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DECISION AND NOTICE OF DECISION
DECISIÓN Y AVISO DE LA DECISIÓN TOMADA

A.L.J. Case No. 018-29037

Mailed and Filed: March 18, 2019

IN THE MATTER OF:

ER NO:11-01737

MAJOR MODEL MANAGEMENT INC
ATTN NADIA SHAHRIK
344 W 38TH ST RM 602
NEW YORK NY 10018-8494

PASHMAN STEIN WALDER HAYD
COURT PLAZA SOUTH
21 MAIN ST, SUITE 200
HACKENSACK NJ 07601-

Department of Labor Office: LND

Hearing Requested: May 22, 2018

A.S.O.-NYC-ATT: M. HALL

PLEASE TAKE NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within **TWENTY DAYS** from the date this decision was mailed. **READ IMPORTANT INFORMATION ON REVERSE SIDE REGARDING YOUR RIGHT TO APPEAL.** Any party who failed to appear at the hearing has the right to apply to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear.

POR FAVOR TOME NOTA: esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, puede apelar dentro de **VEINTE DIAS** contados a partir de la fecha en que esta decisión fue enviada por correo. **LEA LA INFORMACIÓN IMPORTANTE AL REVERSO SOBRE SUS DERECHOS DE APELACIÓN.** Cualquiera de las partes que falle en comparecer a la audiencia, tiene el derecho de solicitar que se reabra su caso. Para que dicha solicitud sea otorgada, la parte interesada debe solicitarlo dentro de un periodo de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia.

DOCUMENTO IMPORTANTE. PUEDE OBTENER UNA TRADUCCIÓN DEL MISMO LLAMANDO AL 1-888-209-8124 (FUERA DEL ESTADO DE NUEVA YORK 1-877-358-5306)

ISSUES: Amount of contributions due under the Unemployment Insurance Law.

The Department of Labor issued the initial determination holding MAJOR MODEL MANAGEMENT INC liable for additional contributions, effective from the first calendar quarter of 2015 through the fourth calendar quarter of 2017, based on remuneration paid to the claimant and to all other models similarly situated as employees. The employer disagreed with determination of employment status for models and the additional contributions assessed and requested a hearing.

A hearing was held at which testimony was taken. There were appearances on behalf of the employer and on behalf of the Commissioner of Labor.

FINDINGS OF FACT: The employer operates a modeling agency where the employ agents who work with

models who are booked for various clients and project assignments. The employer takes a certain percentage of the amount that the models receive from their booking assignments as commission for the work that they perform on behalf of the models. The models pay the employer a fee to appear on their website so that when the employer's clients are looking for models, they can search the employer's website. The employer has certain appearance requirements in order for the models to be accepted onto their website and also require the models to maintain these appearance requirements once they have agreed to be represented by the employer. The employer maintains the models daily schedules to avoid any conflicts. The models are free to book themselves directly with any client, however, certain clients have exclusives on models for a period of time and the employer keeps track of those exclusives, such as a "fall" or "spring" collection. If the model has been booked for such an assignment, they would be restricted by the client from appearing in something similar. This restriction would be placed on the model from the client and not from the employer. The employer would negotiate the fees on behalf of the models, however, the models were free to accept a lower rate on a job if they felt that they wanted to take the job against the advice of the employer. The employer maintained an apartment in the city that they offered to models who were from out of town and would deduct the costs of the apartment from whatever booking fees the models received while the models stayed in the apartment. The employer provided this apartment for ease to the models and the employer was always reimbursed by the models for whatever expenses they laid out on behalf of the models.

OPINION: Pursuant to Labor Law § 560 (1), any employer shall become liable for contributions under Labor Law, Article 18, if the employer has paid remuneration of \$300 or more in any calendar quarter. Such liability shall commence on the first day of such calendar quarter. Pursuant to Labor Law § 517 (1), remuneration means every form of compensation for employment paid by an employer to an employee; whether paid directly or indirectly by the employer, including salaries, commissions and bonuses. Pursuant to Labor Law § 511 (1), employment means any service under any contract of employment for hire, express or implied, written, or oral.

The credible evidence establishes that the employer is not liable for the additional contributions on behalf of the models. The credible evidence further establishes that the models employed the employer as agents and therefore, the employer did not exercise direction and control over the models. In reviewing the various factors that were used to determine the models as employees, all of these factors points to the existence of *an* employment relationship, however, it is the reverse of the one that was found by the audit. The models employ the employer to be their agents and have a commission taken out of all of their bookings to pay for such services. The models pay the employer a fee in order to appear on their website. The models exercise control over their agents and have the freedom to accept jobs without their agent. Accordingly, I conclude that the employer is not liable for additional contributions, effective from the first calendar quarter of 2015 through the fourth calendar quarter of 2017, based on remuneration paid to the claimant and to all other models similarly situated as employees.

DECISION: The initial determination holding MAJOR MODEL MANAGEMENT INC liable for additional contributions, effective from the first calendar quarter of 2015 through the fourth calendar quarter of 2017, based on remuneration paid to the claimant and to all other models similarly situated as employees, is overruled.

The employer is not subject to the additional contributions.

/s/ Rachel Freeman

Administrative Law Judge