

1 Miles E. Locker, CSB #103510
DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
State of California
3 455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
4 Telephone: (415) 703-4863
Fax: (415) 703-4806
5 Attorney for State Labor Commissioner

6
7

8 BEFORE THE LABOR COMMISSIONER

9

STATE OF CALIFORNIA

10

11 ISMAEL "IZZY" DIAZ,) No. TAC 12-03
12)
Petitioner,)
13)
vs.)
14)
PHILLIP JOHNSON, aka PHILIP JOHNSON;) DETERMINATION OF
15 CMT TALENT AGENCY, dba COLOURS MODEL &) CONTROVERSY
TALENT AGENCY, and/or CMT,)
16)
Respondents.)

17

18 The above-captioned matter, a petition to determine
19 controversy under Labor Code §1700.44, came on regularly for
20 hearing on August 15, 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

28

1. CMT TALENT AGENCY (hereinafter "CMT") was most recently
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 ½ W. 3rd Street, Los Angeles,
4 California.

5 2. In the spring of 2002, CMT talent agent PHILLIP or
6 PHILIP JOHNSON had a conversation with petitioner ISMAEL "IZZY"
7 DIAZ, in which JOHNSON offered to represent DIAZ as a talent
8 agent by attempting to obtain work for DIAZ as a television or
9 film actor. Shortly thereafter, DIAZ executed a written contract
10 with CMT under which he engaged the services of CMT as a talent
11 agency to negotiate contracts for the petitioner in the rendition
12 of professional services as an actor and in all other fields in
13 the entertainment industry, for which CMT would be entitled to
14 commissions.

15 3. As a result of CMT's efforts, DIAZ obtained employment
16 for the three day period from December 17 through December 19,
17 2002, as an actor for Warner Bros. Television Productions on an
18 episode of "The George Lopez show", a television sitcom.

19 4. By check dated December 27, 2002, Warner Bros.
20 Television Productions paid \$1,128.95 to CMT on behalf of DIAZ.
21 This check was deposited into a "California Commercial Theatrical
22 client trust account", maintained by JOHNSON in Santa Barbara,
23 California, on January 6, 2003.

24 5. Starting in mid-January 2003, DIAZ made over 30 calls to
25 CMT and to JOHNSON inquiring about payment. Neither JOHNSON nor
26 CMT ever paid DIAZ any money for his acting services in
27 connection with this sitcom.

28 //

1 in violation of the Act." *Styne v. Stevens* (2001) 26 Cal.4th 42,
2 55.

3 4. We therefore hold that CMT and JOHNSON must disgorge to
4 DIAZ the entire \$1,128.95 received from Warner Bros. Television
5 Productions for DIAZ's services as an actor, and that CMT and
6 JOHNSON are not entitled to retain any part of the \$1,128.95 as
7 an agency fee or commission. Also, in accordance with Civil Code
8 sections 3287 and 3289, we conclude that DIAZ is entitled to
9 interest on the wrongfully withheld funds, at the rate of 10% per
10 annum, from January 6, 2003, the date the funds were received by
11 CMT and JOHNSON.

12 5. We note that even if CMT or JOHNSON had been licensed
13 when it procured this employment for DIAZ, the failure to
14 promptly remit the funds received from Warner Bros. Television
15 Productions on behalf of DIAZ would constitute a violation of
16 Labor Code section 1700.25. This statute provides that a
17 licensed talent agency that receives any payment of funds on
18 behalf of an artist shall immediately deposit that amount in a
19 trust fund account maintained by him or her in a bank, and shall
20 disburse those funds, less the agent's commission, to the artist
21 within 30 days after receipt. Section 1700.25 further provides
22 that if, in a hearing before the Labor Commissioner on a
23 petition to determine controversy, the Commissioner finds that
24 the talent agency willfully failed to disburse these amounts
25 within the required time, the Commissioner may award interest on
26 the wrongfully withheld funds at the rate of 10% per annum, and
27 reasonable attorney's fees.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Respondents PHILLIP JOHNSON, aka PHILIP JOHNSON; and CMT TALENT AGENCY, dba COLOURS MODEL & TALENT AGENCY, and/or CMT, are jointly and severally liable for the following amounts, which shall be paid to petitioner ISMAEL "IZZY" DIAZ:

- 1. \$1,128.95 for unlawfully withheld earnings;
 - 2. \$94.08 for interest on the unlawfully withheld earnings, as of the date of this decision (with further interest accruing at the rate of 31 cents per day thereafter);
- for a total, as of the date of this decision, of \$1,223.03.

Dated: 10/9/03

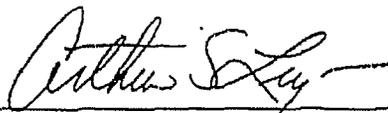


MILES E. LOCKER

Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 10-10-03



ARTHUR S. LUJAN

State Labor Commissioner

