UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re	
Distribution of 2013 Digital Audio Recording Royalty Funds	**Docket No. 14-CRB-0006 DART SR (CO/FA) (2013)**

ORDER DENYING MOTION FOR REHEARING

On March 24, 2016, the Copyright Royalty Judges (Judges) issued their Determination in the captioned proceeding. The Judges rejected a claim to sound recording royalties by Mr. Eugene "Lambchops" Curry relating to the musical work "Somebody Loves You Baby."[1] Mr. Curry filed a timely "Motion to Reconsider Determination pro se" (Motion).[2] The Judges accept this filing as a motion for rehearing as allowed under 17 U.S.C. § 803(c)(2). The Judges neither requested nor received opposition to the motion.

The Rehearing Standard

The standard for consideration of motions for rehearing is set forth in 17 U.S.C. § 803(c)(2)(A), which states that the Judges

> may, *in exceptional cases,* upon a motion of a participant in a proceeding ... order a rehearing after the determination in the proceeding is issued ... on such matters as the Copyright Royalty Judges determine to be appropriate.

Id. (emphasis added). In such "exceptional cases" the movant is required to show that an aspect of the determination is erroneous. 37 C.F.R. § 353.1. In order to demonstrate that an aspect of the determination is erroneous, the movant must show that the challenged aspect of the determination is "without evidentiary support in the record or contrary to legal requirements." 37 C.F.R. § 353.2.

The Judges have previously stated that "[m]otions for reconsideration must be subject to a strict standard in order to dissuade repetitive arguments on issues that have already been fully considered ... by the Board." *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 (May 3, 2006). The same considerations apply to motions for rehearing.

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[1] The Judges here reiterate that they make no ruling with regard to any claim Mr. Curry or TAJAI Music, Inc. might have to royalties payable for the underlying musical work. This proceeding is to determine royalties for the sound recording and featured artists on the sound recording only.

[2] According to the transmittal information, Mr. Curry's filing was timely, even though the Copyright Royalty Board did not receive the filing until past the filing deadline date.

Order Denying Motions for Rehearing, Docket No. 2011-1 CRB PSS/Satellite II (January 30, 2013). This "strict standard" is consonant with the Judges' statutory obligation to limit rehearings to "exceptional cases." *Cf. Regency Communications Inc. v. Cleartel Communications, Inc.*, 212 F. Supp. 2d 1, 3 (D.D.C. 2002). The Judges should grant rehearing motions only when (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 Motions for Rehearing*, Docket No. 2011-1 CRB PSS/Satellite II (Jan. 30, 2013). Mr. Curry's Motion does not allege any intervening change in the law. In support of the Motion, he has submitted additional documents, but these documents are not relevant and thus do not constitute new evidence sufficient to grant rehearing. Additionally, nothing in Mr. Curry's Motion establishes a clear error or manifest injustice in the conclusion.

Mr. Curry's Motion

In his Motion, Mr. Curry provided several exhibits, including a copy of a 1992 copyright registration for the musical composition "Somebody Loves You Baby" showing himself and Walter "Bunny" Sigler as the composers of the words and music. Mr. Curry also provided a copy of an undated Copyright License Agreement between TAJAI Music, Inc. (TAJAI), which represents itself as owner of the copyright to the composition, and MCA Records, Inc. (MCA) purporting to license MCA to use the composition for, *inter alia,* "sound recordings in all forms...." *See* Motion, Ex. 3. The license agreement references the album titled "Burnin'", featuring Patti LaBelle, released 10/1/91. The agreement obligates MCA to pay royalties to TAJAI for the licensed work.

Mr. Curry's other exhibits purport to be publishers' royalty statements for the song "Somebody Loves You Baby." A statement from UMG Recording, Inc. reports royalties due and "Paid Via Direct Deposit". *See* Motion, Ex. 7. The purported statement from Warner-Tamerlane Publishing Corp. is incomplete and inconclusive. *See* Motion, Ex. 8. The statement from The Harry Fox Agency, Inc. acknowledges Messrs. Curry and Sigler as "writer(s)," and seems to indicate payment to TAJAI by "Check No. 7474006." *See* Motion, Exs. 9-11. None of the exhibits Mr. Curry provided to support his claim to royalties from the sound recording fund have any probative value, however, as each of them is a royalty statement for amounts owed (or paid) to TAJAI apparently unrelated to the sound recording, but rather payable for the underlying published musical work.

Conclusion

The captioned proceeding and the Judges' Determination in the proceeding relate only to a portion of the royalties deposited with the U.S. Copyright Office under chapter 10 of the Copyright Act. 17 U.S.C. §§ 1001-1010. Chapter 10 provides that the Copyright Office shall divide deposited royalties into two separate funds: the sound recording fund and the musical works fund. Music writers and publishers receive royalties only from the musical works fund. Musicians, vocalists, featured artists, and the owner of the copyright to the sound recording receive royalties from the sound recording fund. The evidence presented by Mr. Curry, prior to the determination and in conjunction with his Motion, does not support his claim to any portion of the sound recording fund at issue in this proceeding.

Therefore, the Judges **DENY** the Motion and forward the Determination to the Register of Copyrights for the mandatory 60-day review prior to publication in the *Federal Register* in accordance with 17 U.S.C. §§ 801(f)(1)(D) & 803(c)(6).

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: May 6, 2016.