

Before the
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In re

DISTRIBUTION OF CABLE
ROYALTY FUNDS

Docket No. 16-CRB-0009-CD (2014-2017)

**SETTLING DEVOTIONAL CLAIMANTS' OPPOSITION TO MULTIGROUP
CLAIMANTS' MOTION FOR RECONSIDERATION OF ORDER 48 REGARDING
PARTIAL DISTRIBUTION OF 2015-17 CABLE FUNDS**

The Settling Devotional Claimants (“SDC”) oppose the motion filed by Worldwide Subsidy Group LLC (“WSG”), dba Multigroup Claimants (“MGC”), to reconsider the Judges’ Order No. 48, which granted a partial distribution of 2015-17 cable royalties to MGC in the Devotional category. Dkt. 16-CRB-0009-CD (2014-17) (July 18, 2024). Utilizing their discretionary authority, the Judges ordered a smaller partial distribution than MGC requested to guard against the possibilities of fraud or trouble recouping overpayments. In response, MGC now seeks reconsideration in order to request a partial distribution that is actually larger than its original request. Reconsideration should be denied.

Reconsideration is only appropriate 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 IPG Motion to Reconsider Preliminary Hearing Order Relating to Claims Challenged by SDC*, Dkt. 2008-2 CRB CD 2000-2003 (Phase II), at 1 (May 14, 2013) (citing *Regency Comm’ns Inc. v. Cleartel Comm’ns, Inc.*, 212 F. Supp. 2d 1, 3 (D. D.C. 2002) and *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996)). MGC does not articulate any of these grounds for reconsideration. Even if MGC could justify reconsideration, it cannot establish that the Judges should actually change their ruling to increase the partial

distribution. While the SDC disagree that any partial distribution was warranted due to the evidence submitted that raises concerns about MGC's ability and willingness to repay a partial distribution and the SDC's challenge to MGC's claim to be a valid claimant representative, the Judges' discretionary reduction of MGC's requested distribution was well supported by the record. MGC's motion to reconsider simply retreads its reply briefs, rather than illustrating any error or injustice.

A. The Judges Did Not Commit Clear Error or Manifest Injustice in Weighing the Evidence on MGC's Ability and Willingness to Return Excess Partial Distributions

MGC challenges the Judges' ruling that granted "one half of the request" that MGC sought in its motions for partial distribution. Order 48, at 6. This ruling was neither clear error nor manifest injustice, and MGC makes no attempt to argue either in its motion for reconsideration. Instead, MGC resorts to an out-of-context quote from a decade-old ruling that "[c]laims of inability to pay, without more, are insufficient to sustain a reasonable objection to partial distribution." *Order Denying IPG Motion for Partial Distribution*, Dkt. 2008-2 CRB CD 2000-2003 (Phase II), at 5 (Feb. 11, 2014). That order, on the very next page, denied a partial distribution to MGC (under its prior moniker Independent Producers Group) on the grounds that "[e]ven without financial evidence, the IPG proposal raises concerns not only about IPG's ability, but also its willingness, to disgorge funds, should the need arise ... Nothing in the record engenders confidence that IPG would disgorge funds." *Id.* at 6. MGC's reconsideration motion cites this ruling favorably, arguing not only that the decision was correct, but that with respect to its ability to repay, "the current situation fails to vary in any way" from the record in the 2014 order. Motion, at 6. The Judges used the same reasoning in this case to halve the partial distribution to MGC, "so as to satisfy the Judges that, in the given circumstances, the likelihood of any overpayment is diminished and the likelihood of the ability to repay any overpayment is

enhanced.” Order 48, at 6. Thus, the Judges’ ruling cannot be manifest injustice (to MGC) because it reaches a result more favorable to MGC despite circumstances that fall squarely within an established precedent that would justify outright denial of a partial distribution.

There are, however, additional details in the record in 2024 that further demonstrate that the Judges did not err in finding “credible concerns with the requested partial distribution,” with respect to the likelihood of an overpayment and repayment of such. Order 48, at 6. These factors inform the Judges’ discretion to determine the amount of, rather than entitlement to, any partial distribution under 17 U.S.C. § 801(b)(3)(B). Any one of the following concerns, alone, reasonably justify the Judges’ decision to reduce the partial distribution.

First, MGC wholly ignores that the Judges reduced the distribution to address “legitimate concerns ... that MGC used inflated percentages to calculate its partial distribution request.” Order 48, at 6. As the SDC explained in their original opposition, the significant fluctuations in IPG awards year-over-year make it impossible to reliably predict stable awards for this entity. *See SDC Opposition to MGC Motions for Partial Distribution of 2015-17 Cable and Satellite Royalty Funds*, Dkt. 16-RB-0009-CD (2014-2017), at 4-5 (Aug. 6, 2021). In the last 20 years, the IPG/WSG/MGC cable award in the Devotional category has only ever exceeded the 16.6% “average” MGC based its request on twice (in 2010 and 2011), and the reason for fluctuation is not always due to changes in the market value of a stable set of claims and claimants, but also due to claim invalidity or other forms of dismissal. *Id.* The Judges have expressed concern that there “is no assurance that a group of claimants that IPG represented in one year will be the same group in a subsequent year.” *Order Granting in Part and Denying in Part IPG’s Motion for Partial Distribution*, Dkts. 2012 -6 CRB CD 2004-09 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), at 10 (Sept. 26, 2016). This concern is apparent in these proceedings, where MGC

has absolutely no claims for one of the four years, and admits that its claimant composition changes year-over-year. *See* MGC Petition to Participate, Dkt. 16-CRB-0009-CD (2014-17), at 1 (Mar. 11, 2019); MGC Petition to Participate, Dkt. 16-CRB0010-SD (2014-17), at 1 (Mar. 11, 2019) (admitting that “certain of the parties assigned rights to MC, or made independent claims, for less than the aggregate of 2015-2017 calendar years”).

As a result, it is difficult to predict whether MGC is likely to receive a similar final distribution in this category in all three years, and the Judges properly adjusted the request downward to protect against the possibility of an overpayment in one year or another. This up-front protective measure is reasonable, because the Judges cannot allow funds from one royalty year to be used to cover shortfalls in a different royalty year. Such “cross-collateralization” of partial distributions was proposed by IPG and rejected by the Judges in 2014. *Order Denying IPG Motion for Partial Distribution*, Dkt. 2008-2 CRB CD 2000-2003 (Phase II), at 6 (Feb. 11, 2014). In this very consolidated proceeding, MGC will receive a 0% share in one of the four years being adjudicated (2014), so the Judges’ implementation of a margin of error is appropriate and not manifest injustice.

Second, there is ample evidence that there is a risk of fraud, deceit, or even mistake on the part of MGC in these proceedings that justify the Judges treading carefully.

- In the 2010-13 cable proceedings, the Judges found that MGC “filed multiple claims ... without the authorization of the claimants.” *Ruling and Order Regarding Objections to Cable and Satellite Claims*, Dkts. 14-CRB-0010-CD (2010-13), 14-CRB-0011-SD (2010-13), at 10 (Oct. 23, 2017).
- Regardless of evidence of bad faith, the Judges have found that WSG’s pattern of filing claims without authority, even if done by mistake, demonstrates a “continuing

disregard for the integrity of these royalty distribution proceedings.” *Memorandum Opinion and Ruling on Validity and Categorization of Claims*, Dkts. 2012-6 CRB CD 2004-09 (Phase II) & 2012-7 CRB SD 1999-2009 (Phase II), at 10 (Mar. 13, 2015) (addressing filing of claims for Tracee Productions “*many* years after the termination” by that claimant). MGC has already made similar self-described mistakes (which would have had the supposedly coincidental effect of increasing MGC’s royalty share) in this proceeding, conveniently “forgetting” about termination correspondence from claimant Raycom. *Orders Denying MGC’s Motion for Modification*, Dkts. 16-CRB-0009-CD (2014-17) & 16-CRB-0010-SD (2014-17), at 2 (Oct. 22, 2019).

- There are multiple examples of adjudicated fraud or deceit on the part of MGC and its principals, including in direct relation to these proceedings, which are completely unaddressed by MGC’s motion. *See, e.g., Distribution of 2000-03 Cable Royalty Funds*, Dkt. 2008-2 CRB CD 2000-03 (Phase II), 78 Fed. Reg. 64,984, 65,000 (Oct. 30, 2013) (finding Raul Galaz “admittedly lied in a cable distribution proceeding”); *Galaz v. Galaz*, 2015 Bankr. LEXIS 229, at *13 (Bankr. W.D. Tex. Jan. 23, 2015), *aff’d* in *Galaz v. Galaz*, 850 F.3d 800 (5th Cir. 2017) (“Alfredo [Galaz] was a mere straw man, while Raul [Galaz] had full knowledge of the fraudulent nature of his actions. The Court finds that Raul intended to defraud debtor by transferring the royalty rights to . . . an LLC purportedly owned by Alfredo, an insider – for no consideration”).

MGC argues that certain other legal cases cited by the SDC in its opposition (filed three years ago) have since been resolved without an adjudication that it committed fraud. Even accepting MGC’s characterization of those outcomes only for the sake of argument, MGC’s

motion for reconsideration fails to address the above laundry list of legitimate concerns that justified a reduction in the partial distribution. The fact that MGC disputes the weight or persuasiveness of (some of) the evidence does not justify reconsideration or change the need to account for these risks overall. MGC misses the forest for the trees by relitigating the specifics of certain examples cited in the SDC opposition as if it were filing (yet another) reply brief. The Judges expressly did not base their decision on a “finding regarding the validity of MGC’s authority to claim any specific royalties.” Order 48, at 6 n.7. Instead, the Judges ruled that “MGC has not adequately addressed” the potential for fraud or insolvency inherent in a partial distribution to MGC that the SDC detailed in their opposition. Order 48, at 5.

Third, the Judges’ conclusions were not clearly erroneous in finding a need to mitigate concerns regarding MGC’s ability to repay funds disbursed via a partial distribution. MGC, as the movant, bore the burden of establishing the appropriateness of the partial distribution it requested. Instead, MGC failed to submit evidence or persuasive argument in its replies or two renewals of the partial distribution motion that satisfied the Judges that it would be able to repay overpayments. MGC’s argument that meeting this burden would require it to “open its financial books” is a hyperbolic strawman. MGC did not submit, even in its motion for reconsideration, any evidence of its solvency after a bankruptcy petition was submitted indicating it had a \$0 value.¹

¹ MGC’s baseless claim that it is the SDC, not MGC, who are at risk of failing to honor their repayment obligations is an exercise in projection and deflection. Motion at 7, n.13. In the referenced proceeding, the Judges found a small shortfall in the Devotional category, but the allocation parties (including SDC) promptly remitted funds to the Licensing Division in compliance with the partial distribution repayment agreements, shortly after the Licensing Division provided its recalculation of the repayment amount and long before MGC’s motion for reconsideration made this false accusation. *Order 39 of Final Distribution of 2010-2013 Satellite Royalty Funds to Multigroup Claimants*, Dkt. 14-CRB-0010 CD/SD (2010-2013) (Dec. 18, 2023) (“On March 2, 2023, the Judges were informed that the Licensing Division had recovered the overpayments, with interest.”).

To the contrary, the motion for reconsideration reinforces the concerns about MGC's ability to repay. MGC admitted that over the years, its financials have been in the red, perhaps explaining why it refused to submit evidence of its financial wherewithal (or lack thereof) in support of its motions for partial distribution or reconsideration. Indeed, it corroborates the concerns raised by the bankruptcy petition by claiming that in 2018, "WSG's debts far exceeded its assets." Motion, at 6. MGC's motion for reconsideration carefully avoids stating that it is currently solvent, instead arguing that it was insolvent in 2018, that it received royalty distributions in 2021, and that there is no evidence of "MGC's current solvency" in the record. Motion, at 5. The Judges are not required to give MGC the benefit of the doubt on this record and with millions of dollars owed to other legitimate claimants at stake. By its own admission, MGC was insolvent in 2018, and there is no basis in the record to conclude it is no longer insolvent. There is certainly no basis in the record to conclude that the Judges committed "clear error" or "manifest injustice" by hedging against the possibility of insolvency.

B. Any Reduced Partial Distribution Should Not Rely on 2014-2017 Allocation Shares That Are Still Subject to Appeal or Revision

MGC seeks to change the calculation method for its partial distribution to a formula that is more favorable to MGC. Its initial request sought an amount calculated as a percentage of the aggregate royalty pool, based on average awards to the Devotional category and to MGC within the Devotional category in the 2010-13 proceedings.² The Judges followed MGC's requested calculation (and halved the distribution at the end, in an exercise of discretion). MGC now protests its own calculation, seeking to substitute in the larger Devotional category awards issued

² The SDC did not receive from the Licensing Division the calculations attached as MGC's Exhibit A. Assuming their authenticity, the Division's calculation of the partial distribution as a percentage of the Devotional category instead of the total cable royalty fund does not appear to match the Judges' calculation required by Order 48. If their calculations are in error, the Licensing Division can correct them without the need for reconsideration by the Judges.

in the 2014-17 cable allocation determination instead of the 2010-13 Devotional allocation average. Logically, it makes little sense to change the initial decision to award MGC a lower-than-requested partial distribution (made to guard against the need or ability to recoup overpayments) just to recalculate a higher partial distribution using a different methodology.

There is also no basis to use the later Devotional award. The 2014-17 allocation determination is not new evidence to the Judges who issued that ruling (in this docket, no less), and it was available to use in calculating a partial distribution if the Judges considered it an appropriate benchmark. They declined to do so. MGC also failed to request a calculation based on the 2014-17 allocation determination in either of its two renewals of the motion for partial distribution or a subsequent supplemental filing after the award was issued. *See MGC's Renewed Motion for Partial Distribution of 2015-2017 Cable Royalties*, Dkt. 16-CRB-0009-CD (2014-2017) (Jan. 28, 2022); *MGC's Second Renewed Motion for Partial Distribution of 2015-2017 Cable Royalties*, Dkt. 16-CRB-0009-CD (2014-2017) (Apr. 3, 2023). Thus, the argument is waived and it fails to raise new evidence that was previously unavailable.

And, at any rate, there is a reasonable objection to the use of the new allocation awards, which are currently subject to appeal in the U.S. Court of Appeals in the D.C. Circuit. *See Office of the Commissioner of Baseball v. Librarian of Congress*, Dkt. 1, Petition for Review, No. 24-1259 (D.C. Cir. July 26, 2024); *Public Broadcasting Service v. Copyright Royalty Board*, Dkt. 1, Petition for Review, No. 24-1260 (D.C. Cir. July 26, 2024). Rather than utilize a non-final allocation award that would exacerbate the risk the Judges were trying to mitigate, it was reasonable for the Judges to rely on the past averages that MGC specifically asked the Judges to rely on. *See also Order Denying IPG Motion for Partial Distribution*, Dkt. 2008-2 CRB CD

2000-2003 (Phase II), at 5 (Feb. 11, 2014) (“partial distributions are primarily determined based upon percentages established in a prior proceeding”).

Conclusion

For the foregoing reasons, MGC’s motion for reconsideration should be denied.

Date: August 1, 2024

Respectfully submitted,

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Certificate of Service

I certify that on August 1, 2024, I caused the foregoing to be served on all parties by filing through the eCRB system.

/s/ Michael Warley
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Proof of Delivery

I hereby certify that on Thursday, August 01, 2024, I provided a true and correct copy of the SDC Opposition to MGC Motion for Reconsideration of Order 48 re Partial Distribution of 2015-2017 Funds to the following:

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