COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0024
June 26, 2024

Michelle Shocked	*v.*	Law Rocks
CLAIMANT		**RESPONDENT**

PROPOSED STATEMENT OF FACTS

The parties appeared at a Merits Conference on April 10, 2024. Claimant Michelle Shocked ("Shocked" or "Claimant") submitted evidence and a position statement on March 28, 2024. (Dkt. 24 – 36). Respondent Law Rocks, Inc. ("Respondent" or "Law Rocks") submitted evidence, a position statement, and a witness statement on March 28, 2024. (Dkt. 37 - Dkt. 39). At the Merits Conference, Michelle Shocked, Omi Crawford, and Charles Jarrell testified. Based on the submissions and the witness testimony at the conference, the Copyright Claims Board ("Board") finds the following facts as established.

1. Shocked is a songwriter, performer, and the president of the Fraudulent First Sale Project ("FFSP"). Merits Conference Testimony ("Conference Tr.") at 2:00.

2. Law Rocks is a 501(c)(3) nonprofit organization, founded in 2009, that raises money by hosting charity concerts in various cities around the world. The performers in the concerts are largely members of the legal community. At each Law Rocks concert, each participating bands select a charity to support. Respondent Position Statement at 3 (Dkt.37).

3. Claimant is the copyright owner of five musical works, which are registered with the U.S. Copyright Office. Those works are "If Love Was a Train" and "Anchorage" (Reg. No. PA0000411583), "Come a Long Way" (Reg. No. PA0000575541), "On the Greener Side" (Reg. No. PA0000440105), and "33 RPM Soul" (Reg. No. PA0000575540) (collectively, the "Works"). Amended Claim (Dkt. 3).

4. On two occasions, Shocked has performed with a group of attorneys. Conference Tr. at 2:34. That group of attorneys performs under the name "Crude, Humble, and Obvious" (the "Group"). One member of the Group was Drew Kastner ("Kastner"). Respondent Evidence, Exh. 5 at 1(Dkt. 38).

5. Shocked testified that Kastner is a copyright attorney who also served as a board member of FFSP. Conference Tr. at 50:09. Additionally, Kastner provided ongoing legal representation to Shocked and FFSP at the time of the alleged infringement. Claimant Evidence "Emails RE: Law Rocks," Emails 1-15, 56-95 (Dkt. 36); Conference Tr. at 9:54, 49:55.

6. Sometime around August 8, 2022, the Group and Shocked decided they would like to perform at the Law Rocks Washington, DC Event ("Law Rocks DC Event"). Claimant Evidence "Emails RE: Law Rocks," Email 2 (Dkt. 36). Kastner, through intermediaries, was put in touch with Ted Scott ("Scott") and Omi Crawford ("Crawford"), the Director of Law Rocks (Crawford Witness Statement at 1 (Dkt. 39)), who oversaw the Law Rocks DC Event. Claimant Evidence "Emails RE: Law Rocks," Emails 1-17 (Dkt. 36). In subsequent email correspondence on August 8, 2022, Scott noted that "Law Rocks DC is pretty set at this point" but stated that the band could perform in a concert in a different city. *Id.* at Email 6.

7. In an email to Scott, Crawford, and others on August 15, 2022, Kastner stated that the Group would focus on the upcoming Law Rocks event in New York City scheduled for October 20, 2022 ("NYC Event"). *Id.* at Email 11. On August 18, 2022, Crawford emailed information about the NYC Event to Shocked and Kastner. *Id.* at Email 13.

8. On August 22, 2022, Crawford, Shocked, and Kastner held a meeting on Zoom about the upcoming NYC Event. After the meeting, Crawford emailed Shocked and Kastner additional information and attached the "NYC Band Welcome Kit" and the "Sponsorship Package" (collectively, the "Welcome Packet") to the email. The

Welcome Kit provided important information about logistics, fundraising, photography at and filming of the concert. Crawford directed Kastner and Shocked to apply at lawrocks.org/rock to "officially sign up" for the event. *Id.* at Emails 20-22.

9. Law Rocks used Typeform, a software that creates an embedded webform on the Law Rocks website, to collect band applications for events. Interested applicants type in their answers to the questions one by one. The form also shows the filer important information about, and requirements for, playing at the event. Once complete, the application is created and emailed to Law Rocks. Conference Tr. at 1:56:56.

10. On August 22, 2022, Law Rocks received an application from, "contact@michelleshocked.com" for "Michelle Shocked featuring CSUSA's Crude, Humble & Obvious" to play at the NYC Event. Respondent Evidence, Exh. 1 at 1-3 (Dkt. 38). The form specified that the Group members, their legal affiliations, and the nonprofit that would be the beneficiary of the Group's fundraising efforts. *Id.*

11. Shocked testified that Kastner's assistant, Joan Companara ("Companara"), filled out the form on the Law Rocks website for the NYC Event using information provided by Shocked in a phone call with Companara about the Law Rocks DC Event. Conference Tr. at 7:02- 7:48. Companara, who had permission from Shocked to fill out the form using Shocked's name and contact information, collaborated with Shocked about specific language in the form. *Id.* at 9:14-10:41; 25:52.

12. Crawford testified that the form indicated that it was completed and sent by Shocked from contact@michelledshocked.com. *Id.* at 2:03:06. In addition, on August 22, 2022, Shocked sent an email to Crawford and Kastner in which Shocked states "[c]onfirming I've completed the lawrocks.org/rocks application form for 'Michelle Shocked featuring CSUSA's Crude Humble & Obvious' as best I could."

In that email, Shocked also offered to change the billing for the band if Law Rocks wanted to emphasize the legal professionals in the group. Respondent Evidence, Exh. 2 at 1 (Dkt. 38). On August 23, 2022, Shocked sent another email to Law Rocks stating "Just to confirm I've completed the band profile." Respondent Evidence, Exh. 4 at 2 (Dkt. 38).

13. During these email exchanges, Shocked used two emails interchangeably – mshocked@michelleshocked.com, which Shocked stated is her personal email address, and contact@michelleshocked.com, which she stated is her business email address. Conference Tr. at 36:50-37:31.

14. On August 23, 2022, Crawford sent an email to Shocked and Kastner, which confirmed that Shocked's application to perform at the NYC Event was granted. The email also contained the same Welcome Packet that Shocked received on August 22, 2022, after the Zoom meeting. Respondent Evidence, Exh. 5 (Dkt. 38).

15. The Welcome Packet contained "Playing the Event" information including deadlines, rules, and requirements. *Id.* at 2. Specifically, the Welcome Packet stated that "[t]he concert will be professionally photographed; the high resolution photo files will be sent to all participants. The concert will be professionally filmed; the digital files will be sent to all participants." This information was located with other important technical information about lighting, sound, green rooms, and staging. It also included significant details regarding ticketing, set length, playlist, order of play, sound checks, and encores at the event. *Id.*

16. On August 22, 2022, Shocked forwarded the Welcome Packet to other members of the Group. In the email, Shocked states that the members of the Group are "[w]elcome to look over the Welcome Kit and Sponsorship forms and offer your input, or I'll just represent for us all, as best I can." Claimant Evidence "Emails RE: Law Rocks," Email 21 (Dkt. 36).

17. At the hearing, Shocked admitted that she "very possibly" reviewed the Welcome

Packet. Conference Tr. at 30-35. Shocked took responsibility for submitting the application, allowed her name to appear as the filer, received the Welcome Packet on more than one occasion, passed it on to her fellow bandmates and continued to represent the Group in connection with the NYC Event. Claimant Evidence "Emails RE: Law Rocks," Email 21 (Dkt. 36). Shocked's continuing involvement in directing the Group's participation in the NYC Event is also evidenced by an email that she sent to Crawford on August 24, 2022 in which she indicated her preference for using one photo of the Group over another on Law Rocks' website. Respondent Evidence, Exh. 4 (Dkt. 38). Shocked never objected to any of the provisions contained in the materials that were sent to her by Law Rocks.

18. Shocked and the attorney members of the Group did not discuss Law Rocks' filming policy among themselves or with Law Rocks. Nor did they object to the filming in advance of the performance. Conference Tr. at 2:08:00-2:08:36.

19. Crawford testified that it is Law Rocks' practice to record the performances at each of its charity concerts and it contracts a local videographer in each city to do so. Once Law Rocks receives the footage of the performances from a concert, it distributes to each performer the video of their performance so that they can share the video with friends and family. Law Rocks also posts the videos to its YouTube channel. Conference Tr. at 1:52:59-1:54:44.

20. Crawford testified that Law Rocks' YouTube account is not monetized, and Law Rocks does not receive any income from the streaming of videos on that account. Conference Tr. at 2:26:16.

21. No performer has ever objected to the filming of their performance at a Law Rocks event prior to the performance but Crawford said they would not have filmed such a performance if the performer had objected. Crawford Witness Statement at 1 (Dkt. 39).

22. On October 20, 2022, "Michelle Shocked featuring Crude, Humble & Obvious" performed, without Kastner who was unable to perform, at the Law Rocks concert at the NYC Event. Claimant Position Statement at 1-2 (Dkt.24); Conference Tr. at 7:48. The Group performed five songs. Claimant Position Statement at 1 (Dkt.24).

23. All performances during the NYC Event were recorded by Chris Carton ("Carton"), a videographer contracted by Law Rocks for the NYC and other East Coast Events. Conference Tr. at 2:11:12; 2:15:28. The recordings were made on behalf by Law Rocks. Conference Tr. at 2:07:59; 2:15:18.

24. Shocked testified that she was aware that there were professional photographers at the event but has testified that she was unaware that the performance would also be recorded. *Id.* at 15:00-18:00. Crawford testified that Carlton was likely in the back of the venue at the NYC Event. *Id.* at 2:16:50.

25. On October 21, 2022, Law Rocks sent thank you emails to all participants, which gave details about how much money was raised, where participants can find photographs of the event, and asks participants to complete a survey. The email also states "[v]ideo will be edited and sent within two weeks." Claimant Evidence "Emails RE: Law Rocks," Email 46 (Dkt. 36).

26. On October 22, 2022, Shocked sent an email to Crawford inquiring about the video recording. The email states, in part, "[w]as any mention made in the participation for Law Rocks process that video recordings were being made?... [w]as there any mention regarding a livestream of the performances?" *Id.* at Email 48.

27. On October 22, 2022, Crawford responded to Shocked's email stating:

> "Yes, the application does include the information that the charity event will be professionally filmed bands are always thrilled to receive footage of their rock star moment! There was no livestream. Obviously as a professional musician playing originals you are not our usual participant. From your email

I'm assuming you would request we do not include video of your set on our channel or downloads or anywhere else. We would of course respect that for you or anyone else who asked."

Id. at Email 49.

28. Shocked and the Group never received the recording of their October 20, 2022 performance from Law Rocks. Respondent Position Statement at 2 (Dkt. 37).

29. Between November and December 2022, Shocked continued to email Law Rocks to request transfer of the "raw footage" of the Group's performance and to assert ownership of the recording. *Id.*; Claimant Evidence "Emails RE: Law Rocks," Emails 54, 55 (Dkt. 36).

30. On January 20, 2023, Charles Jarrell ("Jarrell"), counsel for Law Rocks, responded to Shocked's claims by email. Specifically, Jarell noted that "Law Rocks has not distributed or shared the video of your band's performance, and will not do so. The footage will be discarded." Respondent Evidence, Exh. 8 (Dkt. 38).

31. On January 21, 2023, Shocked filed this claim (Dkt. 1) and amended it on February 15, 2023. (Dkt. 3).

32. Between January 20, 2023 and January 30, 2023, Shocked and Kastner exchanged a series of emails regarding the recording of her performance at the NYC Event. Claimant Evidence "Emails RE: Law Rocks," Emails 57-70 (Dkt. 36). Those emails evidence the fact that Kastner was representing Shocked in connection with her dispute with Law Rocks concerning the video recording of Shocked's performance. For instance, in a January 20th email to Shocked, Kastner states, "…I clearly advised you not to push this." *Id.* at Email 64.

33. On January 31, 2023, Kastner emailed Jarrell and asked him to "contact me at your earliest opportunity to discuss your email below to my client Michelle Shocked." *Id.* at Email 71. Jarrell testified that it was his understanding that Kastner was

representing Shocked with respect to the dispute over the recording of Shocked's performance. Conference Tr. at 2:39:11.

34. Shortly after emailing Jarrell, Kastner sent the following email to Shocked at 10:44 AM:

> "I think the simple approach is to point out that on 10/22/22, Omi agreed to exclude footage of your performance from their channel and their downloads. If they will honor that agreement and acknowledge your exclusive ownership of copyright in the musical compositions, the sound recordings of your performance and send you the footage, you will withdraw your CCB claim." Claimant Evidence "Emails RE: Law Rocks," Email 72 (Dkt. 36).

35. Jarell and Kastner spoke by phone later that morning. Respondent Position Statement at 6 (Dkt.37). After the call, Kastner emailed the Claimant and stated "[t]hey have agreed to erase all footage of your performance and not post anything anywhere but they will not give you a copy." Claimant Evidence "Emails RE: Law Rocks," Email 75 (Dkt. 36).

36. At 1:12 PM, Jarrell emailed Kastner memorializing the call and stated:

> "This will confirm that Law Rocks has, or promptly will, permanently and completely discard any and all audio or video recordings or footage of your client's performance at the Law Rocks event…I can confirm that Law Rocks has not shared, distributed or posted the footage of your client's performance with anyone since the event."

Id. at Email 76. In a series of emails between 1:18 and 3:20 PM, Kastner implored Shocked to accept the agreement. In these emails, Shocked re-asserted her desire to receive the "raw footage" from Law Rocks as well as her belief that she owns the footage. Kastner advised Shocked that "I disagree and once again, you are overruling my strong advice. The footage itself, is not in my opinion, your property." Kastner further states "I do not think you will win this at the CCB." *Id.* at Emails 77-87.

37. At 4:06 PM, the Claimant sent another demand letter to Jarrell seeking the video recording of the event and asserting their ownership of the recording. *Id.* at Email

88.

38. At 5:16 PM, Kastner emailed Jarrell to state: "I no longer represent Ms Shocked in this matter." *Id.* at Email 90.

39. At 6:27 PM, Kastner emailed the Claimant to formally withdraw his representation stating "To be clear again, I do not believe that your argument is legally supportable. Furthermore, I believe that the resolution I had negotiated was a fair resolution and one." *Id.* at Email 92.

40. Respondent had no further communications with Claimant or Kastner, until it received notification of the filing of this claim on March 22, 2023. Respondent Position Statement at 7 (Dkt. 37). After Jarrell learned of Shocked's filing of this proceeding before the CCB, he wrote to Kastner, "[Shocked] claims that you withdrew from representing her because you were 'intimidated' when in fact you confirmed to me in writing that she was proceeding 'against [your] advice.'" Claimant Evidence "Emails RE: Law Rocks," Email 72 (Dkt. 36). Jarrell also warned Kastner to preserve all documents in this matter as Law Rocks would be seeking discovery from Kastner. *Id.* Kastner responded that he took no part in preparing or filing Shocked's CCB claim and did not withdraw from representing Shocked because he was intimidated. *Id.* at Email 101. When Kastner informed Shocked of Jarrell's demand to preserve documents relevant to this proceeding, Shocked advised Kastner to ignore the request to preserve documents. *Id.* at Email 105.

41. The evidence demonstrates that despite the strong and repeated advice of her lawyer, whom she called an "respected law professional," Shocked filed and pursued this claim. Conference Tr. at 53:57-54:50.

42. Law Rocks has not distributed, sold, posted, disseminated, published, or copied Shocked's performance at the NYC Event. Respondent Position Statement at 2

(Dkt.37). Nor has it earned any money from the recording of Shocked's performance.

43. The Respondent has ensured that all video recordings of the Claimant's performance have been permanently discarded and destroyed. Crawford testified that she communicated with Carton on several occasions and has received confirmation in writing that all files were deleted. Conference Tr. at 2:28:06-2:19:13.

44. Jarrell testified that he had been assured that the recordings were destroyed. *Id.* at 2:41:35. In an email dated January 31, 2023, Jarrell asked Kastner to inform him of any reference to "your client or her performance in any Law Rocks' materials" so that they could remove such references. Claimant Evidence "Emails RE: Law Rocks," Email 76 (Dkt. 36). Jarrell testified that he had never received any notification from Kastner or Shocked that there were references to Shocked or her performance in any Law Rocks' materials. Conference Tr. at 2:42:40.

45. Shocked did not search for or see the allegedly infringing video on YouTube or any other online platform. Further, no other individual or entity has informed Shocked that the footage is available anywhere – either online or otherwise. *Id.* at 41:34-44:34.

46. No evidence that the video of Shocked's performance was distributed, sold, copied, displayed or otherwise used was presented to the Board during the course of this proceeding.

The parties have until **July 17, 2024,** to file submissions which detail which factual findings, if any, they disagree. If a party disagrees with the Board's factual finding(s), they must be specific both as to which factual finding(s) they disagree with and the evidence or testimony that contradicts that factual finding(s).

Any filing which disagrees with these factual findings must follow the procedures set forth in § 220.5(b) and be limited to five pages. Nothing should be attached to, or filed with the response because a party may only rely on evidence or testimony already submitted, unless the presiding

officer grants leave to do so. More information is available on page 9 of the **Smaller Claims Chapter** of the CCB Handbook.

Both parties are warned not to submit irrelevant allegations or personal attacks on the other.

Copyright Claims Board