

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Grant V. Lam)

Licensee of Aircraft Radio Station N4390Q)
Mililani, Hawaii)File No.: EB-06-HL-087
NAL/Acct. No.: 200632860002
FRN: 0015340128

FORFEITURE ORDER

Adopted: March 28, 2007**Released: March 30, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Grant V. Lam (“Lam”), licensee of aircraft radio station N4390Q, for repeatedly violating Section 87.193 of the Commission's Rules (“Rules”).¹ On August 22, 2006, the Enforcement Bureau’s Honolulu Resident Agent Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$2,000 to Lam after determining that Lam apparently repeatedly allowed the activation of his emergency locator transmitter (“ELT”) on distress and safety frequencies, when it was not required as a locating aid for survival purposes.² In this *Order*, we consider Lam’s arguments that the violation was not intentional and that Lam has since ensured that the operation of the ELT is in compliance with the Rules.

II. BACKGROUND

2. On April 16, 2006, a Honolulu agent responded to a complaint of interference to the distress and safety frequencies, 121.5 MHz and 243 MHz, at the Honolulu International Airport. The Agent tracked the signal to an ELT on board aircraft station N4390Q, located on the south ramp of the Honolulu International Airport. Lam, the registered owner of the aircraft, was working on the aircraft at the time of the ELT activation. Lam deactivated the ELT at the request of the agent. The agent explained to Lam that Lam was responsible for preventing non-emergency activations of the ELT. A Notice of Violation (“*Notice*”) was issued to Lam on April 26, 2006. In the *Notice*, Lam was cited for violation of Section 87.193 of the Rules,³ because of the activation of the ELT on board aircraft N4390Q, in the absence of any actual emergency situations. Lam replied to the *Notice* by letter dated May 3, 2006. The response from Lam acknowledged the violation, surmised that the activation resulted from nearby turbulence, and stated that Lam changed the ELT batteries.

¹ 47 C.F.R. § 87.193.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632860002 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released August 22, 2006).

³ 47 C.F.R. § 87.193.

3. On July 18, 2006, FCC Honolulu agents received a complaint of interference to the distress and safety frequencies, 121.5 MHz and 243 MHz, at the Honolulu International Airport. The agents employed an FCC direction finding vehicle to track the source of the signal to an ELT installed on aircraft station N4390Q, located in Hangar 421-139, on the south ramp of the Honolulu International Airport. Lam's wife, Tham Lam, was in the hangar at the time of the inspection and deactivated the ELT at the request of the agents. She explained to the agents that the ELT activated earlier that day without apparent cause, so she was aware that there was a problem with the ELT. The agents warned Ms. Lam that the ELT appeared to be defective, and should be removed from service until it could be repaired, or replaced. The ELT reactivated as the agents were departing the hanger. The agents alerted Ms. Lam to the reactivation, and advised her that the unit batteries should be removed as soon as possible. Ms. Lam deactivated the ELT via the unit toggle switch, and indicated to the agents that she would remove the batteries to avoid further non-emergency activations.

4. On August 22, 2006, the Honolulu Office issued a *NAL* in the amount of \$2,000 to Lam. In the *NAL*, the Honolulu Office found that Lam apparently repeatedly allowed the activation of his ELT on distress and safety frequencies, when it was not required as a locating aid for survival purposes. Lam filed a response to the *NAL* on September 8, 2006 ("*Response*"). In his *Response*, Lam argues that he did not intentionally violate the Rules, and that he took steps after the issuance of the *Notice*, and again after the issuance of the *NAL*, to ensure that the operation of the ELT was in compliance with the Rules.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

6. Pursuant to Section 87.18(b) of the Rules, "[a]n aircraft station is licensed by rule, and does not need an individual license issued by the FCC if the aircraft station is not required by statute, treaty or agreement to which the United States is signatory to carry a radio, and the aircraft station does not make international flights or communications. Even though an individual license is not required, an aircraft station licensed by rule must be operated in accordance with all applicable operating requirements, procedures and technical specifications"⁸ As the FAA Civil Aviation Registry lists Grant V. Lam as the owner of aircraft N4390Q, he is responsible for the aircraft ELT transmissions.

7. A false ELT activation has the potential to severely impact the search and rescue network, resulting in responder resources being wasted and misdirected. According to the United States Coast Guard ("USCG") Joint Rescue Coordination Center in Honolulu, Hawaii, air searches for false ELT activations cost the USCG thousands of dollars per search hour. Additional costs are incurred by rescue

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 87.18(b).

coordination centers, support personnel, and ground search and rescue responders. False activations also can cause harmful interference to the Search and Rescue Satellite system and to airplanes and vessels in the vicinity of the signal. Additionally, a false activation may conceal or prevent timely response to a legitimate distress signal.

8. Section 87.193 of the Rules states that ELTs “are intended to be actuated manually or automatically and operated automatically as part of an aircraft station as a locating aid for survival purposes.”⁹ The ELT in Lam’s aircraft, N4390Q, was activated on April 26, 2006, and July 18, 2006. The activation of the ELT was not for use as a locating aid for survival purposes on either day. Additionally, on both days, the activation caused interference to transmissions on distress and safety frequencies, 121.5 MHz and 243 MHz.

9. In his *Response*, Lam acknowledges that the ELT activated on the dates listed above, but argues that the activations were not intentional. In the *NAL*, the Honolulu Office determined that the violation was repeated, not willful or intentional. Therefore, we find no merit to this argument.

10. Lam also argues that after the first inadvertent activation, on April 16, 2006, he replaced the batteries to remedy the problem. After the second inadvertent activation, on July 18, 2006, he removed the unit from his plane and sent it back to the manufacturer. Consequently, he argues that he has taken immediate corrective measures after each inadvertent activation. While we appreciate Lam’s efforts, we find that on each date, they took place after he was approached by a Honolulu agent about the activation. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁰ Therefore, we find no merit to this argument. We also note that Lam has not claimed an inability to pay the proposed forfeiture amount, and has produced no financial documentation to support such a claim.¹¹

11. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Lam repeatedly violated Section 87.193 of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the \$2,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Grant Lam **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,000 for repeatedly violating Section 87.193 of the Rules.¹²

⁹ 47 C.F.R. § 87.193.

¹⁰ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹¹ In the *NAL*, the Honolulu Office stated that the “Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.” *NAL* at para. 13.

¹² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 87.193.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Grant Lam, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.