DIVISION OF LABOR STANDARDS ENFORCEMENT Department of Industrial Relations State of California BY: DAVID L. GURLEY (Bar No. 194298) 320 W. 4th Street, Suite 430 90013 Los Angeles, CA Telephone: (213) 897-1511 4 Attorney for the Labor Commissioner 5 6 BEFORE THE LABOR COMMISSIONER 8 OF THE STATE OF CALIFORNIA 9 10 AARON M. BEYER, 11 Petitioner, vs. 12 13 COLOURS MODEL/TALENT aka CREW, 14 MANAGEMENT dba CMT, Respondent. 15 16 17

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Case No. TAC 50-03

DETERMINATION OF CONTROVERSY

INTRODUCTION

The above-captioned petition was filed on December 9, 2003, by AARON M. BEYER, (hereinafter "Beyer" or "Petitioner"), alleging that COLOURS MODEL/TALENT AGENCY aka CREW MANAGEMENT dba CMT, (hereinafter "Respondent" "Colours"), collected or petitioner's earnings and failed to remit those earnings to the petitioner in the amount of \$5,626.34.

Respondent was properly served but did not file an answer, nor did they appear at the hearing. The hearing was held on March 15, 2005, before the undersigned attorney for the Labor

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Commissioner. The petitioner appeared in propria persona. Based upon the testimony and evidence presented at this hearing, the Labor Commissioner adopts the following Determination of Controversy.

FINDINGS OF FACT

- 1. In or around May of 2003, the parties entered into a representation agreement whereby the respondent would procure modeling and acting engagements for the petitioner, in exchange for 10% of Beyer's gross earnings.
- 2. On or around July 21, 2003, the respondent arranged an audition for Beyer. Beyer secured the job and attended a two-day commercial shoot for the client, Chrysler Motors. The commercial was shot at several Southern California locations and was ultimately aired nationally on a regular basis.
- 3. The petitioner was compensated by the employer, Talent Partners. Talent Partners would determine the amount of royalties owed to the petitioner based on the number of times the commercial aired. Talent partners would then send petitioner's earnings directly to the respondent. The respondent was required to deduct his 10% commission from petitioner's gross earnings and then immediately remit the remainder of the royalties directly to the petitioner.
- 4. On or around August 23, 2003, through September 6, 2003, the respondent received several royalty checks on behalf of the petitioner from Talent Partners in the amount of \$5,626.34. The respondent failed to remit those earnings to the petitioner and notwithstanding petitioner's repeated requests those earnings

remain unpaid. Credible evidence was submitted at the hearing establishing the checks were cashed and deposited into the respondent's bank accounts.

- 5. In September 2003, the petitioner contacted Talent Partners and inquired why he not received royalty checks, notwithstanding the repeated airings of the Chrysler commercial during national broadcasts. Talent Partners indicated they had timely paid petitioner's royalties directly to petitioner's management, Colours. Talent Partners then submitted copies of the canceled checks which were deposited directly into the respondent's account. The petitioner immediately instructed Talent Partners to cease sending the checks to the respondent and instead directed them to send all future royalty checks directly to the petitioner.
- 6. Petitioner seeks the \$5,626.34 in royalty checks which were earned by the petitioner, but deposited and cashed in the respondent's bank account.

LEGAL ANALYSIS

- 1. Labor Code 1700.4(b) includes "models" and "actors" in the definition of "artist". The petitioner is an "artist" within the meaning of Labor Code §1700.4(b).
- 2. Labor Code §1700.40(a) defines "talent agency" as, "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists."
- 3. Labor Code section 1700.5 provides that "no person shall engage in or carry on the occupation of a talent agency

without first procuring a license therefor from the Labor Commissioner." A review of the Division of Labor Standards Enforcement's Licensing and Registration Unit's licensing database indicated the respondent was not licensed as a California Talent Agent.

- 4. In <u>Waisbren v. Peppercorn Production</u>, Inc. (1995) 41 Cal.App.4th 246, the court held that any single act of procuring employment subjects the agent to the Talent Agencies Act's licensing requirements, thereby upholding the Labor Commissioner's long standing interpretation that a license is required for any procurement activities, no matter how incidental such activities are to the agent's business as a whole. Applying <u>Waisbren</u>, it is clear respondent acted in the capacity of a talent agency within the meaning of §1700.4(a). Consequently, the Labor Commissioner has jurisdiction to hear this matter pursuant to Labor Code §1700.44.
- 5. Clearly, respondent's actions of receiving and failing to remit petitioner's monies established a breach of Colours fiduciary duty toward their client. The conversion of petitioner's earnings operated to the detriment of the artist. Respondent's actions breached the contract with the petitioner and their common law duty to act with good faith and fair dealing.
- 6. The respondent benefitted from his breach and has been unjustly enriched and the law must impose protections on behalf of the public. Accordingly, respondent must return all monies converted and has no right to any commissions collected from the petitioner.

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7. Petitioner is entitled to recover all commissions paid to the respondent for the one-year period preceding filing of the petition pursuant to Labor Code §1700.44(c), and entitled to immediate payment of all earnings illegally converted. The evidence produced at the hearing established respondent collected \$246.81 in commissions on behalf of the petitioner within one year from the filing of this petition and \$5,626.34 in royalties earned by the petitioner.

8. The talent agency is on notice that the Labor Commissioner will seek additional information from the respondent, including, inter alia, all books and records for inspection, pursuant to Labor Code §1700.27 to further inquire as to the agencies business practices.

ORDER

For the above-stated reasons, respondent illegally collected commissions, converted their client's property, and consequently materially breached their fiduciary duties. Consequently, the Respondent, COLOURS MODEL/TALENT AGENCY aka CREW MANAGEMENT dba CMT, shall remit to the petitioner, AARON M. BEYER, within 10 days of receipt of this determination, \$246.81 in illegally collected commissions; \$5,626.34 in illegally converted earnings and interest at 10% per annum (20% of \$5,873.15 = \$1,174.63) for a total award of \$7,047.15. IT IS SO ORDERED.

Dated: 7/5/05 David L. Gurley Attorney for the Labor Commissioner ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER Dated: 7/7/05 State Labor Commissioner