

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED

15-CRB-0011-DART-SRF (CO) (2014)

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

On November 19, 2019, the Alliance of Artists and Recording Companies, Inc. (AARC) on behalf of itself, Emmanuel Adeyinka, and Benjamin Bacon (collectively, the Settling Parties) filed with the Copyright Royalty Judges (Judges) a Motion to Dismiss Powell from the 2014 DART SRF Proceeding ([Motion](#)). Mr. David Powell, a *pro se* participant in this proceeding who purports to represent “circle god network inc d/b/a/ david powell” (CGN),¹ filed his response in opposition, which included an embedded motion to dismiss AARC, on November 24, 2019 ([Opposition](#)), AARC filed its reply on November 26, 2019 ([AARC Reply](#)), and Mr. Powell filed a reply supporting his embedded motion to dismiss on November 29, 2019 ([CGN Reply](#)).

AARC asks the Judges to dismiss CGN’s claim to any portion of the 2014 DART Sound Recordings Fund on grounds that CGN failed to file a claim during the statutorily specified period. Motion at 1.

CGN asks the Judges to dismiss AARC for failure to file a claim during the statutorily specified period. Opposition at 1.

For the reasons discussed below, the Judges **GRANT** the Motion and **DISMISS** CGN from this proceeding, and the Judges **DENY** CGN’s embedded cross-motion to dismiss AARC from this proceeding.

Arguments

AARC argues that CGN should be dismissed from the 2014 DART SRF distribution proceeding because it did not file a claim for royalties in the 2014 DART SRF as required by the statute and regulations. Motion at 2-4 (citing 17 U.S.C. § 1007(a)(1); 37 C.F.R. § 360.20); Motion, Attachment 1 (2014 DART Claims List)).

AARC acknowledges that CGN filed a Petition to Participate in the proceeding on September 27, 2019, ([CGN PTP](#)), in response to the Judges’ Notice announcing commencement of paper proceeding, requesting Petitions to Participate, and allowing comments, 84 Fed. Reg. 49,562 (Sep. 20, 2019) ([2014 Notice](#)). *Id.* at 2. However, AARC notes that CGN did not file a DART claim, which is a prerequisite to participating in a distribution proceeding that is set forth

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.

in the statute as well as relevant regulations. *Id.* at 2-3 (citing 17 U.S.C. §§ 1003-1007; 37 C.F.R. § 360.21).

The Opposition does not address CGN's failure to file a claim by the due date. CGN's Opposition asks the Judges to dismiss AARC, and indicates that AARC failed to comply with the deadline for filing a claim for the 2014 DART proceedings. Opposition at 1-2.

In its Reply, AARC notes that CGN did not address CGN's failure to file a timely claim, as set forth in the statute and regulations. AARC Reply at 2. AARC adds that CGN's allegation that AARC did not file timely claims is refuted by the CRB's records, which show that AARC filed claims for royalties in the Featured Artist Subfund and Copyright Owners Subfund of the 2014 DART Sound Recordings Fund on February 27, 2015, with timely supplementary claims filed on March 2, 2015. AARC Reply at 2-3 (citing 37 C.F.R. § 360.24(c) (2015)); *see* AARC Reply, Attachments 1-3).

CGN's Reply contains no arguments or evidence that the Judges are able to discern which have any bearing on the issues raised in the Motion or the AARC Reply. *See generally* CGN Reply.

Discussion

The Copyright Act (Act) provides that a 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). The Judges' procedural regulations implement this requirement, stating that "[n]o royalty payments for the previous calendar year will be distributed to any interested copyright party who has not filed a claim to those royalty payments during January or February of the following calendar year." 37 C.F.R. § 360.21(b).

The Copyright Royalty Board (CRB) final 2014 DART Claims List ([2014 DART Claims List](#)) does not list any claim filed by Mr. Powell or CGN. The Judges find that neither Powell nor CGN filed a timely claim to the 2014 DART funds.

By contrast, the CRB records of DART claims demonstrate that AARC filed timely claims to the 2014 DART funds. On March 2, 2015, AARC filed supplementary claims to its February 27 claims. *See* 2014 DART Claims List (claims 21 and 22). The additional claims were timely filed because in 2015, the last day of February fell on a Saturday. The CRB's 2015 regulations detailing "Compliance with statutory dates," stated "Notwithstanding paragraphs (a) and (b) of this section, in any year in which the last day of February falls on a Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Royalty Board by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed." 37 C.F.R. § 360.24(c) (2015). The first business day in March 2015 was Monday, March 2.

For the foregoing reasons the Judges **GRANT** the Motion and **DISMISS** CGN from this proceeding, and the Judges **DENY** CGN's embedded cross-motion to **DISMISS** AARC from this proceeding.

SO ORDERED.

Jesse M. Feder
Chief Copyright Royalty Judge

DATED: January 24, 2020.