

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

11	AARON M. BEYER,	)	Case No. TAC 50-03
12		)	
13	vs.	)	DETERMINATION OF
14		)	CONTROVERSY
15		)	
16	COLOURS MODEL/TALENT aka CREW,	)	
	MANAGEMENT dba CMT,	)	
		)	
	Respondent.	)	
		)	
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INTRODUCTION

18 The above-captioned petition was filed on December 9,  
19 2003, by AARON M. BEYER, (hereinafter "Beyer" or "Petitioner"),  
20 alleging that COLOURS MODEL/TALENT AGENCY aka CREW MANAGEMENT dba  
21 CMT, (hereinafter "Respondent" or "Colours"), collected  
22 petitioner's earnings and failed to remit those earnings to the  
23 petitioner in the amount of \$5,626.34.

24 Respondent was properly served but did not file an  
25 answer, nor did they appear at the hearing. The hearing was held  
26 on March 15, 2005, before the undersigned attorney for the Labor  
27

1 Commissioner. The petitioner appeared in propria persona. Based  
2 upon the testimony and evidence presented at this hearing, the  
3 Labor Commissioner adopts the following Determination of  
4 Controversy.

5  
6 FINDINGS OF FACT

7 1. In or around May of 2003, the parties entered into a  
8 representation agreement whereby the respondent would procure  
9 modeling and acting engagements for the petitioner, in exchange for  
10 10% of Beyer's gross earnings.

11 2. On or around July 21, 2003, the respondent arranged  
12 an audition for Beyer. Beyer secured the job and attended a two-  
13 day commercial shoot for the client, Chrysler Motors. The  
14 commercial was shot at several Southern California locations and  
15 was ultimately aired nationally on a regular basis.

16 3. The petitioner was compensated by the employer,  
17 Talent Partners. Talent Partners would determine the amount of  
18 royalties owed to the petitioner based on the number of times the  
19 commercial aired. Talent partners would then send petitioner's  
20 earnings directly to the respondent. The respondent was required  
21 to deduct his 10% commission from petitioner's gross earnings and  
22 then immediately remit the remainder of the royalties directly to  
23 the petitioner.

24 4. On or around August 23, 2003, through September 6,  
25 2003, the respondent received several royalty checks on behalf of  
26 the petitioner from Talent Partners in the amount of \$5,626.34.  
27 The respondent failed to remit those earnings to the petitioner and  
notwithstanding petitioner's repeated requests those earnings



1 without first procuring a license therefor from the Labor  
2 Commissioner." A review of the Division of Labor Standards  
3 Enforcement's Licensing and Registration Unit's licensing database  
4 indicated the respondent was not licensed as a California Talent  
5 Agent.

6 4. In Waisbren v. Peppercorn Production, Inc. (1995) 41  
7 Cal.App.4th 246, the court held that any single act of procuring  
8 employment subjects the agent to the Talent Agencies Act's  
9 licensing requirements, thereby upholding the Labor Commissioner's  
10 long standing interpretation that a license is required for any  
11 procurement activities, no matter how incidental such activities  
12 are to the agent's business as a whole. Applying Waisbren, it is  
13 clear respondent acted in the capacity of a talent agency within  
14 the meaning of §1700.4(a). Consequently, the Labor Commissioner  
15 has jurisdiction to hear this matter pursuant to Labor Code  
16 §1700.44.

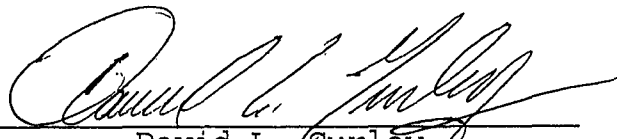
17 5. Clearly, respondent's actions of receiving and  
18 failing to remit petitioner's monies established a breach of  
19 Colours fiduciary duty toward their client. The conversion of  
20 petitioner's earnings operated to the detriment of the artist.  
21 Respondent's actions breached the contract with the petitioner and  
22 their common law duty to act with good faith and fair dealing.

23 6. The respondent benefitted from his breach and has  
24 been unjustly enriched and the law must impose protections on  
25 behalf of the public. Accordingly, respondent must return all  
26 monies converted and has no right to any commissions collected from  
27 the petitioner.



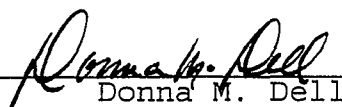
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Dated: 7/5/05

  
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David L. Gurléy  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 7/7/05

  
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Donna M. Dell  
State Labor Commissioner

