

COPYRIGHT ROYALTY JUDGES
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In re

**DISTRIBUTION OF DIGITAL AUDIO
RECORDING TECHNOLOGY MUSICAL
WORKS ROYALTY FUNDS**

**DOCKET NO. 2010-8 CRB DD 2005-
2008 (MW)**

**ORDER RESOLVING CONTROVERSY
AND CONCLUDING PAPER PROCEEDINGS**

On April 12, 2013, the Copyright Royalty Judges (Judges) ordered distribution of royalties deposited to the Musical Works fund for the years 2005, 2007, 2008, to the Settling Parties in this proceeding.¹ One claimant, Mr. David Powell, Jr. asserted a claim to, and a controversy regarding, the Musical Works fund deposited for 2006. By order dated April 12, 2013, the Judges established a Voluntary Negotiation Period² to permit all participants to attempt to settle the remaining controversy. The order required participants to file a joint report of the progress of their settlement negotiations on or before August 5, 2013.

The Judges received Mr. Powell's report³ on August 2. On August 5, 2013, the Settling Parties in this proceeding filed their joint report on the status of negotiations and a Motion for Paper Proceeding. The filings confirmed that negotiations between the Settling Parties and Mr. Powell were unsuccessful. After notice to the affected parties, the Judges commenced paper proceedings to resolve the controversy regarding Mr. Powell's claim.⁴

On December 16, 2013, the Judges received Mr. Powell's "Introductory Memorandum to the Written Direct Case" which included many pages of attachments. The Settling Parties filed their Written Direct Statement on the same day. The Settling Parties Direct Case included sworn testimony of Ellen Meltzer-Zahn, Vice President of Business & Membership Affairs at ASCAP, and Lisa Robinson, Director, Accounts Receivable and Income Tracking, at HFA. On December 30, 2013, the Settling Parties filed their Response to Powell's Written Direct Case and Mr. Powell filed his "Written Counteraffidavit Prima Facie Case."

The Settling Parties contend that Mr. Powell has provided insufficient evidence to establish that he is an interested party in this proceeding. The Settling Parties further contend

¹ The Settling Parties are: Broadcast Music, Inc.; the American Society of Composers, Authors and Publishers (ASCAP); SESAC, Inc.; and The Harry Fox Agency, Inc. (HFA).

² See 17 U.S.C. § 803(b)(3)(A)(ii); 37 C.F.R. § 351.2.

³ Mr. Powell included his settlement negotiation report in a document entitled "Motion for Reversible Error Objection 2005, 2007, 2008 DART Musical Works Funds; Results Announcing Voluntary Negotiations Period."

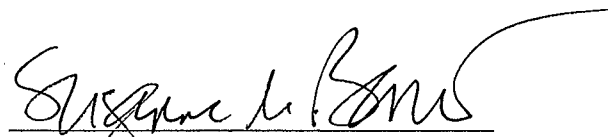
⁴ The Settling Parties submitted comments in favor of paper proceedings. Mr. Powell objected to paper proceedings in this matter.

that *i*) Mr. Powell has produced copyright registration certificates that appear to relate to a sound recording and an underlying literary or dramatic or multimedia work allegedly entitled "Liberation Movement" and depicting the life story of Mr. David Powell,⁵ neither of which is a musical work that would be eligible for royalties from the Musical Works Fund *ii*) Mr. Powell has not provided any sales or performance evidence to establish the validity of his claim, *iii*) Mr. Powell's filings fail to meet the minimum regulatory standard regarding the contents of a Written Direct Statement, and *iv*) Mr. Powell's attack on the sufficiency of the Settling Claimants' claims is unavailing.

The Judges adopt the reasoning of the Settling Claimants in this proceeding and find that Mr. Powell has failed to demonstrate that he is entitled to any of the royalties in the 2006 Musical Works Fund.

Order

The Judges conclude that no controversy exists with regard to the 2006 Musical Works royalty funds. Mr. Powell has failed on numerous occasions to establish a right to royalties from the Digital Audio Recording Technology (Musical Works) royalty fund for 2006. The balance of royalties held in the 2006 Musical Works Fund are available for final distribution to the Settling Parties.


Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: January 15, 2013

⁵ Certificate Nos. SRu 628-683 and, TXu 1-344-005 respectively.

Claimant variously refers to himself as David C. Powell, Jr.; David Powell, Jr.; and David Powell. It is unclear whether the claimant is the author/creator of the alleged work at issue or a successor in interest.