

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

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD
(2007-2011 SRF)

OPPOSITION TO EUGENE CURRY’S MOTION TO RECONSIDER

Pursuant to 37 C.F.R. § 350.6(f), the Alliance of Artists and Recording Companies (“AARC”) hereby files its opposition to Eugene Curry’s (“Curry”) motion for reconsideration filed on November 21, 2019. 37 C.F.R. § 350.6(f) (2019); Motion for Re-Consideration to the Order Denying Re-Submit of Late Direct Written Statement of Eugene Curry Due to Absence of an Explanation of a Reason Failing to Meet the Deadline and Failure to Seek Extension of Time in Advance of the Deadline, In the Matter of Distribution of Digital Audio Recording Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Nov. 21, 2019) (“Curry Motion for Reconsideration”). AARC opposes the Curry Motion for Reconsideration for failure to meet the standard for reconsideration.

INTRODUCTION

The Copyright Royalty Board (“CRB”) has clearly established that a motion for reconsideration should be granted only where, “(1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct a clear error or prevent manifest injustice.” Order Denying Powell Motion for Reconsideration, *In re* Distribution of Satellite Royalty Funds, Docket No. 16-CRB-0010 SD (2014-17) (Oct. 22, 2019) (“Powell Order”) (citing Order Denying SoundExchange’s Motion to Reconsider the Board’s

Order Requiring, In Part, the Production of Certain Income Tax Returns, Docket No. 2005-1 CRB DTRA at 1 (May 3, 2006) (citing Regency Communications Inc. v. Cleartel Communications, Inc., 212 F. Supp. 2d 1, 3 (D.D.C. 2002) and Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996)); see also Order Denying IPG Motion to Reconsider Preliminary Hearing Order Relating to Claims Challenged by SDC at 1 (May 14, 2013); Order denying Motion for Reconsideration by Bruce James Harvey, In the Matter of Distribution of 2012 DART Sound Recordings Fund/Copyright Owners Subfund, Docket No. 2013-4 CRB DD 2012(SRF) (Aug. 15, 2013). These strict standards are essential to ensure that hearings do not continue indefinitely and discourage parties from endlessly making repetitive arguments.

Curry does not argue that there has been an intervening change in the law or that new relevant evidence is available since the CRB denied his motion to submit a late written direct statement. Finally, Curry does not contend that there is a need to correct a clear error. He seems to believe that it is unfair for him to be held to the very CRB regulations and timetable that all the other parties in the proceeding are held to. Therefore, Curry has failed to even attempt to meet the standard for reconsideration and so, his motion reconsideration should be denied. See Powell Order.

ARGUMENT

Instead of satisfying the standard for motions for reconsideration, Curry submits a full page of excuses, along with over 50 pages of attachments that have nothing at all to do with this proceeding. See Curry Motion for Reconsideration (including letter from Roc Nation Records, LLC regarding licensing of Curry musical works, Written Direct Statement of SoundExchange, et. al., Sample License Agreement, and Proposed Rates and Terms of SoundExchange, Inc. and Artist and Copyright Owner Participants). Curry's argument appears to be that he has been too

busy with other CRB proceedings and personal responsibilities to meet the deadline for filing the most essential document in this proceeding – the written direct statement. This argument does not qualify as an “intervening change in controlling law . . . [or as] new evidence.” Powell Order. The fact that Curry is busy with other matters does not mean that he is exempt from the CRB’s regulations and timetable. All parties in a DART proceeding have to juggle matters other than the proceeding at issue. Notably, the CRB warned Curry, *in this very proceeding*, that complying with the regulations was critical to his continued participation in this proceeding; even attaching a copy of the regulations to its order. Order Granting Curry Eugene Leave To Refile Exhibit, *In re* Distribution of Digital Audio Recording Royalty Funds CONSOLIDATED Docket No. 2008-3 CRB DD (2007-2011 SRF) (Apr. 2, 2019). Therefore, the fact that Curry’s failure to comply with the Judges’ procedural regulations and timeline resulted in the CRB’s decision to disallow a late-filed written direct statement (a one month late filing), does not rise to the level of a “clear error” or “manifest injustice.” *Id.* The CRB’s decision to deny Curry’s motion to file his written statement, over a month after it was due, was correct. Nothing in the Curry Motion for Reconsideration supports reconsideration of the CRB’s decision.

CONCLUSION

WHEREFORE, in view of the foregoing, AARC respectfully requests that the CRB deny the Curry Motion for Reconsideration for failure to satisfy the standard for granting reconsideration.

Respectfully submitted,
On Behalf of AARC

/s/Linda R. Bocchi, Esq.

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Proof of Delivery

I hereby certify that on Friday, November 22, 2019, I provided a true and correct copy of the Opposition to Eugene Curry's Motion to Reconsider to the following:

Curry, Eugene, 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