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|-----|---|---|--|--|--|--|--|
| 1 2 | EDNA GARCIA EARLEY, Bar No. 195661 STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF LABOR STANDARDS ENFORCEMENT |   |  |  |  |  |  |
| 3   | 320 W. 4th Street, Suite 430<br>Los Angeles, California 90013<br>Telephone: (213) 897-1511<br>Facsimile: (213) 897-2877           |   |  |  |  |  |  |
| 5   | Attorney for the Labor Commissioner   |   |  |  |  |  |  |
| 7   |   |   |  |  |  |  |  |
| 8   | BEFORE THE LABOR COMMISSIONER   |   |  |  |  |  |  |
| 9   | OF THE STATE OF CALIFORNIA  |   |  |  |  |  |  |
| 10  |   |   |  |  |  |  |  |
| 11  | SHAZIA ALI aka SHAZIA DEEN, an  | CASE NO. TAC 14198                      |  |  |  |  |  |
| 12  | individual,   | DETERMINATION OF<br>CONTROVERSY         |  |  |  |  |  |
| 13  | Destate   | CONTROVERSI                             |  |  |  |  |  |
| 14  | Petitioner,   |   |  |  |  |  |  |
| 1-5 | VS.   |   |  |  |  |  |  |
| 16  |   |   |  |  |  |  |  |
| 17  | NOUVEAU MODEL AND TALENT<br>MANAGEMENT, INC.  |   |  |  |  |  |  |
| 18_ | Respondent.   |   |  |  |  |  |  |
| 19  |   |   |  |  |  |  |  |
| 20  |   |   |  |  |  |  |  |
| 21  |   | Petition to Determine Controversy under |  |  |  |  |  |
| 22  | Labor Code §1700.44, came on regularly for hearing in Los Angeles, California, before   |   |  |  |  |  |  |
| 23  | the undersigned attorney for the Labor Commissioner assigned to hear this case.   |   |  |  |  |  |  |
|     | Petitioner SHAZIA ALI aka SHAZIA DEEN, an individual, ("Petitioner") appeared   |   |  |  |  |  |  |
| 24  | represented by attorney Steven M. Sokoloff of Law Offices of Cyrus & Cyrus, PLC.  |   |  |  |  |  |  |
| 25  | Respondent NOUVEAU MODEL AND TALENT MANAGEMENT, INC., who, until  |   |  |  |  |  |  |
| 26  | recently, was licensed as a talent agency, appeared telephonically through its CEO, Peter   |   |  |  |  |  |  |
| 27  | W. Hamm ("Respondent").   |   |  |  |  |  |  |
| 28  |   |   |  |  |  |  |  |

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

## FINDINGS OF FACT

- 1. Petitioner is a model.
- 2. During Respondent's representation of Petitioner, it was a licensed talent agency. Respondent is no longer licensed as a talent agency.
- 3. Petitioner and Respondent entered into an agreement wherein Respondent agreed to act as Petitioner's talent agency in return for 10-20% commissions on all modeling jobs booked through Respondent.
- 4. Petitioner alleges that Respondent has failed to pay her for three jobs: (1) The Phoenix Job; (2) The Hilton Print Job; and (3) The Hilton Commercial Job.
- 5. The Phoenix Job: Petitioner alleges that on or about January 21, 2008, Respondent booked her for a modeling job for Phoenix Footwear Group ("Phoenix"). Under the terms of the agreement, Phoenix agreed to pay, and did pay Respondent \$2,400.00 for the modeling shoot. Respondent admits to having received the \$2,400.00 from Phoenix and admits to not having paid Petitioner on this project. Of the \$2,400.00, \$2,000.00 is the amount Petitioner earned and \$400.00 is the Agency Fee. Petitioner argues that she is entitled to \$2,000.00 because Respondent was paid its 20% commission with the \$400.00 Agency Fee. Respondent, however, argues that it is entitled to 20% of Petitioner's \$2,000.00 earnings (\$400.00) and that the \$400.00 Agency fee is separate and apart from Petitioner's earnings and is a fee that production companies commonly pay agencies who supply the talent. As such, it owes Petitioner only \$1,600.00 (\$2,000.00 less 20%).
- 6. The Hilton Print Job: Petitioner alleges that on or about February 7, 2008, Respondent booked Petitioner for a print modeling job for Hilton Hotels ("Hilton"). Under the terms of the agreement, Hilton agreed to pay and did pay Respondent \$2,400.00 for the modeling shoot: Respondent admits to having received the \$2,400.00 from Hilton

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and admits to not having paid Petitioner on this project. Of the \$2,400.00, \$2,000.00 is the amount Petitioner earned and \$400.00 is the Agency Fee. Petitioner argues that she is entitled to \$2,000.00 because Respondent was paid its 20% commission with the \$400.00 Agency Fee. Respondent, however, argues that it is entitled to 20% of Petitioner's \$2,000.00 earnings (\$400.00) and that the \$400.00 Agency fee is separate and apart from Petitioner's earnings and is a fee that production companies commonly pay agencies who supply the talent. As such, it owes Petitioner only \$1,600.00 (\$2,000.00 less 20%).

- 7. The Hilton Commercial Job: On February 7, 2008, Respondent booked Petitioner for a modeling job for a Hilton T.V. Commercial, under the terms of which Petitioner would pay Respondent 10% commissions on all earnings, including residuals. Respondent admits to having received six checks from Hilton for Petitioner totaling \$4,804.68 which it has not paid to Petitioner. Of this amount, Respondent argues it is entitled to 10% or \$480.47 and owes Petitioner \$4,324.21. Respondent testified that it received a seventh check in the amount of \$448.41 which it claims it paid Petitioner \$391.70. Petitioner denies that this amount received was for this job. Petitioner testified that she had an eighth check, in the amount of \$591.69, mailed directly to her and owes Respondent 10% or \$59.17 as Respondent's commission on this check.
- 8. In addition to the unpaid earnings stated hereinabove, Petitioner also seeks attorney's fees, costs and/or penalties.

## **LEGAL ANALYSIS**

- 1. Petitioner, a model, is an "artist" within the meaning Labor Code §1700.4(b).
  - 2. At all times relevant, Respondent was a licensed talent agency.
- 3. Labor Code §1700.44(a) provides in relevant part: "In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner...."
- 3. With regard to **The Phoenix Job** and **The Hilton Print Job**, the issue is whether the 20% Agency Fee serves as Respondent's commission or is a separate fee

between Respondent Agency and the Third Party Production Company that has nothing to do with Respondent's commissions from Petitioner's earnings.

Peter Hamm credibly testified for Respondent, that he explained to Petitioner that it is common for the agency to receive an Agency Fee from the Production company, in addition to commissions from Petitioner's earnings, which are separate.

So long as said fees are not "registration fees" or fees charged for services expressly listed in Labor Code §1700.40(b) (or similar services), and are not intended to be part of an artist's compensation (even though they may be based on a percentage of the artist's total earnings), we find that the Agency Fees are between the talent agency and the third party companies and the Labor Commissioner has no jurisdiction over such fee arrangements. We note that the evidence, however, must clearly establish that the Agency Fee is separate and apart from the fees the production company pays to the artist. There must be no question that the fees are intended for the agency and are not meant for the artist.

Here, no evidence was presented to show that the Agency Fee was intended for Petitioner. Rather, the evidence established that this fee was separate and apart from Petitioner's earnings. As such, the Agency Fee does not take the place of the commission agreed to between the parties, as Petitioner argues. Accordingly, Petitioner is only entitled to \$1,600.00 in earnings on The Phoenix Job and \$1,600.00 in earnings on The Hilton Print Job.

- 4. As to **The Hilton Commercial Job**, the evidence establishes that Petitioner is entitled to \$4,324.11 in unpaid earnings on Check Nos. 30083267, 30245480, 30245481, 3024582, 30310749 and 30537634. The evidence also establishes that Petitioner is entitled to \$403.57 in unpaid earnings on Check No. 22362315 which Respondent claims to have paid \$391.70 although he has not produced any evidence supporting that this payment was for this job. Respondent is entitled to a \$59.17 credit for the payment that was sent directly to Petitioner, Check No. 30236666.
  - 5. Pursuant to Labor Code §1700.25(e)(1), Petitioner is entitled to \$1,500.00 in

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<u>'reasonable attorney's fees</u> and pursuant to Labor Code §1700.25(e)(2) Petitioner is entitled to interest on all unpaid earnings.

## **ORDER**

Based on the foregoing, we hereby ORDER that Petitioner SHAZIA ALI aka SHAZIA DEEN, an individual is entitled to:

1. \$7,868.51 in unpaid earnings, \$1,436.33 in accrued interest pursuant to Labor Code \$1700.25(e)(2), (earnings and interest are broken down in the chart below), and \$1,500.00 in attorney's fees pursuant to Labor Code \$1700.25(e)(1) for total award of \$10,804.84.

| Job                                    | Unpaid<br>Earnings (less<br>commissions) | Payment Due<br>to Petitioner | Interest (10% from payment due date to decision date | Total Due  |
|--|--|------------------------------|--|------------|
| The Phoenix Job                        | \$1,600.00                               | 3/21/08                      | \$326.58   | \$1,926.58 |
| The Hilton Print Job                   | \$1,600.00                               | 3/21/08                      | \$326.58   | \$1,926.58 |
| The Hilton<br>Commercial -<br>30083267 | \$403.57                                 | 6/6/08                       | \$73.86  | \$477.43   |
| The Hilton<br>Commercial -<br>30245480 | \$1,257.80                               | 8/11/08                      | \$207.45   | \$1,465.25 |
| The Hilton                             | \$1,255.73                               | 8/11/08                      | \$207.11   | \$1,462.84 |
| Commercial - 30245481                  |  |                              |  |            |
| The Hilton<br>Commercial -<br>30245482 | \$599.85                                 | 8/11/08                      | \$98.93  | \$698.78   |
| The Hilton<br>Commercial -<br>30310749 | \$403.58                                 | 9/6/08                       | \$63.69  | \$467.27   |
| The Hilton<br>Commercial -<br>30537634 | \$403.58                                 | 12/06/08                     | \$53.63  | \$457.21   |
| The Hilton<br>Commercial -<br>30236666 | \$-59.17                                 |                              |  | \$59.17    |
| The Hilton<br>Commercial -<br>22362315 | \$403.57                                 | 4/25/08                      | \$78.50  | \$482.07   |
| TOTAL                                  | \$7,868.51                               |                              | \$1,436.33   | \$9,304.84 |

| _1   | 2. Petitioner SHAZIA ALI aka SHAZIA DEEN, an individual, is also entitled             |  |  |  |  |  |  |
|--|---|--|--|--|--|--|--|
| 2  | to recover from the \$50,000.00 bond posted by Respondent with the Labor Commissioner |  |  |  |  |  |  |
| 3  | as a condition of being licensed as a talent agent.                                   |  |  |  |  |  |  |
| 4  |   |  |  |  |  |  |  |
| 5  | DATED: April 5, 2010 Respectfully submitted,  |  |  |  |  |  |  |
| · 6  |   |  |  |  |  |  |  |
| 7  | By: Elwalravatances   |  |  |  |  |  |  |
| 8  | EDNA GARCIA EARLEY  |  |  |  |  |  |  |
| 9  | Attorneys for the Labor Commissioner  |  |  |  |  |  |  |
| 10   |   |  |  |  |  |  |  |
| 11   |   |  |  |  |  |  |  |
| 12   | ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER                                |  |  |  |  |  |  |
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| 13   | Dated: April 7 2010 By: Angla Brie Steel  |  |  |  |  |  |  |
| 13<br>14   | 1 0 1 1 0   |  |  |  |  |  |  |
| 13<br>14<br>15   | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16   | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19   | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20                                     | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
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| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22                         | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23                   | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24             | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25       | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
| 13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26 | Dated: April 7 2010 By: Angela Bradstreet   |  |  |  |  |  |  |
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