	\$338.70
PetSmart	4/28/06	\$2,581.00
PetSmart	5/4/06	\$274.65
Sheen Kidz	6/8/06	\$120.00
United Way PSA	6/15/06	\$95.30 <sup>2</sup>
PetSmart	6/23/06	\$535.00
PetSmart	7/31/06	\$2,581.00
PetSmart	8/3/06	\$73.24
PetSmart	8/7/06	\$274.65
PetSmart	9/25/06	\$535.00
PetSmart	10/6/06	\$755.05
PetSmart	10/30/06	\$1,605.00
PetSmart	10/30/06	\$2,581.00
PetSmart	11/9/06	\$164.79
	TOTAL	\$14,250.88

<sup>1</sup>This claim is beyond the one year statute of limitations and is not included in the total.

<sup>2</sup>The figure represents 15% commission withheld by Respondent, noted for purposes of disgorgement. All other funds associated with the payment has been received by Petitioners.



1           “The Talent Agency Act is a remedial statute that must be liberally construed to promote its  
2 general objective, the protection of artists seeking professional employment.” *Buchwald v. Superior*  
3 *Court* (1967) 254 Cal.App.2d 347, 354. “The weight of authority is that even the incidental or  
4 occasional provision of such services requires licensure.” *Styne v. Stevens* (2001) 26 Cal.4th 42; *Park*  
5 *v. Deftones* (1999) 71 Cal.App.4th 1465; *Waisbren, supra*, 41 Cal.App.4th 246; *Wachs v. Curry*  
6 (1993) 13 Cal.App.4th 616. The evidence leads to the conclusion that Respondent procured or  
7 attempted to procure employment for the Petitioner with a third party.

8           The Petitioner alleged and subsequently met Petitioner’s burden establishing that Respondent  
9 violated the Talent Agency Act by procuring or attempting to procure employment with a third party,  
10 thereby acting as a “talent agency” without the requisite license.

11           4.        “An agreement that violates the licensing requirement of the Talent Agency Act is  
12 illegal and unenforceable. . .” *Waisbren, supra*. “Since the clear object of the act is to prevent  
13 improper persons from becoming [talent agents] and to regulate such activity for the protection of  
14 the [artist], a contract between an unlicensed [agent] and [an] artist is void.” *Buchwald, supra*.  
15 Having determined that a person or business entity procured, promised or attempted to procure  
16 employment for an artist without the requisite talent agency license, “the [Labor] Commissioner may  
17 declare the contract [between the unlicensed agent and artist] void and unenforceable as involving  
18 the services of an unlicensed person in violation of the Act.” *Styne, supra*. Moreover, the artist that  
19 is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and  
20 “may . . . [be] entitle[d] . . . to restitution of all fees paid the agent.” *Wachs, supra*. Under the facts  
21 of this case, the finding is that the Agreement is void *ab initio*, became void once Respondent  
22 procured or attempted to procure employment for Petitioner, and is void as to all prior and subsequent  
23 commissions paid, subject to the one year statute of limitations. Disgorgement of all amounts within  
24 the one year statute of limitations, as outlined on Page 3, is an appropriate remedy.

25           5.        The holding is that Respondent must disgorge to Petitioner all amounts received  
26 within the one year statute of limitations from any third party for Petitioner’s services; the  
27 Respondent is not entitled to retain any part as a fee or commission; and, in accordance with Civil  
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1 Code sections 3287 and 3289 and Labor Code section 1700.25<sup>3</sup>, the Petitioner is entitled to interest  
2 on the funds at the rate of ten percent (10%) per annum from the date the funds were received by the  
3 Respondent.

4 6. Therefore, Respondent must pay Petitioner \$14,250.88 plus interest at ten percent  
5 (10%) per annum in the amount of \$2,484.31 as of March 5, 2008. March 6, 2008 and continuing,  
6 Respondent is liable for interest accumulating at a daily rate of \$4.85.

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21 <sup>3</sup> Labor Code section 1700.25. (a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit  
22 that amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the  
23 licensee's commission, shall be disbursed to the artist within 30 days after receipt. However, notwithstanding the preceding  
24 sentence, the licensee may retain the funds beyond 30 days of receipt in either of the following circumstances: (1) To the extent  
25 necessary to offset an obligation of the artist to the talent agency that is then due and owing. (2) When the funds are the subject of a  
26 controversy pending before the Labor Commissioner under Section 1700.44 concerning a fee alleged to be owed by the artist to the  
27 licensee. (b) A separate record shall be maintained of all funds received on behalf of an artist and the record shall further indicate  
28 the disposition of the funds. (c) If disputed by the artist and the dispute is referred to the Labor Commissioner, the failure of a  
licensee to disburse funds to an artist within 30 days of receipt shall constitute a "controversy" within the meaning of Section  
1700.44. (d) Any funds specified in subdivision (a) that are the subject of a controversy pending before the Labor Commissioner  
under Section 1700.44 shall be retained in the trust fund account specified in subdivision (a) and shall not be used by the licensee  
for any purpose until the controversy is determined by the Labor Commissioner or settled by the parties. (e) If the Labor  
Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time  
required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under Section 1700.44,  
order the following: (1) Award reasonable attorney's fees to the prevailing artist. (2) Award interest to the prevailing artist on the  
funds wrongfully withheld at the rate of 10 percent per annum during the period of the violation. (f) Nothing in subdivision (c), (d),  
or (e) shall be deemed to supersede Section 1700.45 or to affect the enforceability of a contractual arbitration provision meeting the  
criteria of Section 1700.45.

1 **ORDER**

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

3 1. The Agreement entered into on February 4, 2005 between Petitioners and  
4 Respondent is void *ab initio*, and Respondent has no enforceable right thereunder, and is not entitled  
5 to any commissions or other amounts purportedly owed;

6 2. Petitioners are awarded all amounts withheld by Respondent, subject to the statute of  
7 limitations, totaling \$14,250.88;

8 3. Respondent is ordered to pay interest in the amount of \$2,484.31; and

9 4. Respondent is additionally ordered to pay daily interest in the amount of \$4.85,  
10 accruing from March 6, 2008.

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12 Dated: 3/19/08

  
13 JAMES E. OSTERDAY  
Attorney for the Labor Commissioner

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

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17 Dated: 3/21/08

  
18 ANGELA BRADSTREET  
State Labor Commissioner

