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## **Jello Biafra Loses Bid to Deny Royalties to Former Mates**

**A panel sends the matter of the group's dissolution back down, but finds for Biafra's three opponents in all else.**

**By Tyler Cunningham**

Daily Journal Staff Writer

SAN FRANCISCO - The rebellious racket recorded on such albums as "Fresh Fruit for Rotting Vegetables" belongs to the punks who made it, not to the lead singer's record label, an appeals court said Wednesday.

Weighing in on the long and complex legal battle between the seminal 1980s punk band The Dead Kennedys and its lead singer, Jello Biafra, the 1st District Court of Appeal substantially upheld San Francisco Superior Court Judge Anne Bouliane.

The court said Bouliane was right to hit Biafra with a \$220,000 verdict for breach of contract and fraud. She also was right to determine that the group's creative output - including songs such as "Holiday in Cambodia" and "Kill the Poor" - belongs to a partnership among the four band members.

But the justices reversed Bouliane's decision to break up the band, remanding the case to the trial court to determine whether a partnership among the punks should be dissolved and its assets sold.

"[T]he record demonstrates that Biafra's fraudulent actions precipitated the rift in the partnership and made it impossible for the partnership to carry on its business as it had in the past," Justice Maria P. Rivera wrote for the court.

She was joined by Justices Timothy A. Reardon and Patricia K. Sepulveda. *Dead Kennedys v. Biafra*, A094272

David Given, a lawyer with Phillips & Erlewine in San Francisco who represented the three band members, said the opinion was a complete victory for his clients.

"The Court of Appeal confirmed exactly what we wanted and what we said all along," he said. "There's only one bad guy in this."

Paul Keating, a lawyer with Carroll Burdick & McDonough who represented Jello Biafra, could not be reached for comment Wednesday.

The Dead Kennedys formed in San Francisco in 1978 and quickly developed a reputation for shocking and satiric lyrics. The band separated in 1986 in the wake of a criminal trial on charges of distributing harmful material to minors in the form of questionable album artwork. The charges resulted in a mistrial.

Their legal problems arose in 1998, when three former band members sued lead singer Jello Biafra, whose real name is Eric Reed Boucher.

The three band members claimed that Biafra didn't properly promote the group's albums and wrongfully exploited their collective intellectual property through his own record label.

Biafra answered that he had exclusive rights to the catalog. He also cross-complained, seeking the dissolution of Decay Music, a general partnership the four band members formed in 1981 to publish records, retain rights to the music and collect income from royalties.

After a concurrent jury and court trial, Bouliane found that the individual band members who participated in the recording projects owned the recordings, subject to a written 1991 agreement granting an exclusive license to Decay Music. She also ordered that Decay Music dissolve, based on antagonistic feelings among the band members, and sell the rights to the music catalog.

The court rejected Biafra's claims that the partnership agreement did not establish the parties' ownership interest in the music; that it did not transfer the copyright interest in the band's works to Decay Music; and that the band's claims for unpaid royalties were barred by the statute of limitations.

The justices also reversed a \$5,000 fraud verdict against guitarist East Bay Ray.

The panel also reversed Bouliane's order forcing the band to dissolve Decay Music and sell the

catalog. The appeals court said that it's uncertain whether the value of the catalog would be diminished if its sale were forced and remanded the case to the trial judge to answer that question.

The bandmates prefer to maintain rights to the recordings, Given said. He anticipates no changes in the way Dead Kennedys works are sold and marketed, and said Biafra will remain a full partner with rights to vote on such matters.

He even left open the possibility that the foursome might, someday, make music again.

"Never say never," he said.

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