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In re	
DISTRIBUTION OFSATELLITE ROYALTY FUNDS	**DOCKET NO. 16-CRB-0010 SD (2014-17)**

ORDER DENYING MULTIGROUP CLAIMANTS' MOTION FOR MODIFICATION OF JUDGES' ORDER OF SEPTEMBER 12, 2019

On September 17, 2019, Multigroup Claimants (MC) filed with the Copyright Royalty Judges (Judges) a Motion for Modification of Judges' Order of September 12, 2019 (Motion) to remove a clause in a footnote of the Judges' order stating that MC did not have the authority to file the claims at issue in that order. MC contends that "there is no evidence to support such a conclusion." Motion at 1. The Judges disagree and therefore **DENY** the motion.

The issue presented in this order dates back to June 16, 2019, when MC filed with the Judges a motion to amend its petition to participate in this proceeding to remove all references to either "Jefferson Pilot Sports (cka Raycom Sports)" or "Raycom Sports." Multigroup Claimants' Motion to Amend Petition to Participate In Distribution Proceedings (First Motion).

In its First Motion, MC stated

> Counsel for MC was recently contacted by one of the entities appearing on Exhibit A to such filing, purporting that it had previously notified the undersigned that it was terminating its agreement with Independent Producers Group ("IPG") because efforts to contact IPG had been unavailing. [Fn. Such entity purportedly attempted to contact Independent Producers Group at a long-extinguished IPG address, despite notification from IPG years prior that there had been a change of address for IPG, and despite receiving multiple emails from IPG.] MC's counsel did not recall such communication.

First Motion at 1 and n.1.

On July 31, 2019, the Judges denied the motion without prejudice, stating that "based on the record before them, the Judges have insufficient evidence to decide whether to grant or deny the Motion." *Order Denying Without Prejudice Multigroup Claimants' Motion to Amend Petition to Participate in Distribution Proceedings* at 2.

On August 14, 2019, MC filed a Second Motion to Amend Petition to Participate in Distribution Proceedings (Second Motion). In its Second Motion, MC attached as Exhibit 2 emails between MC's counsel and Ellenann V. Yelverton, the Deputy General Counsel to Gray Television, parent company to Raycom Sports Network, Inc. In the first of those emails, dated May 16, 2019, MC's counsel responded to a May 14, 2019 letter that he received from Ms. Yelverton ("Yelverton Letter"). In her letter (which MC's counsel attached to his outgoing email), Ms. Yelverton stated that "you have publicly held yourself out as counsel to Raycom Sports in federal filings. You must immediately cease and desist any actions that would indicate,

expressly or implicitly, your or MC's representation of Raycom Sports." *Id*. at 1. Ms. Yelverton's letter stated further

> Raycom Sports has *not* given you or MC the authority nor [sic] the consent to file on its behalf in the Proceedings. In fact, you have been on explicit notice to cease all communication with Raycom Sports and/or its employees since my last letter to you in March 2012.

Id.

In his May 16, 2019 email responding to the Yelverton Letter, MC's counsel stated that he had received the May 14, 2019 letter, and he had "no recollection of receiving a letter from you before." Email from Brian D. Boydston to Ellenann Yelverton (May 16, 2019). He requested a copy of the March 2012 letter that Ms. Yelverton referenced in her May 14, 2019 letter.

On May 17, 2019, Ms. Yelverton responded, apparently attaching the March 2012 letter that MC's counsel requested. *See* email from Ellenann Yelverton to Brian D. Boydston (May 17, 2019) ("Please see the attached prior correspondence.").

On May 20, 2019, MC's counsel responded, stating that he "had completely forgotten about this [March 2012 letter]." Email from Brian D. Boydston to Ellenann Yelverton (May 20, 2019). Notably, MC's counsel did not deny that he had ever received the March 2012 letter. Rather, he asserted that he had "completely forgotten about" it.

MC's counsel also did not dispute Ms. Yelverton's characterization of the March 2012 letter, or her characterization of the import of the March 2012 to the current proceeding, which she conveyed in her May 14, 2019 letter ("Raycom Sports has *not* given you or MC the authority nor [sic] the consent to file on its behalf in the Proceedings. In fact, you have been on explicit notice to cease all communication with Raycom Sports and/or its employees since my last letter to you in March 2012."). Although MC provided in the Second Motion a copy of Ms. Yelverton's May 17, 2019 email, to which she apparently attached her March 2012 letter, MC chose not to provide the Judges with a copy of the March 2012 letter. Nor has MC provided a copy of the March 2012 letter in the current motion. Had MC believed that Ms. Yelverton mischaracterized the substance of her March 2012 letter in her subsequent correspondence with MC, presumably MC would have provided a copy of the March 2012 letter to the Judges to highlight the purported mischaracterizations. MC's failure to do so, repeatedly, leads the Judges to conclude that Ms. Yelverton accurately characterized the substance of her March 2012 letter in her subsequent correspondence with MC, which is to say, IPG/MC was put on notice to cease all communications with Raycom Sports and/or its employees in March 2012. This conclusion is supported by MC's initial characterization of the exchange between MC and Raycom, which MC conveyed to the Judges in the First Motion. *See* First Motion at 1 & n.1, emphasis added ("Counsel for MC was recently contacted by one of the entities appearing on Exhibit A to such filing, purporting that *it had previously notified the undersigned that it was terminating its agreement with Independent Producers Group* ('IPG') because efforts to contact IPG had been unavailing. [Fn. Such entity purportedly[1] attempted to contact Independent Producers Group at a

[1] MC's use of the word "purportedly" could suggest that MC doubts the veracity of Raycom's assertions that it sent the March 2012 letter to IPG at a "long-extinguished IPG address." Indeed, MC makes explicit allegations in the current motion to that effect. Motion at 2-3 ("express[ing] skepticism as to whether a March 2012 termination letter was actually sent" and "press[ing] the Raycom Sports representative to provide evidence demonstrating that it was

long-extinguished IPG address, despite notification from IPG years prior that there had been a change of address for IPG, and despite receiving multiple emails from IPG.] MC's counsel did not recall such communication.").[2]

On May 30, 2019, Ms. Yelverton requested that MC's counsel "confirm you have withdraw [sic] any and all Raycom Sports related claims." Email from Ellenann Yelverton to Brian D. Boydston (May 30, 2019).

On June 7, 2019, Ms. Yelverton, in response to another email from MC's counsel seeking additional information from Raycom Sports, stated: "Please confirm you have withdrawn the unauthorized claims. I do not need to provide you anything further. You have no documentation to make these claims, so please provide withdrawals Monday." Email from Ellenann Yelverton to Brian D. Boydston (June 7, 2019).

On June 16, 2019, MC's counsel responded by email: "We filed a motion to amend our claims to remove Raycom." Email from Brian D. Boydston to Ellenann Yelverton (June 16, 2019).[3]

Current Motion

In its current Motion, MC argues that "there is no evidence to support" the Judges' conclusion that MC did not have the authority to file claims on behalf of Raycom Sports. Motion at 1. MC states that "the 2015-2017 claims were filed in July 2016, July 2017, and July 2018. Consequently, for the Judges to affirmatively conclude that MC had no authority to file claims for Raycom Sports' [sic] on such dates, *some* evidence would need to exist that *as of such dates* Raycom Sports had notified MC (or its predecessor) that MC had no such authority." Motion at 2. MC continues: "As the Judges even acknowledge, the *only* evidence before the Judges is the letter received by MC's legal counsel from Raycom on May 16, 2019, the email correspondence relating thereto—evidence post-dating the filing of the Raycom Sports claims in July 2016, July 2017, and July 2018." *Id*. MC goes on to comment on MC's counsel's opinion regarding the Yelverton Letter, "express[ing] skepticism as to whether a March 2012 termination letter was actually sent" and "press[ing] the Raycom Sports representative to provide evidence demonstrating that it was actually sent, *and* address[ing] the veracity of assertions made within the alleged March 2012 letter." *Id*. at 2-3. The Judges find none of MC's arguments to be availing.

A claimant representative's authority to represent a claimant "turns on a factual inquiry into 'whether the claimant intended for its claim to be filed on its behalf by another.' Such intent must be expressed prior to the filing of the relevant claim." *Settling Devotional Claimants v. Librarian of Congress*, 797 F.3d 1106, 1115 (Aug. 14, 2015), quoting the Judges' *Memorandum Opinion and Order*, Docket No. 2008-2 CD 2000-2003, at 4 (Mar. 21, 2013). Based on the

actually sent, *and* address[ing] the veracity of assertions made within the alleged March 2012 letter."). To date, however, MC has provided no evidence to support those claims.

[2] Reading this passage from the First Motion in the context of the Second Motion, the Judges infer that the entity referred to in the passage is Raycom Sports and that the attempt to contact IPG at "a long-extinguished IPG address" refers to Ms. Yelverton's March 2012 letter, which MC characterizes consistently in the first and second motions as the one that counsel "did not recall" or had "completely forgotten about."

[3] In the Judges' Order Granting Multigroup Claimants' Second Motion to Amend, the Judges provided a more detailed summary of the email and correspondence that occurred between MC's counsel and Ms. Yelverton, which the Judges hereby incorporate by reference.

evidence in the record, which includes the Yelverton Letter and the subsequent email exchanges between Ms. Yelverton and MC's counsel, the Judges conclude that in March 2012, a representative of Raycom Sports sent or reasonably believed that she had sent a letter to counsel for IPG (and now for MC), MC's predecessor, communicating that IPG was no longer authorized to represent the interests of Raycom Sports.

The Judges further find that when Ms. Yelverton learned that MC had filed a petition to participate in the current proceeding that included claims that MC or IPG had filed on Raycom Sports' behalf, Ms. Yelverton reiterated Raycom Sports' position, originally stated in its March 2012 letter to IPG's counsel, that MC was not authorized to represent Raycom Sports in this proceeding. At MC's request, Ms. Yelverton provided a copy of the March 2012 letter to MC's counsel who acknowledged receipt of the letter and subsequently amended MC's petition to participate in this proceeding based on the substance of the March 2012 letter and subsequent correspondence from Ms. Yelverton reiterating the information that she reasonably believed she had conveyed in the March 2012 letter. MC's acknowledgement of receipt of the March 2012 letter as an attachment to a subsequent email from Ms. Yelverton to Mr. Boydston and his tacit acknowledgement that Ms. Yelverton had accurately characterized the import of the March 2012 letter in subsequent correspondence to MC is sufficient evidence for the Judges to conclude that MC had no authority to file claims in this proceeding on behalf of Raycom Sports or its affiliates. The Judges interpret MC's decision to exclude a copy of the March 2012 letter, which was attached to an email that MC included in its Second Motion, as a tacit acknowledgement on MC's part that the letter conveyed the information that Ms. Yelverton claimed it conveyed. The Judges' find MC's allegations that Ms. Yelverton somehow fabricated the March 2012 letter and its conveyance to IPG to be baseless.

Therefore, MC's Motion to amend the Judges' September 12, 2019 Order is **DENIED**.

SO ORDERED.

Digitally signed by
Jesse Feder
Date: 2019.10.22
12:16:21 -04'00'

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: October 22, 2019