BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

LISA CENTENO, ) No. TAC 41-02

Petitioner,

vs.

CMT TALENT AGENCY, aka COLOURS MODEL & TALENT AGENCY, ) DETERMINATION OF

Respondent. ) CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on January 14, 2003, in Los Angeles, California, before the Labor Commissioner's undersigned hearing officer. Petitioner appeared in propria persona; respondent failed to appeared. Based on the evidence presented at this hearing and on the other papers on file in this mater, 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 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. By letter dated December 11, 2001 to Labor Commissioner
attorney David Gurley, GEORGIA TRIPLETT stated that COLOURS
ceased operations in September 2001 and that she had assumed all
debts incurred by COLOURS prior to its closing.

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

5. In April 2002 petitioner received a telephone call from
her CMT agent, informing her about a modeling job in connection
with a Sony print advertisement. Petitioner successfully auditioned for the job. She was told she would be paid $1000 less a 20% commission for CMT, for a total of $800 for her work. The job was completed on April 13, 2002.

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

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

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

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

LEGAL ANALYSIS

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

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

3. Petitioner was entitled to payment of $800 no later than June 21, 2002, thirty days after it was paid to CMT (or COLOURS).
The failure to disburse this amount to petitioner was willful, therefore entitling the petitioner to interest on this amount at the rate of 10% per annum, commencing on June 21, 2002.

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

ORDER

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

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

Dated: 2/26/03

MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 2/26/03

ARTHUR S. LUJAN
State Labor Commissioner

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