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BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

JENNIFER SHELTON-FRATES,

Petitioner,

vs.

CONAN CARROLL, an individual;
CONAN CARROLL & ASSOCIATES, A
Talent Agency,

Respondents.

CASE NO. TAC 8521

**DETERMINATION OF
CONTROVERSY**

The above-captioned matter, a Petition to Determine Controversy under Labor Code §1700.44, came on regularly for hearing on January 29, 2009 in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner JENNIFER SHELTON-FRATES (“Petitioner”) appeared in pro per. Respondent CONAN CARROLL, an individual; CONAN CARROLL & ASSOCIATES, A Talent Agency, (hereinafter, collectively referred to as “Respondent”), was served with the Petition to Determine Controversy on or about August 7, 2008, but failed to appear.

1 Based on the evidence presented at this hearing and on the other papers on
2 file in this matter, the Labor Commissioner hereby adopts the following decision.
3

4 **FINDINGS OF FACT**

5 1. In September, 2001, Petitioner, an actress, entered into a written agreement
6 to be represented by Theatrical Agent, Stella Archer of the Talent Agency Schiowitz/
7 Clay/Rose, Inc. Ms. Archer left Schiowitz/Clay/Rose, Inc. in 2003 and joined Respondent
8 Conan Carroll & Associates as an agent. Petitioner followed Ms. Archer to Respondent
9 Conan Carroll & Associates. When Ms. Archer left Respondent Conan Carroll &
10 Associates in 2004, Respondent Conan Carroll & Associates took over representation of
11 Petitioner as her talent agency.
12

13 2. During the course of his representation of Petitioner, Respondent sent
14 Petitioner out on auditions, signed contracts for her and collected all fees on Petitioner's
15 behalf which he disbursed to Petitioner less his 10% commission fee.
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17 3. In September, 2007, Petitioner shot a Coca Cola commercial for which
18 she did not receive at least three (3) residual checks from Respondent totaling \$839.59
19 (\$493.68 + \$300.65 + \$45.26). Evidence was presented that these checks were sent
20 directly to Respondent, who failed to disburse them to Petitioner. The proceeds of two of
21 the checks were sent to Petitioner by Respondent in March, 2008 with a non-sufficient
22 funds check. Consequently, Petitioner was charged a \$10.00 bank fee. The check was
23 never reissued by Respondent.
24

25 4. Petitioner testified that she also shot a commercial for "Commerce Bank" in
26 July, 2007, while represented by Respondent. The evidence presented establishes that
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1 residual payments for this commercial were normally paid directly to Respondent who
2 disbursed them to Petitioner less his 10% commission. Petitioner testified that she
3 received all residual payments for this commercial except for one totaling \$448.41.
4
5 Petitioner provided a copy of the cancelled check from the third party employer showing
6 that Respondent collected and negotiated the check on behalf of Petitioner.

7 5. Petitioner filed the instant Petition to Determine Controversy on March 28,
8 2008 seeking: \$1,288.00 (\$839.59 + \$448.41) in unpaid earnings less Respondent's 10%
9 commission which Petitioner calculated as \$155.61¹ for a total of \$1,132.39 in unpaid
10 earnings; \$10.00 for the bank fee charged as a result of Respondent issuing a check
11 without sufficient funds; \$87.59 in reimbursement for expenses incurred in serving the
12 Petition and postage fees; and \$225.00 in attorney's fees incurred in investigating and
13 preparing the Petition, for a total of \$1,454.98, plus interest.
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16 LEGAL ANALYSIS

17 1. Petitioner, an actress, is an "artist" within the meaning Labor Code
18 §1700.4(b).

19 2. At all times relevant, Respondent was a licensed talent agency.
20

21 3. Labor Code §1700.44(a) provides in relevant part: "In cases of
22 controversy arising under this chapter, the parties involved shall refer the matters in
23 dispute to the Labor Commissioner..."
24

25 4. Labor Code §1700.25(a) requires that all talent agents who receive payment
26

27 ¹ It appears that the parties had an oral agreement that the 10% talent agency commission
28 was calculated based on the *gross* wages paid to Petitioner. The amount that Petitioner
seeks in this Petition is the *net* amount received by Respondent less the 10% commission
which is calculated on the *gross* amount of earnings.

1 of funds on behalf of their client artists, shall disburse such funds, less the agent's
2 commission, within 30 days after receipt. The undisputed evidence that was presented in
3 this case establishes that Respondent failed to disburse \$1,288.00 in funds collected on
4 behalf of Petitioner to her within 30 days of receipt, as required under Labor Code
5 §1700.25(a), or anytime thereafter. Accordingly, Petitioner is entitled to \$1,288.00 less
6 Respondent's 10% commission (\$155.61) for a total of \$1,132.39.
7

8
9 5. The evidence presented also establishes that Petitioner attempted on at least
10 20 separate occasions to collect the unpaid funds from Respondent, to no avail. Labor
11 Code §1700.25(e) provides:

12
13 If the Labor Commissioner finds, in proceedings under
14 Section 1700.44, that the licensee's failure to disburse
15 funds to an artist within the time required by
16 subdivision (a) was a willful violation, the Labor
17 Commissioner may, in addition to other relief under
18 Section 1700.44, order the following: (1) Award
19 reasonable attorney's fees to the prevailing artist. (2)
20 Award interest to the prevailing artist on the funds
21 wrongfully withheld at the rate of 10 percent per annum
22 during the period of the violation.
23
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25 The undisputed evidence presented establishes that Respondent issued at least one check
26 to Petitioner without sufficient funds and then failed to reissue a replacement check.

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28 Additionally, the evidence establishes that Respondent collected \$1,288.00 in funds meant

1 for Petitioner and retained those funds without regard for Petitioner. Accordingly, we find
2 that Respondent willfully violated Labor Code §1700.25(a) and therefore, award \$225.00
3 in reasonable attorney's fees, which amount is supported by a Declaration submitted by
4 Attorney Michael Shelton-Frates.
5

6 We also award interest on the unpaid earnings pursuant to Labor Code
7 §1700.25(e). Interest on the unpaid earnings is calculated at 10% per annum from the day
8 the payment was due to Petitioner by Respondent, (30 days after check received), to
9 today's date. The total amount of interest due on the unpaid earnings is \$137.42 and is
10 broken down as follows:
11

12	Check Amount	Check Date	30 Days – Payment DUE to Petitioner	Total Interest (Calculated at 10% from Check date to 4/3/2009)
13	\$493.68	2/15/2008	3/16/2008	\$51.80
14	\$300.65	2/25/2008	3/24/2008	\$30.89
15	\$45.26	1/28/2008	2/27/2008	\$4.97
16	\$448.41	1/24/2008	2/23/2008	\$49.76
17	TOTAL			\$137.42

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21 6. Lastly, we find that Petitioner is entitled to recover from the \$50,000 bond
22 posted by Respondent with the Labor Commissioner as a condition of being licensed as a
23 talent agent.
24

25 **ORDER**


26 For the reasons set forth above, IT IS HEREBY ORDERED that Petitioner
27 JENNIFER SHELTON-FRATES is entitled to collect \$1,494.81 from Respondent
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1 CONAN CARROLL, an individual; CONAN CARROLL & ASSOCIATES, A Talent
2 Agency. This award is broken down as follows:

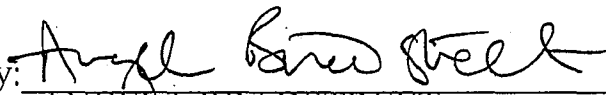
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- 4 1. Unpaid Earnings in the total sum of \$1,132.39;
 - 5 2. Interest on the unpaid earnings pursuant to Labor Code §1700.25(e),
6 calculated at 10% per annum from the date the earnings were due to be paid to Petitioner
7 under Labor Code §1700.25(a) until today's date, April 3, 2009, for a total of \$137.42;
 - 8 3. Reasonable Attorney's Fees in the sum of \$225.00 pursuant to Labor Code
9 §1700.25(e).
 - 10 4. Petitioner is also entitled to recover the total sum of \$1,494.81 from the
11 \$50,000 bond posted by Respondent with the Labor Commissioner as a condition of being
12 licensed as a talent agent.
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14

15 DATED: April 3, 2009

Respectfully submitted,

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18 By: 
19 EDNA GARCIA EARLEY
Attorneys for the Labor Commissioner

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22 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

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25 Dated: April 7 2009 By: 
26 ANGELO BRADSTREET
State Labor Commissioner

