

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of 2014 Digital Audio
Recording Royalty Funds

Docket No. 15-CRB-0011-SRF (CO) (2014)

MOTION TO DISMISS POWELL FROM THE 2014 DART SRF PROCEEDING

The Alliance of Artists and Recording Companies, Inc. (“AARC”),¹ on its behalf and that of itself, Emmanuel Adeyinka (“Adeyinka”), and Benjamin Bacon (“Bacon”) (collectively referred to as the “Settling Parties”),² hereby moves to dismiss “circle god network inc d/b/a david powell” (“CGN”) from the distribution proceeding of the 2014 Digital Audio Recording Technologies (“DART”) Sound Recordings Fund (“SRF”) for failure to file a claim during the statutorily specified period. 17 U.S.C. § 1006(a)(2) (2016); 37 C.F.R. § 360.20 (2019).

BACKGROUND OF THIS PROCEEDING

On March 2, 2015, AARC filed joint claims for the 2014 DART SRF Copyright Owners Subfund and Featured Artists Subfund. See 2014 DART Claims List at 3, E-mail from CRB to Sarah Koons (Mar. 24, 2015, 15:45 EST) (on file with AARC) (Attachment 1). According to the

¹ AARC represents tens of thousands of featured recording artists and sound recording copyright owners (“AARC Participants”), with combined repertoires of millions of sound recordings and billions of sales. AARC, a non-profit organization formed to administer DART royalties, is the leading common agent representing the interests of featured recording artists and sound recording copyright owners in DART royalty proceedings. AARC currently represents over 440,000 featured recording artists and over 16,000 labels. AARC has filed valid claims to the 2014 DART SRF Subfunds at issue and represents all the 2014 DART SRF parties.

² As mentioned in AARC’s 2014 DART SRF Notice of Settlement and reported on the eCRB, AARC has settled with Adeyinka and Bacon. Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, *In re* Distribution of 2014 Digital Audio Recording Royalty Funds, Docket No. 15-CRB-0011-SRF (CO) (2014) (July 23, 2015). Both parties signed up with AARC as participants.

records, CGN did not file a claim to the 2014 DART royalty. See 2014 DART Claims List.

On September 20, 2019, the Copyright Royalty Board (“CRB”) announced commencement of a proceeding to determine the distribution of the remaining 2014 DART SRF royalties. Notice announcing commencement of paper proceeding, requesting Petitions to Participate, and allowing comments, *In re* Distribution of 2014 Digital Audio Recording Royalty Funds, Docket No. 15–CRB–0011 DART (SRF/CO) (2014), 84 Fed. Reg. 49,562 (Sept. 20, 2019) (“2014 Notice”). The 2014 Notice set October 21, 2019, as the due date for “interested copyright parties” to file Petitions to Participate (“PTP”) with any applicable filing fees. Id.

AARC complied with the 2014 Notice by filing its PTP along with the one hundred and fifty dollars (\$150) filing fee on October 16, 2019. Alliance of Artists and Recording Companies, Petition to Participate, eCRB (Oct. 16, 2019), <https://app.crb.gov/case/petitionToParticipate/7>.

Although CGN had not filed a claim in 2015 to the 2014 DART royalty, he filed a PTP on September 27, 2019. [C]ircle god network inc d/b/a david powell, Petition to Participate, eCRB, <https://app.crb.gov/case/petitionToParticipate/5>; see also E-mail from eCRB to AARC Staff (Sept. 27, 2019, 13:02 EST) (on file with AARC).

LEGAL DISCUSSION

The Audio Home Recording Act of 1992 (“AHRA”) sets forth the procedural requirements for DART SRF royalty distribution proceedings. Section 1006 provides that a critical prerequisite to establishing entitlement to royalty payments is that a party claiming entitlement “has filed a claim under section 1007.” 17 U.S.C. § 1006(a)(2). To file a valid DART claim, an interested copyright party “**shall** file with the Copyright Royalty Judges a claim for

payments collected during the preceding year” during the first 2 months of each calendar year.

17 U.S.C. § 1007(a)(1) (2016) (emphasis added). Filing a DART claim is a statutory prerequisite to participating in a distribution proceeding — the statute provides no exceptions. See generally 17 U.S.C. §§ 1003-1007 (2016).

The CRB’s regulations governing DART proceedings echo this statutory requirement. Section 360.21(b) clearly states that “[n]o royalty payments for the previous calendar year will be distribute to any interested copyright party who has not filed a claim to those royalty payments during the January or February of the following calendar year.” 37 C.F.R. § 360.21 (2019).

ARGUMENTS

CGN should be dismissed from the 2014 DART SRF distribution proceeding because it did not file a claim for the 2014 DART SRF royalty as required by the statute and regulations. See 17 U.S.C. § 1007(a)(1); 37 C.F.R. § 360.20. By failing to do so, CGN waived its right to establish entitlement to the 2014 DART SRF royalty payments as an Interested Copyright Party, and so, cannot now participate in the 2014 DART SRF distribution proceeding. Id.

According to the CRB records, AARC filed joint claims to the 2014 DART SRF royalty on behalf of its featured recording artists and sound recording copyright owners on March 2, 2015.³ See 2014 DART Claims List at 3. However, as evidenced by the CRB’s official records,

³ The CRB regulations also provide the method to compute the filing time. The last day of the filing period should be included “unless it is a Saturday, Sunday, Federal holiday, or a day on which the weather or other conditions render the Copyright Royalty Board's office inaccessible.” 37 C.F.R. § 303.7(a)(3) (2019). The last day of the filing period to claim to the 2014 DART SRF, February 28, 2015, was a Saturday. Accordingly, the filing period should be extended to the next working day, which was March 2, 2015. Therefore, AARC filed its claim on time.

neither CGN as a corporate entity nor David Powell as an individual filed a 2014 DART SRF claim. See Id.

Notably, the CRB has recognized in its previous decision in this 2014 DART SRF proceeding that neither CGN nor David Powell was a claimant in the proceeding. See Notice soliciting comments on motion for partial distribution, *In re* Distribution of 2014 Digital Audio Recording Royalty Funds, Docket No. 15-CRB-0011 DART SR (CO/FA) (2014), 80 Fed. Reg. 67,433 (Nov. 2, 2015) (where the CRB noted that AARC had settled with all the Featured Artist claimants except for Herman Kelly and all but four Copyright Owners claimants: Dr. Dwight Sanders, Eric Burns, Tajai Music, Inc., and Afterschool Publishing Company (affiliated with Herman Kelly). The Judges also noted that they had since dismissed the claims of Dr. Sanders and Mr. Burns. No mention was made of CGN or David Powell); see also Motion in Support of Settling Claimants' Notice of Settlement and Request for Partial Distribution of the 2014 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, *In re* Distribution of 2014 Digital Audio Recording Royalty Funds, Docket No. 15-CRB-0011 DART SR (CO/FA) (2014) (Dec. 2, 2015) (identifying the claimants in this proceeding as AARC, Emmanuel Adeyinka, and Benjamin Bacon (settling claimants), and Herman Kelly, Tajai Music, Inc., and Afterschool Publishing Company (non-settling claimants)); Order Granting AARC's Request for Partial Distribution of Royalties from the 2014 DART Sound Recordings Fund, *In re* Distribution of 2014 Digital Audio Recording Royalty Funds, Docket No. 15-CRB-0011 DART SR (CO/FA) (2014) (Jan. 21, 2016) (recognizing that AARC has settled with certain claimants in this proceeding, but neither CGN nor David Powell were

included as a settling party or a non-settling party, and granting partial distribution to the settling claimants). Nowhere in the CRB's records or AARC's filings is CGN nor David Powell listed as a claimant.

CONCLUSION

For all the foregoing reasons, AARC respectfully requests the rejection of CGN's Petition to Participate and the dismissal of CGN from the 2014 DART SRF distribution proceeding.

WHEREFORE, in view of the foregoing, AARC respectfully requests the dismissal of CGN from the 2014 DART SRF distribution proceeding.

Respectfully submitted,
On Behalf of AARC

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November 19, 2019

In the Matter of
Distribution of 2007-2011
Digital Audio Recording Royalty Funds
CONSOLIDATED Docket No. 2008-3
CRB DD (2007-2011 SRF)
AARC Direct Case

ATTACHMENT 1

2014 DART Claims List

2014 DART Claims

Claim No.	Date Received	Filing Status Single/Joint	Filer's Information Interested Party(IP)/ Authorized Representative (AR)	Filers Address	Contact Name	Phone No.	Email
1	1/15/2015	Joint	AR of IP: Emmanuel Adeyinka; Sound Recording Fund: Copyright Owners Subfund	10811 Richmond Avenue Houston, TX 77042	Emmanuel Adeyinka	832-554-6736	primetimerecording production@gmail.com
2	1/16/2015	Single	AR:Emmanuel Adeyinka: Sound Recordings Fund: Copyright Owners Subfund	10811 Richmond Avenue Houston, TX 77042	Emmanuel Adeyinka	832-554-6746	primetimerecording production@gmail.com
3	1/29/2015	Single	IP: Eugene Curry: Musical Works Fund: Publishers Subfund	4000 Gypsy Lane, #245 Philadelphia, PA 19129	Eugene Curry	215-843-8261	light1@voicenet.com
4	1/29/2015	Single	IP: Tajai Music Inc: Sound Recordings Fund: Copyright Owners Subfund	4000 Gypsy Lane, #245 Philadelphia, PA 19129	Tajai Music In.	215-843-8261	light1@voicenet.com
5	1/29/2015	Single	IP: Eugene Curry: Musical Works Fund: Writers Subfund	4000 Gypsy Lane, #245 Philadelphia, PA 19129	Eugene Curry	215-843-8261	light1@voicenet.com
6	1/29/2015	Single	IP: Eric N. Burns: Sound Recordings Fund: Copyright Owners Subfund	16568 Coriander Place Fontana, CA 92337	Eric N. Burns	909-427-0802	ericeman8@aol.com
7	2/2/2015	Joint	IP: Broadcast Music Inc: Musical Works Fund: Publishers Subfund	7 World Trade Center 250 Greenwich Street NewYork, NY 10007	Stuart Rosen	212-220-3153	srosen@bmi.com
8	2/2/2015	Joint	IP: Broadcast Music Inc: Musical Works Fund: Writers Subfund	7 World Trade Center 250 Greenwich Street NewYork, NY 10007	Stuart Rosen	212-220-3153	srosen@bmi.com

2014 DART Claims

9	2/11/2015	Single	AR/IP: Dr. Dwight Sanders: Sound Recordings Fund: Copyright Owners Subfund	1775 Monterey Court, 2201 C. Street NW	Dr. Dwight Sanders	6146013248	us47700868309@gmail.com
10	2/18/2015	Joint	IP: American Society of Composers, Authors and Publishers: Musical Works Fund: Publishers Subfund	One Lincoln Plaza New York, NY 10023	Samuel Mosenkis	212-621-6450	smosenkis@ascap.com
11	2/18/2015	Joint	IP: American Society of Composers, Authors and Publishers: Musical Works Fund: Writers Subfund	One Lincoln Plaza New York, NY 10023	Samuel Mosenkis	212-621-6450	smosenkis@ascap.com
12	2/23/2015	JOINT	AR: The Harry Fox Agency, Inc.: Musical Works Fund: Publishers Subfund	40 Wall Street, 6th Floor New York, NY 10005	Jennie Ingram	212-922-3238	jingram@harryfox.com
13	2/23/2015	Joint	AR: The Harry Fox Agency, Inc.: Musical Works Fund: Writers Subfund	40 Wall Street, 6th Floor New York, NY 10005	Jennie Ingram	212-922-3238	jingram@harryfox.com
14	2/26/2015	JOINT	IP: SESAC, Inc: Musical Works Fund: Publishers Subfund	152 West Street, 57th Floor New York, NY 10019	John Beiter	212-586-3450	jbeiter@shackelfordlaw.net
15	2/26/2015	JOINT	IP: SESAC, Inc: Musical Works Fund: Writers Subfund	152 West Street, 57th Floor New York, NY 10019	John Beiter	212-586-3450	jbeiter@shackelfordlaw.net
16	2/26/2015	Single	IP: Herman Kelly: Sound Recordings Fund: Featured Artist Subfund	P. O. Box 14157 Detroit, MI 48214-0157	Herman Kelly	313-945-6186	hermankelly@att.net
17	2/26/2015	single	IP: AfterSchool Publishing co: Sound Recordings Fund: Copyright Owners Subfund	P. O. Box 14157 Detroit, MI 48214-0157	Herman Kelly	313-945-6186	hermankelly@att.net

2014 DART Claims

18	2/26/2015	Single	IP: Herman Kelly: Musical Works Fund: Writers Subfund	P. O. Box 14157 Detroit, MI 48214-0157	Herman Kelly	313-945-6186	hermankelly@att.net
19	2/26/2015	Single	IP: AfterSchool Publishing Company: Musical Works Fund: Publishers Subfund	P. O. Box 14157 Detroit, MI 48214-0157	Herman Kelly	313-945-6186	hermankelly@att.net
20	2/26/2015	Single	IP: Benjamin B. Bacon: Sound Recordings Fund: Copyright Owners Subfund	139 McIntyre Street Savanah, GA 31415-1915	Benjamin Bacon	912-596-3814	benjamin@planespacedesign.com
21	3/2/2015	JOINT	Both IP & AR: Alliance of Artistist and Recording Companies: Sound Recordings Fund: Copyright Owners Subfund	700 N. Fairfax Street, Suite 601 Alexandria, VA 22314	Linda Bocchi	703-535-8101	lbocchi@aacroyalties.com
22	3/2/2015	JOINT	Both IP & AR: Alliance of Artistist and Recording Companies: Sound Recordings Fund: Featured Artist Subfund	700 N. Fairfax Street, Suite 601 Alexandria, VA 22314	Linda Bocchi	703-535-8101	lbocchi@aacroyalties.com
23	3/1/2015	Single	IP: FBC Publishing LLC: Musical Works Fund: Publishers Subfund	999 Dill Avenue Atlanta, GA 30310	Erica Parrott	404-436-5099	fbcpublishing@yahoo.com
24	3/1/2015	Single	IP: FBC Publishing LLC: Musical Works Fund: Writers Subfund	999 Dill Avenue Atlanta, GA 30310	Erica Parrott	404-436-5099	fbcpublishing@yahoo.com

Proof of Delivery

I hereby certify that on Tuesday, November 19, 2019, I provided a true and correct copy of the Motion to Dismiss Powell from the 2014 DART SRF Proceeding to the following:

Eugene Curry Mr., represented by Eugene Curry Mr., served via Electronic Service at lambchopsmusic@voicenet.com

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

Signed: /s/ Linda R Bocchi