

## **Rules for Appeals of Decisions of the ASCAP Board of Review**

Pursuant to a resolution duly adopted by ASCAP's Board of Directors, appeals from a decision of the ASCAP Board of Review (an "Underlying Decision") generally shall be conducted pursuant to the American Arbitration Association's ("AAA") Optional Appellate Arbitration Rules, effective November 1, 2013, with certain modifications, as follows ("Appellate Rules"):

### **AR-1. Effect of Appeal on Underlying Decision**

Upon the filing of a timely notice of intent to appeal with the Secretary of the Society pursuant to Article XIV, Section 4 of ASCAP's Articles of Association, the parties agree that the Underlying Decision shall not be considered final for purposes of any court action to confirm or enforce the Underlying Decision ("judicial enforcement proceedings"), and the time period for commencement of judicial enforcement proceedings shall be tolled during the pendency of the appeal. The parties agree to stay any judicial enforcement proceedings already initiated until the conclusion of the appeal process. If the appeal is withdrawn, the Underlying Decision shall be deemed final as of the date of withdrawal.

### **AR-2. Initiation of the Appeal**

Promptly upon the filing of a notice of intent to appeal, the Secretary to the Board of Review shall undertake any actions necessary to initiate the appeal by filing with the AAA a Notice of Appeal, a copy of the applicable arbitration agreements (including, but not limited to, ASCAP's Articles of Association and these Appellate Rules) providing for appeal of the Underlying Decision, and a copy of the Underlying Decision. The Notice of Appeal shall conform with the AAA's guidelines and filing requirements. Copies of the Notice of Appeal, together with any other initiating documents shall be provided to all parties to the Appeal.

### **AR-3. Qualifications of Panel**

- (a) The Panel of arbitrators shall be selected from the AAA's Appellate Panel.
- (b) No person shall serve on the Panel in any dispute in which that person is precluded from serving under the applicable code of ethics governing the appointment of arbitrators. Prior to accepting an appointment, the prospective appellate arbitrator(s) shall disclose to the AAA any circumstances likely to create a presumption of bias or prevent a prompt resolution of the appeal. Upon receipt of such information, the AAA shall either replace the appellate arbitrator(s) or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the appellate arbitrator shall serve, the AAA has the authority to make the decision as to whether the appellate arbitrator(s) shall serve or whether another appellate arbitrator(s) shall be appointed by the AAA. The AAA is authorized to appoint another appellate arbitrator promptly if an appointed appellate arbitrator is unable to serve on the Panel.

#### **AR-4. Appointment of Panel**

To the extent practicable, the Panel will be appointed as follows:

- (a) The Panel shall consist of three (3) members.
- (b) Upon receipt of a Notice of Appeal, the AAA shall send simultaneously to each party to the dispute an identical list of ten (10) (unless the AAA decides that a different number is appropriate) qualified potential Panel members. The parties are encouraged to agree upon the selection of the Panel.
- (c) If the parties are unable to agree upon the Panel, each party shall have fourteen (14) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the potential Panel members to serve. If the AAA is unable to form a Panel of three members from the initial list of 10 arbitrators for any reason, the AAA shall have the power to fill the remaining positions on the Panel without the submission of additional lists to the parties.
- (d) If the parties have requested appellate arbitrators with specific qualifications, the AAA will consider such requests when creating the list of the appellate arbitrators. Such requests shall be made within five (5) days of submission of the Notice of Appeal.

#### **AR-5. Vacancies**

If a Panel member shall become unwilling or unable to serve after his or her appointment to the Panel, the AAA shall administratively appoint a substitute Panel member.

#### **AR-6. Preliminary Conference**

The Panel shall hold a Preliminary Conference, whether by conference call or otherwise, as follows:

- (a) Within one week of the appointment of the Panel a preliminary conference will be scheduled with the parties, the Panel members, and the case manager appointed by the AAA (the “Case Manager”) to review and formalize the briefing schedule, set a deadline for the submission of the record on appeal and address any other procedural issues consistent with these rules and the objectives for an expedited, cost effective and just appellate process.

- (b) The Panel shall enter an order reflecting the briefing schedule, and any other timeframes and administrative matters determined during the preliminary conference call.
- (c) The Panel may require a detailed specification of issues on appeal in advance of the first appellate brief, and may direct or limit the parties to certain areas or issues in their briefing, or request additional briefing.

#### **AR-7. Absent Parties**

The Panel may proceed with the Appeal in the absence of a party if it is determined by the Panel that the absent party consented to the jurisdiction of the appeal process by agreement, due notice was provided, and the absent party is provided a copy of the order from the preliminary conference.

#### **AR-8. Jurisdiction**

The Panel may consider only matters that fall within the Board of Review's jurisdiction, as set forth in the Board of Review's Rules of Procedure. If the Panel determines that it does not have jurisdiction to hear the Appeal, the Appeal shall be dismissed and the Underlying Decision shall be deemed to be final.

#### **AR-9. Issues Subject to Appeal and Standard of Review**

A party to the Board of Review may appeal on the grounds that the Underlying Decision is based upon: an error of law that is material and prejudicial; or determinations of fact that are clearly erroneous. Issues of law shall be reviewed *de novo*. Issues of fact shall be reviewed for clear error, giving deference to any credibility findings made by the Board of Review.

#### **AR-10. Assessment of Costs**

The Panel shall have the authority, in its discretion, to award the fees and costs of the Appeal (in accordance with AR-11 below), as well as attorneys' fees, to a prevailing party. The Appellant shall be deemed the prevailing party if the Underlying Decision is reversed. The Appellee shall be deemed the prevailing party if the Underlying Decision is affirmed. If the Underlying Decision is modified, the Panel shall have the authority to award costs and fees to the party that it deems to be the prevailing party.

#### **AR-11. AAA Fees and Costs of Appeal**

- (a) The Appellant shall be responsible for the AAA's administrative fees and appeal tribunal fees and costs arising from the appeal where there is no cross-appeal. If there is a cross-appeal the fees and costs of the appeal shall be shared equally by the Appellant and Appellee, or shared pro rata if there is more than one Appellant or Appellee.

- (b) A party's failure to timely pay the AAA shall automatically place the nonpaying party's appeal in abeyance for a period of seven (7) days, following which, if the amounts are not paid in full within this seven (7)-day grace period, the nonpaying party's appeal may be dismissed. If the appeal has been suspended by either the AAA or the appeal tribunal and the parties have failed to make the full deposits requested within the time provided after the suspension, the Panel, or the AAA if a Panel has not been appointed, may terminate the proceedings. The arbitration will terminate on its own accord after fourteen (14) days from the date of suspension.
- (c) Pursuant to AR-10, the Panel's decision may include a reallocation of a party's share of the fees and costs of the appeal.

### **AR-12. Interpretation of Appellate Rules**

The Panel shall have the authority to interpret and apply these rules insofar as they relate to the Panel's own powers and duties.

### **AR-13. Place of Appeal**

All proceedings before the Panel shall be conducted in New York City, unless otherwise agreed by the parties.

### **AR-14. Oral Argument**

Unless otherwise directed by the Panel, all appeals will be determined upon the written documents submitted by the parties. If the Panel deems oral argument necessary, or if a party to the Appeal requests oral argument, the Panel at its discretion may schedule same. Requests for oral argument must be made within thirty (30) days after the Appeal is initiated by the Secretary to the Board of Review (*see* AR-2) or oral argument is waived. If oral argument is granted it shall be scheduled to take place within thirty (30) days of filing of the last brief; if the parties and Panel members cannot convene within 30 days, oral argument shall be scheduled as soon thereafter as is practicable.

### **AR-15. Record on Appeal**

The parties shall cooperate in compiling the record on appeal, which shall consist of: all evidence taken by or submitted to the Board of Review in connection with the Protest, including the transcript of the proceedings before the Board of Review; documents admitted into evidence during the proceedings before the Board of Review; the parties' pre- and post- hearing briefs filed with the Board of Review; and/or other evidence relevant to the Appeal that was presented to the Board of Review. A party may not present for the first time on appeal, and the Panel may not request, evidence that was not presented to the Board of Review during the proceedings before the Board of Review unless the Panel first determines that: (i) the party attempted to present the evidence to the Board of Review; and (ii) the Board of Review improperly prohibited the party from presenting such evidence. A dispute regarding whether a document is part of the record on appeal shall be

determined by the Panel. The record on appeal shall be submitted by the parties by the deadline determined by the Panel at the Preliminary Conference (*see* AR-6).

#### **AR-16. Appellate Briefs**

Unless otherwise agreed by the parties and approved by the Panel, or determined by the Panel as a necessary deviation, the following briefing schedule shall be followed:

- (a) Appellant's Initial Brief shall be served no later than twenty-one (21) days after the Appeal is Initiated, and its text shall be limited to 30 pages.
- (b) Appellee's Answering Brief shall be served no later than twenty-one (21) days after service of Appellant's Initial Brief, and its text shall be limited to 30 pages.
- (c) If Appellee cross-appeals, then its Cross-Appeal Brief shall be served at the same time as Appellee's Answering Brief, and its text shall be limited to 30 pages.
- (d) Appellant's Reply Brief to Appellee's Answering Brief, if any, shall be served no later than ten (10) days after service of Appellee's Answering Brief, and its text shall be limited to 10 pages.
- (e) Appellant's Answering Brief to Appellee's Cross-Appeal Brief shall be served no later than (21) days after service of Appellee's Cross-Appeal Brief, and its text shall be limited to 30 pages.
- (f) Appellee's Reply Brief to Appellant's Answering Brief, if any, shall be served no later than ten (10) days after service of Appellant's Answering Brief, and its text shall be limited to 10 pages.
- (g) For good cause shown, each party is entitled to request a single seven (7)- day extension for filing a brief that is to be served under these rules, such extension to be automatically granted by the Case Manager. In extraordinary circumstances, subject to the discretion of the Panel, an additional extension may be granted.
- (h) All briefs shall be typewritten in 12-point typeface, double-spaced, and on 8-1/2 by 11 inch paper with 1 inch margins.

#### **AR-17. Service of Documents**

- (a) The service of notices, briefs, answers, replies, orders, and other documents may be accomplished by any means permissible under the AAA's Optional Appellate Arbitration Rules. At the Panel's request -- in lieu of, or in addition to, electronic submission -- copies of cases, exhibits, and other documents attached to or referenced in briefs shall be delivered to the Panel directly via mail or overnight courier at the address provided by the Case Manager.

- (b) All deadlines under these Rules shall be determined by calendar days. If the final day for service under a deadline falls on a legal holiday or weekend day, the period shall be extended until the first following business day.

#### **AR-18. The Panel's Decision**

- (a) Within thirty (30) days of service of the last brief or, if oral argument is granted, within thirty (30) days after oral argument, the Panel shall take one of the following actions:
  1. Affirm the Underlying Decision;
  2. Reverse the Underlying Decision;
  3. Modify the Underlying Decision (incorporating those aspects of the Underlying Decision not otherwise vacated or modified); or
  4. Request additional clarification on matters in the record and notify the parties of the Panel's exercise of an option to extend the time to render a decision, not to exceed thirty (30) days.
- (b) The Panel may modify the timeframe referenced in AR-18(a) for good cause.
- (c) The Panel's decision shall be in writing and include a concise summary of the decision and an explanation for the decision, unless the parties agree otherwise. The Panel shall not rule, opine, or comment on matters outside the scope of its jurisdiction.
- (d) All decisions of the Panel shall be by majority vote. If less than two-thirds of the Panel vote for reversal or modification, the Underlying Decision shall be affirmed.

#### **AR-19. Finality of Appeal**

The decision of the Panel shall be conclusive and final, and neither the protesting member(s) nor ASCAP shall have the right of any further recourse, including recourse to the courts, except as may be necessary to confirm, or oppose confirmation of, the Panel's Award.

#### **AR-20. Confidentiality**

The parties, the Panel and the AAA shall maintain the confidentiality of appellate proceedings in all respects, except as otherwise required by law. To the extent that the Panel's decision and/or any other documents must be filed in court for purposes of having the Panel's Award confirmed, the filing party shall: (i) notify the non-filing party of its intent to have the award confirmed; and (ii) undertake good faith efforts to maintain confidentiality, including through filing the documents under seal, and/or redacting public versions of the documents as permitted by the court.