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2 STATE OF CALIFORNIA
3 DEPARTMENT OF INDUSTRIAL RELATIONS
4 DIVISION OF LABOR STANDARDS ENFORCEMENT
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7 BEFORE THE LABOR COMMISSIONER
8 OF THE STATE OF CALIFORNIA

9 MANNEQUIN MODELS, INC.,
10
11 Petitioner,
12
13 vs.
14 DANIELLE CIPOLLO,
15 Respondent.

CASE NO. TAC-52869
DETERMINATION OF CONTROVERSY

16 **I. INTRODUCTION**

17 The above-captioned matter, a Petition to Determine Controversy under Labor Code
18 §1700.44, came on for hearing on June 21, 2023, before the assigned attorney for the Labor
19 Commissioner¹. Petitioner MANNEQUIN MODELS, INC., (hereinafter “MANNEQUIN”)
20 appeared through their attorney Taylor James Howard of A.E.I. LAW, P.C. Respondent
21 DANIELLE CIPOLLO, (hereinafter “CIPOLLO”) failed to appear.

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

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27 ¹ Due to the hearing officer’s unavailability because of retirement, health, or otherwise prior to the issuance of a
28 determination of controversy, this case was transferred to the undersigned attorney for the Labor
Commissioner. Based on a review of the recorded testimony and evidence presented at the hearing, the
undersigned attorney hereby issues the following determination:

1 **II. FINDINGS OF FACTS**

2 1. In or around October 2019, CIPOLLO and MANNEQUIN entered into an oral
3 agreement whereby MANNEQUIN served as CIPOLLO’s talent agent. The contract enabled
4 MANNEQUIN to seek and procure modeling work for CIPOLLO in return for a percentage of
5 CIPOLLO’s earnings.

6 2. Although the parties failed to execute a written contract, MANNEQUIN provided a
7 sample contract, representing the sample contract’s terms mirrored the terms of the parties’ oral
8 agreement.

9 3. MANNEQUIN was licensed as a talent agency by the California Labor
10 Commissioner. MANNEQUIN’s license was intermittent. According to MANNEQUIN, they
11 experienced “clerical errors” over the years and because of those errors allowed their talent agency
12 license to lapse on several occasions. MANNEQUIN’s licensing history during the relevant period
13 includes the following licensed and unlicensed periods:

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15 MANNEQUIN was licensed from May 21, 2019, through April 2, 2020. For
16 reasons unclear by the record, MANNEQUIN failed to timely renew their license
17 and was therefore **unlicensed from April 3, 2020, through June 27, 2021.**
18 MANNEQUIN again renewed their talent agency license with the Labor
19 Commissioner on June 28, 2021, through April 2, 2022. Again, for reasons unclear
20 in the record, MANNEQUIN again failed to timely renew their license and was
21 therefore **unlicensed again from April 3, 2022, through August 9, 2023.**
22 MANNEQUIN again renewed their talent agency license with the Labor
23 Commissioner on August 10, 2023, through April 4, 2024. MANNEQUIN is
24 currently unlicensed after April 4, 2024

25 4. There were two jobs procured by MANNEQUIN for CIPOLLO at issue in this
26 dispute. On November 13, 2019, MANNEQUIN procured CIPOLLO a modeling job with Hot
27 Topic, a clothing retailer. CIPOLLO modeled clothing weekly for Hot Topic and received earnings
28 from those jobs. MANNEQUIN received CIPOLLO’s gross earnings directly from Hot Topic,
deducted their commissions according to the terms of the oral agreement, and then paid CIPOLLO
the remaining earnings. This arrangement continued from November 2019 through July 4, 2022, a
period of approximately 21 months.

1 3. Labor Code §1700.23 provides that the Labor Commissioner is vested with
2 jurisdiction over “any controversy between the artist and the talent agency relating to the terms of
3 the contract,” and the Labor Commissioner’s jurisdiction has been held to include the resolution of
4 contract claims brought by artists or agents seeking damages for breach of a talent agency contract.
5 (*Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior Court*
6 (1950) 35 Cal.2d 379.) Therefore, the Labor Commissioner has jurisdiction to determine this
7 matter.

8 4. The central issue is whether MANNEQUIN is entitled to post termination
9 commissions for jobs secured prior to termination of the agreement. Normally, the answer to this
10 question is yes, as we’ve said many times before, “[a] talent agency is generally entitled to receive
11 post termination commissions for all employment secured by the agency prior to its termination.”
12 *ICM Partners v. James Bates*, Case No. TAC-24469, p. 6 (2017) (citing *Paradigm Talent Agency*
13 *v. Charles Carroll*, Case No. TAC 12728 (2011)). Further, “[c]ommissions are owed post
14 termination for monies negotiated by the agent during the term of the agreement and the artist
15 cannot unilaterally determine there is no further obligation to pay for work already performed.” *Id.*
16 (citing *The Endeavor Agency, LLC v. Alyssa Milano*, Case No. TAC 10-05 (2007)).

17 5. The problem MANNEQUIN faces is that MANNEQUIN was unlicensed for a
18 significant time. Moreover, MANNEQUIN was not licensed when they procured the United Sports
19 Brand job on June 4, 2021, nor were they licensed when CIPOLLO terminated their agreement on
20 July 4, 2022.

21 6. California Code of Regulations Title 8 § 12001 (b) states:

22 To be entitled to the payment of compensation after termination of the contract
23 between the artist and the talent agency, the talent agency shall be obligated to serve
24 the artist and perform obligations with respect to any employment contract or to
25 extensions or renewals of said employment contract or to any employment requiring
26 the services of the artist on which such compensation is based.”

27 7. It was clear through testimony and documentary evidence, and as a matter of
28 practicality, that MANNEQUIN was unable to conduct services and perform obligations while they
were unlicensed. This was not an isolated, insignificant period stemming from a clerical error, as
MANNEQUIN argues. MANNEQUIN failed to secure a license from April 2, 2020 through June

1 27, 2021, and again from April 2, 2022 through August 9, 2023, a combined total time of more than
2 30 months without a license.

3 8. In *Waisbren v. Peppercorn Production, Inc* (1995) 41 Cal.App.4th 246, the court
4 held that any single act of procuring employment subjects the agent to the Talent Agencies Act's
5 licensing requirement, thereby upholding the Labor Commissioner's long-standing interpretation
6 that a license is required for any procurement activities. Applying *Waisbren*, respondent required
7 a license for all engagements procured.

8 9. MANNEQUIN asks the Labor Commissioner to apply a "substantial compliance"
9 exception and conclude MANNEQUIN's lapse in licensure was due to a good faith mistake. We are
10 not persuaded by this argument as the evidence belies any substantial compliance. MANNEQUIN
11 was unlicensed more than they were licensed. And MANNEQUIN was unaware of the history of
12 their licensing status until July 17, 2023, when MANNEQUIN contacted the Licensing and
13 Registration Unit asking for their licensing history.

14 10. Moreover, when reviewing the sample contract placed into evidence by
15 MANNEQUIN, section a. and b. state the following:

16 a. The commission indicated above shall also apply on any additional
17 work, jobs or contracts with employers or clients from which Model first received
18 work through Agency. It is expressly understood that to be entitled to continue
19 to receive the compensation on the aforementioned contracts after the
20 termination of this Agreement, Agency shall remain obligated to serve Model
and perform obligations with respect to said work, job or contracts or to extensions
or renewals of said work, job or contracts requiring Model's services on which
such compensation is based.

21 b. The Model may terminate this Agreement for cause on thirty days'
22 written notice to Agency. Cause includes Agency's breach of its obligations
under this Agreement, including loss of its license and/or ceasing doing business
in California.

23 11. Sections a. and b. of the sample contract are particularly problematic for
24 MANNEQUIN, as read together, these provisions expressly state that to be entitled to post
25 termination commissions, MANNEQUIN must be licensed. In short, if MANNEQUIN loses its
26 license, and is therefore unable to serve the model and perform obligations with respect to the work
27 procured, CIPOLLO may lawfully terminate the agreement for cause. It is undisputed that
28

1 MANNEQUIN failed to secure a talent agency license, and when CIPOLLO terminated the
2 agreement on July 4, 2022, she was acting within the scope of the agreement. There is no dispute
3 MANNEQUIN was not paid for any engagements prior to July 4, 2022.

4 12. Finally, in 1982, Assembly Bill 997 established the California Entertainment
5 Commission. Labor Code section 1702 directed the Commission to report to the Governor and
6 Legislature as follows:

7 The Commission shall study the laws and practices of this state, State of New York,
8 and other entertainment capitals of the United States relating to the licensing of
9 agents, and representatives of artists in the entertainment industry in general ... so
10 as to enable the commission to recommend to the Legislature a model bill regarding
11 this licensing.

12 The Commission concluded:

13 [I]n searching for the permissible limits to activities in which an unlicensed personal
14 manager or anyone could engage in procuring employment for an artist without
15 being license as a talent agent,...there is no such activity, there are no such
16 permissible limits, and that the prohibitions of the Act over the activities of anyone
17 procuring employment for an artist without being licensed as a talent agent must
18 remain, as they are today, total. Exceptions in the nature of the incidental,
19 occasional, or infrequent activities relating in any way to procuring employment for
20 an artist cannot be permitted: one either is, or is not, licensed as a talent agent, and,
21 if not so licensed, one cannot expect to engage, with impunity, in any activity
22 relating to the service which a talent agent is licensed to render. There can be no
23 'sometimes' talent agent, just as there can be no 'sometimes' doctor or lawyer or
24 any other licensed professional. (Commission Report page 19-20)

25 13. We are obligated to follow the Commission's conclusions, the express language
26 contained in the contract between the parties, and California's Talent Agency regulations.
27 CIPOLLO lawfully terminated the relationship when MANNEQUIN was unlicensed.
28 MANNEQUIN could not serve the Model and perform obligations with respect to said work and
we therefore cannot award post termination commissions to MANNEQUIN who failed to obtain a
California talent agency license for most of the parties' relationship.

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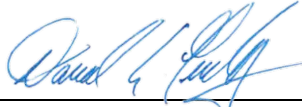
ORDER

For the reasons set forth above, the Petition to Determine Controversy is DENIED.

IT IS SO ORDERED.

Dated: June 7, 2024

Respectfully submitted,

By: 

DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: June 7, 2024

By: 

LILIA GARCIA-BROWER
California State Labor Commissioner