

1 Miles E. Locker, CSB #103510  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
State of California  
3 455 Golden Gate Avenue, 9th Floor  
San Francisco, California 94102  
4 Telephone: (415) 703-4863  
Fax: (415) 703-4806  
5 Attorney for State Labor Commissioner

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7

8 BEFORE THE LABOR COMMISSIONER

9

STATE OF CALIFORNIA

10

11 MALAIKA PAUL, ) No. TAC 26-02

12 )  
12 ) Petitioner, )

13 )  
13 ) vs. )

14 )  
14 COLOURS MODEL & TALENT MANAGEMENT ) DETERMINATION OF  
AGENCY, INC.; CMT TALENT AGENCY, a ) CONTROVERSY

15 )  
15 partnership; BYRON GARRETT, an )  
individual, )

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 November 7, 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 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. COLOURS MODEL & TALENT MANAGEMENT AGENCY, INC.,  
6 (hereinafter "COLOURS") was most recently licensed by the Labor  
7 Commissioner as a talent agency from June 9, 2000 to March 26,  
8 2001. It was licensed as a corporation, and ALBERTA SELLERS and  
9 BYRON GARRETT were listed on the license application form as  
10 corporate officers, with a business address at 8344 ½ W. 3rd  
11 Street, Los Angeles, California.

12 3. While at an acting class in early 2001, Petitioner  
13 MALAIKA PAUL met a person who identified himself as a booking  
14 agent for COLOURS. The booking agent arranged for Petitioner to  
15 audition for Byron Garrett. After the audition, Garrett told  
16 Petitioner that he wanted to represent her as her talent agent.  
17 Petitioner then entered into an oral agreement with Garrett  
18 whereby COLOURS was to serve as Petitioner's talent agent, with  
19 COLOURS to receive commissions equal to 10% of Petitioner's  
20 earnings for all television work and 20% of Petitioner's earnings  
21 for all print modeling work, on jobs procured by COLOURS.

22 4. On April 18, 2001, Petitioner performed television  
23 modeling work in connection with a commercial for Bally Total  
24 Fitness Corporation, for which Petitioner was to be paid \$2,500  
25 for Bally's use, for a period of two years, of advertising  
26 containing Petitioner's likeness, with an option for a second  
27 two-year period at Bally's sole discretion. In addition to this  
28 payment for use of her commercial likeness, Bally agreed to pay

1 Petitioner an additional \$1,625 for extra hours in shooting the  
2 commercial. This modeling job had been procured by COLOURS.

3 5. On April 20, 2001, COLOURS sent an invoice to Bally for  
4 Petitioner's modeling services, and on May 17, 2001, Bally paid  
5 \$4,125 to COLOURS pursuant to this invoice. Despite repeated  
6 demands for payment, COLOURS did not pay Petitioner until  
7 November 2001, and then only paid her \$2,320, retaining \$1,805,  
8 an amount far in excess of what it was entitled to retain as its  
9 commission pursuant to its agreement with Petitioner.

10 6. Petitioner made several phone calls to Byron Garrett and  
11 to Philip Johnson, COLOURS' accountant, during which she insisted  
12 that she was entitled to more money than the amount she had  
13 received. Although Johnson promised that a check would be sent  
14 providing her with additional payment, no further payment was  
15 made.

16 7. In May 2003, Bally exercised its option to use  
17 Petitioner's commercial likeness for another two-year period, and  
18 sent a \$2500 to Respondents for that purpose. Respondents never  
19 transmitted this check to the petitioner, and has never paid her  
20 any proceeds from this check. On May 27, 2003, Respondents  
21 cashed this check.

22 8. This petition was filed on August 12, 2002, and served  
23 on respondents on July 31, 2003.

24 LEGAL ANALYSIS

25 1. Petitioner is an "artist" within the meaning of Labor  
26 Code section 1700.4(b). Respondents are a "talent agency" within  
27 the meaning of Labor Code section 1700.4(a).

28 2. Labor Code §1700.5 provides that "[n]o person shall

1 engage in or carry on the occupation of a talent agency without  
2 first procuring a license . . . from the Labor Commissioner."  
3 The Talent Agencies Act is a remedial statute; its purpose is to  
4 protect artists seeking professional employment from the abuses  
5 of talent agencies. For that reason, "even the incidental or  
6 occasional provision of such [procurement] services requires  
7 licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. Here,  
8 Respondent's procurement of the Bally modeling job occurred when  
9 it was not licensed as a talent agent -- the license issued to  
10 COLOURS had already expired, and the license issued to CMT had  
11 not yet been issued. By procuring employment for the petitioner  
12 when they were not licensed as a talent agency by the State Labor  
13 Commissioner, respondents violated Labor Code §1700.5.

14 3. An agreement that violates the licensing requirement of  
15 the Talent Agencies Act is illegal and unenforceable. "Since the  
16 clear object of the Act is to prevent improper persons from  
17 becoming [talent agents] and to regulate such activity for the  
18 protection of the public, a contract between an unlicensed  
19 [agent] and an artist is void." *Buchwald v. Superior Court*  
20 (1967) 254 Cal.App.2d 347, 351. Having determined that a person  
21 or business entity procured, promised or attempted to procure  
22 employment for an artist without the requisite talent agency  
23 license, "the [Labor] Commissioner may declare the contract  
24 [between the unlicensed agent and the artist] void and  
25 unenforceable as involving the services of an unlicensed person  
26 in violation of the Act." *Styne v. Stevens, supra*, 26 Cal.4th at  
27 55. "[A]n agreement that violates the licensing requirement is  
28 illegal and unenforceable . . . ." *Waisbren v. Peppercorn*

1 Productions, Inc. (1995) 41 Cal.App.4th 246, 262. Moreover, the  
2 artist that is party to such an agreement may seek disgorgement  
3 of amounts paid pursuant to the agreement, and "may . . . [be]  
4 entitle[d] . . . to restitution of all fees paid the agent."  
5 Wachs v. Curry (1993) 13 Cal.App.4th 616, 626.

6 4. Due to the absence of a talent agency license at the  
7 time of procuring this modeling employment for petitioner,  
8 neither COLOURS nor CMT nor BYRON GARRETT are entitled to retain  
9 any portion of the amounts that were withheld from petitioner's  
10 modeling earnings. Petitioner is entitled to restitution of all  
11 unlawfully withheld amounts, plus interest at 10% per annum on  
12 all such amounts, from the dates that such amounts were received  
13 by respondents.

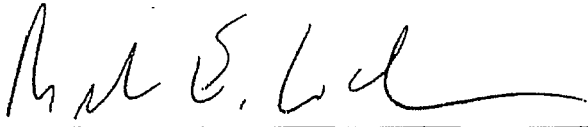
14 ORDER

15 For the reasons set forth above, IT IS HEREBY ORDERED that  
16 COLOURS MODEL & TALENT MANAGEMENT AGENCY, INC. ("COLOURS"), CMT  
17 TALENT AGENCY ("CMT"), and BYRON GARRETT, are jointly and  
18 severally liable for the following amounts, which shall be paid  
19 to petitioner MALAIKA PAUL:

- 20 1. \$4,305.00 for unlawfully withheld earnings;  
21 2. \$1,089.38 for interest on these unlawfully withheld  
22 earnings, as of the date of this decision (with further interest  
23 accruing at the rate of \$1.18 per day thereafter);

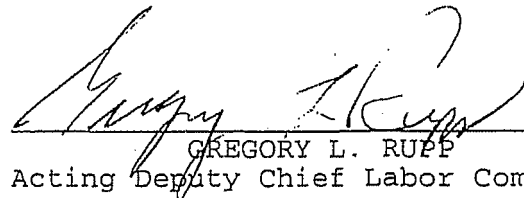
24 For a total, as of the date of this decision, of \$5,394.38.

25  
26  
27 Dated: 2/25/04

  
28 \_\_\_\_\_  
MILES E. LOCKER  
Attorney for the Labor Commissioner

1 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:  
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4 Dated: 3/8/07

  
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GREGORY L. RUPP  
Acting Deputy Chief Labor Commissioner

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