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7
8 BEFORE THE LABOR COMMISSIONER

9 STATE OF CALIFORNIA

10
11 SARAH ROBERTS, aka SARAH MORGAN,) No. TAC 01-03
12)
Petitioner,)
13 vs.)
14 CMT TALENT AGENCY, a partnership, dba) DETERMINATION OF
CMT, C-2, COUTURE, CREWMEN; and PHILLIP) CONTROVERSY
15 JOHNSON, an individual,)
16 Respondents.)

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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 November 7, 2003, in Los Angeles, California, before
21 the Labor Commissioner's undersigned hearing officer. Petitioner
22 appeared in propria persona; respondents failed to appear. Based
23 on the evidence presented at this hearing and on the other papers
24 on file in this matter, the Labor Commissioner hereby adopts the
25 following decision.

26 FINDINGS OF FACT

27 1. CMT TALENT AGENCY (hereinafter "CMT") was most recently
28 licensed as a talent agency by the State Labor Commissioner from

1 July 25, 2001 to July 24, 2002. It was licensed as a
2 partnership, owned by ALBERTA SELLERS and BYRON GARRETT, with a
3 business address at 8344 1/2 W. 3rd Street, Los Angeles,
4 California. CMT has not been licensed as a talent agency since
5 July 24, 2002.

6 2. Phillip Johnson has never been licensed by the State
7 Labor Commissioner as a talent agency.

8 3. In late 2001 or early 2002, petitioner SARAH ROBERTS aka
9 SARAH MORGAN sent headshot photographs to CMT in the hope of
10 obtaining their services as her talent agents. Petitioner
11 received a telephone call from Philip Johnson, who described
12 himself as a CMT agent, in order to set up an audition. At the
13 conclusion of the audition, which took place at CMT's business
14 address, Johnson told petitioner that he was interested in
15 representing her as a talent agent and that we would try to get
16 her modeling and acting work. Following this discussion, Johnson
17 presented petitioner with a written contract, which the
18 petitioner then signed, under which CMT was to serve as
19 petitioner's talent agency, for which CMT would receive
20 commissions in the amount of 10% of petitioner's earnings from
21 acting, and 20% of petitioner's earnings from print modeling, for
22 work obtained by CMT.

23 4. Respondents obtained two jobs for the petitioner --
24 first in March 2002, and next in July 2002. The first job on
25 March 7, 2002, was a print modeling job for Eyematic, a facial
26 animation software company, for which petitioner had been
27 promised \$1,500, less CMT's 20% commission, with a promised a net
28 payment of \$1,200. In July 2002, petitioner received a check

1 from an account maintained by California Commercial Theatrical
2 Accounting (purportedly CMT's "client trust account") in the
3 amount of \$840. However, when petitioner attempted to negotiate
4 the check, it was rejected due to non-sufficient funds, and her
5 bank subsequently charged her a \$10 fee for attempting to cash
6 the NSF check. To date, petitioner has received no payment for
7 this modeling assignment.

8 5. In early July 2002, Philip Johnson contacted the
9 petitioner with an acting assignment for Eyematic, in connection
10 with the production of a video for commercial purposes. At that
11 time, petitioner had not received any check for her previous
12 modeling engagement, and she told Johnson that she would not take
13 this job unless she was paid for the last job. Immediately
14 thereafter, Johnson sent petitioner the \$840 NSF check. Before
15 realizing that the check could not be negotiated, petitioner
16 provided acting services on behalf of Eyematic on July 12, 2002,
17 for which Johnson promised her she would be paid \$900, less CMT's
18 commission of 10%, for a net payment of \$810. To date,
19 petitioner has not been paid at all for this engagement.

20 6. Despite petitioner's repeated telephone calls to
21 Respondents demanding payment for these two jobs, Respondents
22 have failed to make any payment.

23 7. This petition was filed on January 7, 2003, and served
24 on respondents on July 31, 2003. Respondents did not file any
25 answer, or present any evidence to rebut the claim.

26 LEGAL ANALYSIS

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

1 the meaning of Labor Code section 1700.4(a).

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. Petitioner failed to present any direct evidence that
15 Eyematic paid respondents for her modeling and acting jobs.
16 However, with respect to the March 2002 modeling job, the fact
17 that Respondents ultimately provided petitioner with a check
18 (albeit an NSF check) for her services compels the inference that
19 Respondents received payment from Eyematic. With respect to both
20 the March 2002 modeling job and the July 2002 acting job, the
21 fact that Respondents never claimed, in response to petitioner's
22 incessant demands for payment, that the reason for not paying her
23 was because they hadn't received any funds from Eyematic,
24 strongly suggests that Eyematic had in fact paid respondents for
25 petitioner's services. Furthermore, as a matter of law, an agent
26 is required to take all reasonable steps to secure payment for a
27 represented artist's professional services, and the burden rests
28 with the agent -- not the artist -- to show that the agent did

1 what was reasonably necessary to secure the artist's payment. In
2 view of respondents' failure to raise any defense or present any
3 evidence, we must either presume that Eyematic paid in
4 respondents in full for petitioner's services, or that Eyematic
5 had not made full payment, it was due to respondents' failure to
6 take all reasonable steps to secure such payment. In either
7 event, respondents are liable for petitioner's unpaid earnings.

8 4. Respondents' failure to disburse the amounts which we
9 conclude were paid by Eyematic on behalf of the petitioner
10 constitutes a willful violation of Labor Code section 1700.25.
11 Moreover, we conclude that by failing to remit these amounts to
12 the petitioner without any justification, and in particular, by
13 securing petitioner's services for the July acting job under
14 false pretenses by providing her with an NSF check for her
15 ~~previous assignment, Respondent breached its representation~~
16 agreement and violated its fiduciary duty thereunder, thereby
17 losing the right to retain any commissions on amounts earned by
18 petitioner. We therefore conclude that petitioner is entitled to
19 payment of \$1,500 for the March 2002 modeling job, plus \$900 for
20 the July 2002 acting job, plus interest at 10% per annum on these
21 amounts from the date each job was performed, plus \$10 to
22 reimburse petitioner for the NSF bank charge.

23 ORDER

24 For the reasons set forth above, IT IS HEREBY ORDERED that
25 Respondents CMT TALENT AGENCY, a partnership, dba CMT, C-2,
26 COUTURE, CREWMEN; and PHILLIP JOHNSON, an individual, are jointly
27 and severally liable for the following amounts, which shall be
28 paid to petitioner SARAH ROBERTS aka SARAH MORGAN:

- 1 1. \$2,400.00 for unlawfully withheld earnings;
 2 2. \$443.13 for interest on these unlawfully withheld
 3 earnings, as of the date of this decision (with further interest
 4 accruing at the rate of 66 cents per day thereafter);
 5 3. \$10.00 for reimbursement of bank charges;
 6 for a total, as of the date of this decision, of \$2,853.13.

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 9 Dated: *2/25/04* *Miles E. Locker*
 10 _____
 MILES E. LOCKER
 Attorney for the Labor Commissioner

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 12 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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 15 Dated: *3/8/04* *Gregory L. Rupp*
 16 _____
 GREGORY L. RUPP
 Acting Deputy Chief Labor Commissioner

