BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

MALAIKA PAUL, ) No. TAC 26-02
     Petitioner,

vs.

COLOURS MODEL & TALENT MANAGEMENT ) DETERMINATION OF
AGENCY, INC.; CMT TALENT AGENCY, a ) CONTROVERSY
partnership; BYRON GARRETT, an
individual,

     Respondents.

The above-captioned matter, a petition to determine
controversy under Labor Code §1700.44, came on regularly for
hearing on November 7, 2003, in Los Angeles, California, before
the Labor Commissioner's undersigned hearing officer. Petitioner
appeared in propria persona; respondents failed to appear. 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. CMT TALENT AGENCY (hereinafter "CMT") was most recently
licensed as a talent agency by the State Labor Commissioner from

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July 25, 2001 to July 24, 2002. It was licensed as a partnership, owned by ALBERTA SELLERS and BYRON GARRETT, with a business address at 8344 ½ W. 3rd Street, Los Angeles, California.

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

3. While at an acting class in early 2001, Petitioner MALAIKA PAUL met a person who identified himself as a booking agent for COLOURS. The booking agent arranged for Petitioner to audition for Byron Garrett. After the audition, Garrett told Petitioner that he wanted to represent her as her talent agent. Petitioner then entered into an oral agreement with Garrett whereby COLOURS was to serve as Petitioner’s talent agent, with COLOURS to receive commissions equal to 10% of Petitioner’s earnings for all television work and 20% of Petitioner’s earnings for all print modeling work, on jobs procured by COLOURS.

4. On April 18, 2001, Petitioner performed television modeling work in connection with a commercial for Bally Total Fitness Corporation, for which Petitioner was to be paid $2,500 for Bally’s use, for a period of two years, of advertising containing Petitioner’s likeness, with an option for a second two-year period at Bally’s sole discretion. In addition to this payment for use of her commercial likeness, Bally agreed to pay
Petitioner an additional $1,625 for extra hours in shooting the commercial. This modeling job had been procured by COLOURS.

5. On April 20, 2001, COLOURS sent an invoice to Bally for Petitioner's modeling services, and on May 17, 2001, Bally paid $4,125 to COLOURS pursuant to this invoice. Despite repeated demands for payment, COLOURS did not pay Petitioner until November 2001, and then only paid her $2,320, retaining $1,805, an amount far in excess of what it was entitled to retain as its commission pursuant to its agreement with Petitioner.

6. Petitioner made several phone calls to Byron Garrett and to Philip Johnson, COLOURS' accountant, during which she insisted that she was entitled to more money that the amount she had received. Although Johnson promised that a check would be sent providing her with additional payment, no further payment was made.

7. In May 2003, Bally exercised its option to use Petitioner's commercial likeness for another two-year period, and sent a $2500 to Respondents for that purpose. Respondents never transmitted this check to the petitioner, and has never paid her any proceeds from this check. On May 27, 2003, Respondents cashed this check.

8. This petition was filed on August 12, 2002, and served on respondents on July 31, 2003.

LEGAL ANALYSIS

1. Petitioner is an "artist" within the meaning of Labor Code section 1700.4(b). Respondents are a "talent agency" within the meaning of Labor Code section 1700.4(a).

2. Labor Code §1700.5 provides that "[n]o person shall
engage in or carry on the occupation of a talent agency without first procuring a license . . . from the Labor Commissioner." 

The Talent Agencies Act is a remedial statute; its purpose is to protect artists seeking professional employment from the abuses of talent agencies. For that reason, "even the incidental or occasional provision of such [procurement] services requires licensure." Styne v. Stevens (2001) 26 Cal.4th 42, 51. Here, Respondent's procurement of the Bally modeling job occurred when it was not licensed as a talent agent -- the license issued to COLOURS had already expired, and the license issued to CMT had not yet been issued. By procuring employment for the petitioner when they were not licensed as a talent agency by the State Labor Commissioner, respondents violated Labor Code §1700.5.

3. An agreement that violates the licensing requirement of the Talent Agencies Act is illegal and unenforceable. "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." Buchwald v. Superior Court (1967) 254 Cal.App.2d 347, 351. Having determined that a person or business entity procured, promised or attempted to procure employment for an artist without the requisite talent agency license, "the [Labor] Commissioner may declare the contract [between the unlicensed agent and the artist] void and unenforceable as involving the services of an unlicensed person in violation of the Act." Styne v. Stevens, supra, 26 Cal.4th at 55. "[A]n agreement that violates the licensing requirement is illegal and unenforceable . . . ." Waisbren v. Peppercorn
Productions, Inc. (1995) 41 Cal.App.4th 246, 262. Moreover, the artist that is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and "may . . . [be] entitled[ ] . . . to restitution of all fees paid the agent."


4. Due to the absence of a talent agency license at the time of procuring this modeling employment for petitioner, neither COLOURS nor CMT nor BYRON GARRETT are entitled to retain any portion of the amounts that were withheld from petitioner's modeling earnings. Petitioner is entitled to restitution of all unlawfully withheld amounts, plus interest at 10% per annum on all such amounts, from the dates that such amounts were received by respondents.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that COLOURS MODEL & TALENT MANAGEMENT AGENCY, INC. ("COLOURS"), CMT TALENT AGENCY ("CMT"), and BYRON GARRETT, are jointly and severally liable for the following amounts, which shall be paid to petitioner MALAIKA PAUL:

1. $4,305.00 for unlawfully withheld earnings;
2. $1,089.38 for interest on these unlawfully withheld earnings, as of the date of this decision (with further interest accruing at the rate of $1.18 per day thereafter);

For a total, as of the date of this decision, of $5,394.38.

Dated: 2/25/04

MILES E. LOCKER
Attorney for the Labor Commissioner

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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 3/8/04

[Signature]

GREGORY L. RUFF
Acting Deputy Chief Labor Commissioner