

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1338

September Term, 2019

FILED ON: DECEMBER 6, 2019

MULTIGROUP CLAIMANTS,
APPELLANT

v.

COPYRIGHT ROYALTY BOARD AND LIBRARIAN OF CONGRESS,
APPELLEES

NATIONAL BASKETBALL ASSOCIATION, ET AL.,
INTERVENORS

On Appeal from the Copyright Royalty Judges

Before: GARLAND, *Chief Judge*, and ROGERS and RAO, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record and on the briefs of the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is

ORDERED AND ADJUDGED that the appeal from the Copyright Royalty Board be **DISMISSED** for lack of jurisdiction.

Congress delegated to the three Royalty Judges of the Copyright Royalty Board the responsibility of overseeing the distribution to copyright holders of royalty fees collected pursuant to the compulsory licensing scheme for cable and satellite retransmissions of copyrighted material. *See* 17 U.S.C. § 801; *Indep. Producers Grp. v. Library of Cong. (IPG I)*, 759 F.3d 100, 101–03 (D.C. Cir. 2014).

Multigroup Claimants purports to represent copyright holders based on an assignment of agency rights from Worldwide Subsidy Group, LLC, an entity that did business as Independent Producers Group (IPG). Appellant’s Br. at 19 n.4, 25–26. Multigroup Claimants attempts to appeal from two orders issued by the Copyright Royalty Board. The first, dated October 23, 2017, disallowed all of Multigroup Claimants’s royalty claims in the sports programming category and the bulk of its royalty claims in the program suppliers category. The second, dated November 30, 2018, ordered the final distribution of cable and satellite royalty funds for the

years 2010 to 2013 for the program suppliers category, following a settlement agreement between Multigroup Claimants and the Motion Picture Association. *See* Distribution of Cable Royalty Funds; Distribution of Satellite Royalty Funds, 83 Fed. Reg. 61,683, 61,683–84 (Nov. 30, 2018).

“Not every decision the Royalty Judges make is subject to judicial review.” *IPG I*, 759 F.3d at 103. Pursuant to 17 U.S.C. § 803(d)(1), an “aggrieved participant” may appeal from the Copyright Royalty Board’s “[r]esolution of a disputed controversy through formal proceedings.” *Id.* at 105–06. In that appeal, a party may also challenge interlocutory orders issued during a contested distribution proceeding, *Indep. Producers Grp. v. Librarian of Cong. (IPG II)*, 792 F.3d 132, 138 (D.C. Cir. 2015), because those earlier orders “merge[] into and [are] reviewable as part of the Royalty Judges’ final determination,” *Settling Devotional Claimants v. Copyright Royalty Bd.*, 797 F.3d 1106, 1114 (D.C. Cir. 2015). An appealable final determination by the Board “shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges.” 17 U.S.C. § 803(c)(3); *see also IPG I*, 759 F.3d at 102. Conversely, the statute does not allow for an appeal from an order of the Copyright Royalty Board declaring that no controversy exists and distributing royalties based on the parties’ agreement. *IPG I*, 759 F.3d at 107.

Here, through “bypass[ing] the controversy process by settling their dispute,” the parties have “forgo[ne] the particular opportunity for judicial review in this court authorized by 17 U.S.C. § 803(d)(1).” *Id.* Multigroup Claimants contends that the court has jurisdiction, notwithstanding the settlement agreement, because it stipulated that the distribution was conditioned on its right to appeal the claims rulings. Appellant’s Br. at 47–48; Reply Br. at 7–12. The parties’ disagreement over the precise meaning of this supposed reservation of rights is immaterial, given that “parties cannot create jurisdiction by stipulation.” *See CostCommand, LLC v. WH Adm’rs, Inc.*, 820 F.3d 19, 24 (D.C. Cir. 2016). Quite simply, Multigroup Claimants settled its dispute over royalty claims in the program suppliers category and therefore the court does not have jurisdiction to revisit that deal.

Likewise, the court does not have jurisdiction to entertain Multigroup Claimants’ objections to rulings dismissing royalty claims in the sports programming category. A party may appeal from a published final determination of the Copyright Royalty Board, not its every decision. *See IPG II*, 792 F.3d at 137–38. Parties to the 2010–2013 cable royalty distribution for the sports category have, in fact, appealed that final determination to this court. *See Program Suppliers v. Copyright Royalty Bd.*, No. 19-1063 (D.C. Cir. filed Mar. 8, 2019). But here the court does not have jurisdiction to hear challenges to the orders from which Multigroup Claimants appeals.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk