

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Distribution of Digital Audio Recording
Royalty Funds

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

**ORDER GRANTING AARC MOTION TO DISMISS DAVID POWELL AND CIRCLE
GOD NETWORK**

On October 28, 2019, the Alliance of Artists and Recording Companies, Inc. (AARC) filed with the Copyright Royalty Judges (Judges) a motion to dismiss the claim to any portion of the 2007-2011 DART Sound Recordings Fund Copyright Owners Subfund filed by “circle god network inc”) (CGN) ([Motion](#)). Mr. David Powell, a *pro se* participant in this proceeding who purports to represent CGN,¹ filed his response in opposition on November 5, 2019 ([Opposition](#)), and AARC filed its reply on November 12, 2019 ([Reply](#)).

AARC asks the Judges to dismiss Mr. Powell’s claim to any portion of the 2007² DART Sound Recordings Fund/Copyright Owners Subfund on grounds that he failed to file a proper Written Direct Statement (WDS) and failed to provide any supporting evidence of copyright ownership of a sound recording with 2007 sales. Motion at 1. In addition, AARC argues that Mr. Powell’s filing should be rejected because Mr. Powell is not a licensed attorney and is thus ineligible under the Judges’ procedural rules to represent CGN, a corporate entity. *Id.*; see 37 C.F.R. § 303.2.

For the reasons discussed below, the Judges **GRANT** the Motion and **DISMISS** Mr. Powell and CGN from this proceeding.

Arguments

AARC argues that the document that Mr. Powell filed on September 26, 2019, entitled Introduction Memorandum to the Written Direct Case of Circle God Network Inc. (Members) d/b/a David Powell ([Powell WDS](#)), is “facially deficient” because it fails to include any of the elements required by the Judges’ procedural rules. See Motion at 4 (citing 37 C.F.R. § 351.4). “Accordingly [Mr. Powell] did not meet the statutory requirement of written direct statements and [his] claim should be dismissed.” *Id.* at 5.

Moreover, AARC argues that Mr. Powell is entitled to no royalties because he has not put forward any factual evidence to establish that he owns the exclusive reproduction rights to any sound recordings that were sold in 2007. See *id.* at 5-6. AARC, on the other hand, includes

¹ At various points in this proceeding Mr. Powell has filed documents as “David Powell, Pro Se” and “circle god network inc d/b/a/ david powell.” The Judges will use “Mr. Powell” in this Order, unless the context requires otherwise.

² Mr. Powell did not file claims in the Sound Recordings Fund for any other year covered in this proceeding.

evidence in its [WDS](#) of its research that found no musical recordings owned by either Mr. Powell or CGN that were distributed in 2007. *See id.* at 7-8.

In addition, AARC argues that CGN, which the Motion implies is a corporate entity, is not properly represented in this proceeding as required by 37 C.F.R. § 303.2. Section 303.2 states that “[i]ndividual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney....” *Id.* at 8 (quoting 37 C.F.R. § 303.2). There is no record evidence indicating that Mr. Powell is a licensed attorney, and in his filings he repeatedly states that he is acting *pro se*. *See id.* at 9.

The Opposition contains no arguments or evidence that the Judges are able to discern which have any bearing on the issues raised in the Motion.

Discussion

The Copyright Act (Act) requires participants in proceedings before the Judges to file a WDS. 17 U.S.C. § 803(b)(6)(C)(i). The Judges’ procedural regulations implement this requirement, stating that “[a]ll parties who have filed a petition to participate in the hearing must file a written direct statement.” 37 C.F.R. § 351.4(a).

The Act defines the term “written direct statements” to mean “witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.” 17 U.S.C. § 802(b)(6)(C)(ii)(II). The Judges’ procedural regulations enumerate testimony, designated past records and testimony, and the participants’ claim as “required content” in a WDS. 37 C.F.R. § 351.4(b).

The Powell WDS states correctly that “CGN INC.s’ written direct case includes no written testimony and no witnesses” as well as “no designated past records and no testimony records.” Powell WDS at 2. It claims for CGN five percent of DART funds “for each year (2007-2011),” notwithstanding the fact that neither Mr. Powell nor CGN filed claims in the Sound Recordings Fund for any year covered by this proceeding other than 2007. *Id.* The Powell WDS does not include the required elements of a WDS, and is thus facially deficient.

As the Judges have pointed out in another Order in this proceeding

By statute, parties seeking DART royalties from the Sound Recordings Fund must demonstrate that they are “interested copyright parties” as defined in 17 U.S.C. § 1001(7), and that their sound recordings have been “(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and (B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions” during the royalty year at issue. 17 U.S.C. § 1006(a)(1). To make such a demonstration a participant must provide *evidence* of distribution or dissemination. Failing to file a WDS that presents evidence of sales or transmissions precludes a party’s further participation in a DART distribution proceeding.

[Order Granting AARC Motion to Dismiss Curry](#), at 3 (Jan. 15, 2020). The absence of any evidence at all in the Powell WDS is thus no mere formal or procedural default. It goes to the very heart of this exercise: the division of royalties among eligible recipients based on *evidence*

of distribution or dissemination. “Failing to file a WDS that presents evidence of sales or transmissions precludes a party’s further participation in a DART distribution proceeding.” *Id.*

AARC is correct in noting that section 303.2 of the Judges’ regulations requires that a corporate entity must be represented by an attorney in proceedings before the Judges. In light of the Judges’ uncertainty whether Mr. Powell is genuinely seeking to act on behalf of a corporate entity,³ and the lack of any need to resolve this question to dispose of the Motion, the Judges decline to rule on whether section 303.2 constitutes an independent ground for dismissing CGN from the proceeding.

For the foregoing reasons the Judges **GRANT** the Motion and **DISMISS** Mr. Powell and CGN from this proceeding.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: January 17, 2020.

³ See *supra* note 1 and text at p. 2.