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7
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 LISA CENTENO,) No. TAC 41-02
12)
Petitioner,)
13)
vs.)
14)
CMT TALENT AGENCY, aka COLOURS MODEL &) DETERMINATION OF
TALENT AGENCY,) CONTROVERSY
15)
Respondent.)
16)

17 The above-captioned matter, a petition to determine
18 controversy under Labor Code §1700.44, came on regularly for
19 hearing on January 14, 2003, in Los Angeles, California, before
20 the Labor Commissioner's undersigned hearing officer. Petitioner
21 appeared in propria persona; respondent failed to appear.
22 Based on the evidence presented at this hearing and on the other
23 papers on file in this matter, the Labor Commissioner hereby
24 adopts the following decision.

25 FINDINGS OF FACT

26 1. CMT TALENT AGENCY (hereinafter "CMT") was most recently
27 licensed as a talent agency by the State Labor Commissioner from
28 July 25, 2001 to July 24, 2002. It was licensed as a

1 partnership, owned by ALBERTA SELLERS and BYRON GARRETT, with a
2 business address at 8344 ½ W. 3rd Street, Los Angeles,
3 California.

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

11 3. By letter dated December 11, 2001 to Labor Commissioner
12 attorney David Gurley, GEORGIA TRIPLETT stated that COLOURS
13 ceased operations in September 2001 and that she had assumed all
14 debts incurred by COLOURS prior to its closing.

15 4. On or about August 8, 1995, petitioner LISA CENTENO
16 executed a written agreement with COLOURS under which COLOURS was
17 to serve as petitioner's talent agency and to obtain work for
18 petitioner as a model, for which COLOURS would be entitled to
19 commissions on petitioner's modeling earnings. Sometime during
20 early 2002, petitioner was advised by her agent that COLOURS was
21 now operating under the name CMT. Petitioner was given a copy of
22 "Rules and Regulations" under the name Crew Models and CMT Talent
23 Agency. The regulations conclude with an acknowledgment that
24 states: "I have received and read the above rules and regulation
25 stipulating my responsibilities while being represented by CMT
26 Agency."

27 5. In April 2002 petitioner received a telephone call from
28 her CMT agent, informing her about a modeling job in connection

1 with a Sony print advertisement. Petitioner successfully
2 auditioned for the job. She was told she would be paid \$1000
3 less a 20% commission for CMT, for a total of \$800 for her work.
4 The job was completed on April 13, 2002.

5 6. Shortly thereafter, CMT sent an invoice (under the
6 COLOURS name) to Bill Williams, the photographer for this
7 advertisement, in the amount of \$4,000 for the services of four
8 CMT represented models, including the petitioner. On May 21,
9 2002, BWP Studios paid CMT (or COLOURS) the full amount of this
10 invoice.

11 7. In September 2002, petitioner received a check in the
12 amount of \$800 from CMT's accountant, Philip Johnson, on an
13 account maintained by California Commercial Theatrical Accounting
14 (Client Trust Account). The check bore the notation that it was
15 in payment of the Sony account, for \$1,000 less a 20% commission
16 of \$200. Petitioner deposited this check with her credit union
17 and shortly thereafter received notice from her credit union that
18 the check was returned unpaid by the drawee bank due to non-
19 sufficient funds. Petitioner then called Philip Johnson, and he
20 advised the petitioner to re-deposit the check, assuring her that
21 it would clear. Petitioner redeposited the check, but on
22 September 26, 2002 it was again returned to her by her credit
23 union as it was again unpaid by the drawee bank due to non-
24 sufficient funds. Petitioner's credit union charged her a \$15
25 service fee for this NSF check.

26 8. To date, petitioner has not been paid for the modeling
27 work she performed in connection with the Sony commercial.

28 9. This petition was filed on November 7, 2002, and served

1 on CMT at its business address in Los Angeles on November 20,
2 2002. Notices of the hearing were sent to the parties on
3 December 19, 2002. A few hours before the hearing, on
4 January 14, 2003, CMT, by and through its accountant Philip
5 Johnson, faxed a letter to the undersigned hearing officer
6 stating that COLOURS is no longer in business and "CMT Talent
7 Agency does not have a signed contract with your client [sic]....
8 CMT has no business relationship with Colours Model & Talent
9 Agency, Inc. Your client [sic] has filed a claim against the
10 wrong company."

11 LEGAL ANALYSIS

12 1. Petitioner is an "artist" within the meaning of Labor
13 Code section 1700.4(b). The Labor Commissioner has jurisdiction
14 to issue this determination pursuant to Labor Code section
15 1700.44.

16 2. Labor Code section 1700.25 provides that a licensed
17 talent agency that receives any payment of funds on behalf of an
18 artist shall immediately deposit that amount in a trust fund
19 account maintained by him or her in a bank, and shall disburse
20 those funds, less the agent's commission, to the artist within 30
21 days after receipt. Section 1700.25 further provides that if, in
22 a hearing before the Labor Commissioner on a petition to
23 determine controversy, the Commissioner finds that the talent
24 agency willfully failed to disburse these amounts within the
25 required time, the Commissioner may award interest on the
26 wrongfully withheld funds at the rate of 10% per annum.

27 3. Petitioner was entitled to payment of \$800 no later than
28 June 21, 2002, thirty days after it was paid to CMT (or COLOURS).

1 The failure to disburse this amount to petitioner was willful,
2 therefore entitling the petitioner to interest on this amount at
3 the rate of 10% per annum, commencing on June 21, 2002.

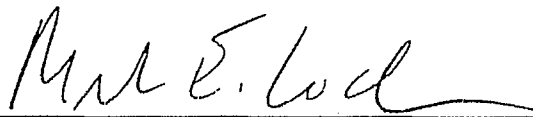
4 4. The evidence leaves no doubt that CMT, operating both
5 under its own name and under the name COLOURS, procured
6 petitioner's modeling work on the Sony commercial. For all
7 intents and purposes, CMT acted as a successor and/or alter ego
8 of COLOURS. Regardless of whether BWP Studios paid "CMT" or
9 "COLOURS" for the modeling work performed by the petitioner, CMT
10 was legally obligated to disburse those funds (less its
11 commission) to the petitioner.

12 ORDER

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

14 1. Respondent CMT TALENT AGENCY, aka COLOURS MODEL & TALENT
15 AGENCY, INC., shall pay \$800.00 to petitioner as the amount owed
16 for her modeling work, plus interest in the amount of \$55.01,
17 plus \$15 as reimbursement for her NSF bank fee, for a total of
18 \$870.01. For each additional day after February 26, 2003 until
19 payment is made, additional interest shall accrue at the rate of
20 22 cents per day.

21
22 Dated: 2/26/03

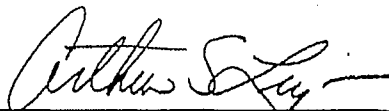


MILES E. LOCKER

Attorney for the Labor Commissioner

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25 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

26
27 Dated: 2/26/03



ARTHUR S. LUJAN

State Labor Commissioner

