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BEFORE THE LABOR COMMISSIONER

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STATE OF CALIFORNIA

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11 VANESA PECHI,) No. TAC 9-03

12)
12) Petitioner,

13)
13) vs.)

14) CMT TALENT AGENCY (formerly COLOURS) DETERMINATION OF
14) MODEL AND TALENT AGENCY),) CONTROVERSY

15)
15) Respondent.)

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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 June 18, 2003, in Los Angeles, California, before the
21 Labor Commissioner's undersigned hearing officer. Petitioner was
22 represented by attorney Tal Rubin; respondent failed to appear.
23 Based on the evidence presented at this hearing and on the other
24 papers on file in this matter, the Labor Commissioner hereby
25 adopts the following decision.

26

FINDINGS OF FACT

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27 1. CMT TALENT AGENCY (hereinafter "CMT" or "respondent")

28 was most recently licensed as a talent agency by the State Labor

1 Commissioner from July 25, 2001 to July 24, 2002. It was
2 licensed as a partnership, owned by ALBERTA SELLERS and BYRON
3 GARRETT, with a business address at 8344 ½ W. 3rd Street, Los
4 Angeles, 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. On February 21, 2002, petitioner VANESA PECHI executed a
13 written "General Contract and Representation Agreement" with CMT,
14 under which she engaged the services of CMT as a talent agency
15 for a period of one year, to negotiate contracts for the
16 petitioner in the rendition of professional services as a model
17 and in all other fields in the entertainment industry, for which
18 CMT would be entitled to commissions. BYRON GARRETT signed this
19 agreement on behalf of CMT.

20 4. On or about February 21, 2002, Respondent arranged for
21 petitioner to perform in a television commercial for the Coors
22 Brewing Company. The commercial was produced by Talent Partners,
23 a production company on behalf of Foote, Cone & Belding, an
24 advertising agency. Petitioner performed on February 26,
25 February 28, and March 1, 2002 in connection with this commercial
26 shoot. Petitioner's compensation for this commercial was to be
27 paid in installments by Talent Partners. The first installment,
28 in the amount of \$1,834.38, less withholding taxes, was paid

1 directly to the petitioner on March 15, 2002. Petitioner then
2 contacted the respondent, advising them that she had received
3 this payment from Talent Partners, and sent a check to CMT for
4 the commissions owed pursuant to the Representation Agreement.
5 Petitioner received no further payments from Talent Partners for
6 her work on this commercial. Instead, from then on, Talent
7 Partners paid residuals owed to petitioner for her work on this
8 commercial to the respondent. From May 1, 2002 to January 7,
9 2003, Talent Partners sent 22 checks to the respondent on
10 petitioner's behalf, in the total sum \$8,326.17 (based on
11 petitioner's gross earnings of \$10,393.79, less taxes that were
12 withheld by Talent Partners). Respondent never disbursed any of
13 these funds to petitioner, despite petitioner's repeated requests
14 for payment.

15 5. Talent Partners stopped making payments directly to the
16 petitioner, and started making these payments on behalf of
17 petitioner to the respondent (via an entity called "CCTA" or
18 "Commercial 2000" in Santa Barbara, California), pursuant to a
19 "Payment and Residual Address Change Request", dated April 1,
20 2002, whereby Talent Partners was instructed to make this change.
21 This Request appears to have been signed by the petitioner,
22 however, she credibly testified that she never signed this
23 Request (and indeed, never even saw it until it was provided to
24 her attorney by Talent Partners). We therefore conclude that
25 CMT, by and through one of its partners, agents, or employees,
26 forged petitioner's signature for the purpose of obtaining these
27 funds. We take judicial notice of other cases we have decided
28 against respondent, wherein we found that CMT agent and

1 pursuant to Labor Code section 1700.44.

2 2. Labor Code section 1700.25 provides that a licensed
3 talent agency that receives any payment of funds on behalf of an
4 artist shall immediately deposit that amount in a trust fund
5 account maintained by him or her in a bank, and shall disburse
6 those funds, less the agent's commission, to the artist within 30
7 days after receipt. Section 1700.25 further provides that if, in
8 a hearing before the Labor Commissioner on a petition to
9 determine controversy, the Commissioner finds that the talent
10 agency willfully failed to disburse these amounts within the
11 required time, the Commissioner may award interest on the
12 wrongfully withheld funds at the rate of 10% per annum, and
13 reasonable attorney's fees.

14 3. Respondent's failure to disburse the amounts paid by
15 Talent Partners on behalf of petitioner with respect to the 22
16 checks received by respondent during the period from May 1, 2002
17 to January 7, 2003, constitutes a willful violation of Labor Code
18 section 1700.25. Moreover, we conclude that by failing to remit
19 these amounts to the petitioner without any justification,
20 Respondent breached its representation agreement and violated its
21 fiduciary duty thereunder, thereby losing the right to retain any
22 commissions on these amounts paid by Talent Partners. We
23 therefore conclude that petitioner is entitled to payment of
24 \$8,326.17, plus interest at 10% per annum on this amount from the
25 date each payment became due, resulting in interest in the amount
26 of \$914.15 as of the date of this decision (with interest
27 accruing at the rate of \$2.28 per day).

28 4. Even though petitioner failed to present evidence that

1 respondent received payment on behalf of the petitioner for her
2 modeling services in connection with the PT Cruiser print
3 advertisement, we conclude that it would be inequitable to deny
4 petitioner's claim for amounts owed for her work on this shoot.
5 Petitioner's testimony establishes that respondent informed her
6 that the job would pay \$1,000. Non-payment for this job was
7 alleged in the petition, yet respondent failed to answer the
8 petition or appear at the hearing. The respondent is in control
9 of whatever evidence may exist as to the timing and precise
10 amounts of any payment made by the advertising agency or
11 production company on behalf of the petitioner for her modeling
12 services on this shoot: A talent agency is expected to take all
13 reasonable steps to collect money that is owed to an artist for
14 work that had been procured by the agency. Under these
15 circumstances, we hold that the respondent has the burden of
16 presenting any evidence to negate the inference that it had, in
17 fact, collected the \$1,000 earned by the petitioner for her
18 modeling services within a reasonable time of her performance of
19 these services. We therefore conclude that as of July 1, 2002,
20 petitioner was entitled to payment of \$1,000 for her work on this
21 advertisement, that respondent willfully failed to remit these
22 earnings to the petitioner, and that she is therefore now
23 entitled to \$122.74 as interest on this amount (with an
24 additional 27 cents interest accruing each day after this
25 decision is issued).

26 5. Based on the conclusion that respondent willfully
27 violated Labor Code section 1700.25, petitioner is also entitled
28 to reasonable attorney's fees. Petitioner's counsel states that

1 his hourly rate is \$250 an hour, and that rate appears consistent
2 with what is charged for similar legal work. We conclude that 16
3 hours is a reasonable amount of time for the work done on this
4 case, so that petitioner is entitled to \$4,000 in attorney's
5 fees.

6 6. The parties who are liable for the amounts owed to
7 petitioner include CMT TALENT AGENCY, a partnership, and its
8 owners, ALBERTA SELLERS and BYRON GARRETT. Moreover, as the
9 evidence here leaves little doubt that respondents were also
10 conducting business under the names COMMERCIAL 2000 and
11 CALIFORNIA COMMERCIAL THEATRICAL ACCOUNTING (or "CCTA"), and that
12 these other entities were little more than alter egos or
13 fictitious business names for CMT, we conclude that these other
14 entities should be named in the order herein.

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ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Respondents CMT TALENT AGENCY, a partnership also doing business under the names COMMERCIAL 2000 and CALIFORNIA COMMERCIAL THEATRICAL ACCOUNTING (or "CCTA"); ALBERTA SELLERS; and BYRON GARRETT shall pay the following amounts to petitioner VANESA

PECHI:

- 1. \$9,326.17 for unlawfully withheld earnings;
- 2. \$1,036.89 interest on the unlawfully withheld earnings (with additional interest accruing at the rate of \$2.55 per day from the date of this decision until the amount owed is paid);

and

- 3. \$4,000.00 for attorney's fees.

Dated: 9/22/03 Miles E. Locker
 MILES E. LOCKER
 Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 9-22-03 Arthur S. Lujan
 ARTHUR S. LUJAN
 State Labor Commissioner

