

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Distribution of the 2005 and 2006
Digital Audio Recording Royalty Funds

Docket No. 2009-4 CRB DD 2005-2006

ORDER GRANTING AARC'S MOTION TO DISMISS EDWARD WHITNEY MAZIQUE'S CLAIMS TO THE REMAINING 2% OF THE 2005 AND 2006 SOUND RECORDINGS FUNDS

On May 21, 2010, the Alliance of Artists and Recording Companies ("AARC") filed with the Copyright Royalty Judges a *Motion to Dismiss Edward Whitney Mazique's Claim to the Remaining 2% of the 2005 and 2006 Sound Recordings Funds*.¹ In its Motion, AARC contends that Mr. Mazique failed to file a timely written direct statement, which is a violation of 37 CFR § 351.4(a), and therefore his claims should be dismissed. In the alternative, AARC contends that Mr. Mazique's claims to the 2005 and 2006 Sound Recordings Funds should be dismissed because, according to AARC, Mr. Mazique failed to include any testimony or exhibits with his written direct statement, as required by 37 CFR § 351.4(b)(1). Mr. Mazique did not file a response to AARC's motion.

Section 351.4(a) states that "all parties who have filed a petition to participate in the hearing must file a written direct statement. The deadline for the filing of the written direct statement will be specified by the [Judges], not earlier than 4 months, nor later than 5 months, after the end of the voluntary negotiation period set forth in [37 CFR § 351.2]." 37 CFR § 351.4(a). Section 351.4(b) states "[t]he written direct statement shall include all testimony, including each witness's background and qualifications, along with all the exhibits." 37 CFR § 351.4(b).

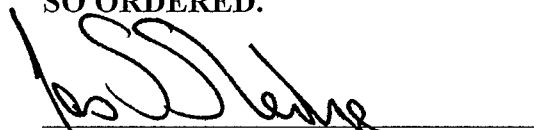
On January 14, 2010, the Judges issued an *Order Setting Deadline and Procedures for the Filing of Written Direct Statements and the Announcement of the Discovery Period*. In that Order the Judges stated: "The deadline for filing written direct statements with the Copyright Royalty Board ("Board") is **Friday, May 14, 2010**. Written direct statement **MUST** be in the possession of the Board by 3 p.m. on Friday, May 14, 2010." (Emphasis in original.) On May 18, 2010, Mr. Mazique filed with the Board a filing captioned "Written [sic] Direct Statement." Mr. Mazique's filing consisted of a one-page cover memo in which Mr. Mazique listed several song titles for which he contends he is the "featured artist, copyright owner, publisher and

¹ On June 28, 2010, AARC supplemented its May 21, 2010 motion with a *Motion to Dismiss Edward Whitney Mazique's Claims to the Remaining 2% of the 2005 and 2006 Sound Recordings Funds Additional Support*. In its June 28, 2010 filing AARC quotes an email from Mr. Mazique to Ms. Bocchi in which Mr. Mazique states that "[m]y claims for the remaining 2% of the royalties are based on the info (the 20 or so [claimants], you listed as settling parties)...Now fair, would be dividing the funds equally between your settling parties and myself, which would obviously be more than the 2% I am requesting..." June 28 Motion at Attachment 10.

songwriter.” He also stated that he has been and will be representing himself and that he is the only witness to support his claim. He contends that “these royalties in question are not based solely on sales. Linda Bocchi [AARC’s counsel] states, that it is based solely on sales.” Mr. Mazique further states that he is attaching to his filing “a few documents that may be of importance” and reiterates his claim “for the remaining 2% of the total funds remaining, for sound recordings, including the featured artist and copyright owners subfunds, for the years of 2005 and 2006.” The “few documents” that Mr. Mazique included with his filing consist of: (1) a prior request for partial distribution that Mr. Mazique filed (which the Judges dismissed in an *Order Denying Request for Distribution and Notice Announcing Commencement of Proceeding and Requesting Petitions to Participate*, 74 FR 31985 (July 6, 2009)); (2) Mr. Mazique’s response to AARC’s motion to dismiss Mr. Mazique’s motion for partial distribution, in which Mr. Mazique states, among other things, that “[m]y music has been distributed over the internet (sales, internet radio, downloads, podcasts, music sites, streams etc.”); (3) an undated memo from Mr. Mazique to the Board in which Mr. Mazique discusses his interactions with AARC; and (4) emails that Mr. Mazique and Ms. Bocchi exchanged, which discussed a possible settlement of Mr. Mazique’s claims.

As discussed above, the deadline for filing written direct statements in this proceeding was set by the Judges for May 14, 2010. Mr. Mazique did not file his statement until May 18, 2010, and did not request leave to submit a late filing. Moreover, other than his own bald assertions, Mr. Mazique provided no testimony or exhibits to support his claims that he is entitled to any royalty funds, much less the remaining royalties in the 2005 and 2006 Sound Recordings Funds. In short, we find that Mr. Mazique’s written direct statement is untimely and facially deficient. Therefore, AARC’s motion to dismiss Mr. Mazique’s claims to the 2005 and 2006 Sound Recordings Funds is **GRANTED**.

SO ORDERED.



James Scott Sledge
Chief United States Copyright Royalty Judge

Dated: August 26, 2010