

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

In the Matter of)	
)	
)	File Number 98080351
KENNETH PAUL HARRIS, SR.)	
))	
Proposed Assignee, Station KSRW(FM))	NAL/Acct. No. x32080019
))	
Childress, Texas)	
)	

FORFEITURE ORDER

Adopted: December 5, 2000

Released: December 6, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000.00) against Kenneth Paul Harris, Sr. (“Harris”) for apparently violating Section 310(d) of the Communications Act of 1934 (“Act”), as amended¹, and Section 73.3540 of the Commission’s rules,² by assuming control of commercial radio Station KSRW(FM), Childress, TX, from Kevin Hackler (“Hackler”) without first obtaining Commission approval.

2. On July 14, 2000, the Chief, Enforcement Bureau issued a Notice of Apparent Liability (“NAL”) for Forfeiture in the amount of eight thousand dollars (\$8,000.00).³ Harris has filed a response. Based on the information before us, we affirm the forfeiture but reduce its amount.

¹ 47 U.S.C. § 310.

² 47 C.F.R. § 73.3540.

³ See In the Matter of Kenneth Paul Harris, Sr., 15 FCC Rcd 12933 (July 14, 2000).

II. BACKGROUND

3. In response to a confidential complaint, we investigated allegations that Hackler, then licensee of Station KSRW(FM), transferred control of the station to Harris without obtaining the required prior authorization of the Commission. The complaint cited locally published lien transfer and sale documents suggesting that transfer of control of the station took place on or about July 8, 1999, even though the licensee had not filed the appropriate application with the Commission. On July 14, 2000, pursuant to Section 503(b) of the Act,⁴ we issued NALs in the amount of \$8,000 each against both Harris and Hackler for engaging in an unauthorized transfer of station control.

4. On August 11, 2000, we received Harris' response to the NAL issued against him. In the response, Harris does not dispute the NAL's factual findings, but argues that reduction or cancellation of the forfeiture is warranted because he violated the pertinent rules "unintentionally," and in order to save the station from going dark due to financial troubles. He contends that local bankers required him to conclude station asset transactions under time constraints that did not allow him to first obtain Commission approval. Harris further submits that he is unable to pay the forfeiture amount. In this connection, he provides prior year tax returns that indicate that his gross income was \$13,665 for 1997, \$11,393 for 1998, and \$107,620 for 1999.⁵

III. DISCUSSION

5. As the NAL indicates, the forfeiture amount in this case was determined in accordance with Section 503(b) of the Act, Section 1.80 of the Commission's rules, and the Commission's Forfeiture Policy Statement.⁶ Section 503(b) of the Act requires that, in evaluating Harris' response, the Commission take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other factors as justice may require. As noted above, Harris contends that mitigation is warranted due to the "unintentional" nature of the violation and because he cannot pay the \$8,000 forfeiture amount without incurring substantial financial hardship.

6. We reject Harris' first argument. There can be no question that Harris intended to engage in the transaction that resulted in the unauthorized transfer of control. Although Harris claims that he was ignorant of the significance of his act, he does not claim that he sought or relied on advice from the FCC or knowledgeable communications counsel prior to undertaking it. Moreover, he knew that FCC approval is ultimately required prior to transferring control of a broadcast licensee. The mere fact that Harris circumvented the application process in order to save the station from going dark does not mitigate the conclusion that he knowingly and willfully violated the pertinent Commission rule. In any event, the intention to engage in a transaction without FCC approval is sufficient to constitute a violation of Section 73.3540 of the Commission's rules. See Southern California Broadcasting Co., 6 FCC Rcd 4387-88 (1991). Under Section 503(b), anyone who "willfully" or "repeatedly" fails to comply with the

⁴ 47 U.S.C. § 503(b).

⁵ This figure reflects the station's gross revenue. Harris' personal gross income for 1999 was \$21,889.

⁶ See Report and Order, The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules, 12 FCC Rcd 170876 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

Communications Act or the Commission's rules may be liable for forfeiture. Here, Harris' conduct was apparently both "willful" because he intended to engage in the transaction, and "repeated" because it continued until July 14, 2000.⁷

7. With regard to Harris' ability to pay, however, we find that the record warrants a substantial downward adjustment of the forfeiture amount. Although other factors may be considered, the best indicator of a rule violator's ability to pay is its gross revenues. See, e.g., PJB Communications of Virginia, Inc., 7 FCC Rcd 2088 (1992). In a recent case, we found that prior revenues comparable to Harris' warranted a substantial reduction in the forfeiture amount. See In re Booth-Newsome Broadcasting, Inc. (DA 00-1695), ___ FCC Rcd ___ (July 31, 2000) (reduction from \$20,000 to \$5,000 warranted where prior three-year revenues averaged, as here, less than \$50,000 annually).⁸ Under these circumstances, we conclude that it is appropriate to reduce Harris' forfeiture from \$8,000 to \$2,000.

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁹, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's rules¹⁰, Kenneth Paul Harris, Sr., IS LIABLE FOR A MONETARY FORFEITURE in the amount of two thousand dollars (\$2,000) for violating the provisions of the Communications Act and the Commission's rules requiring persons to obtain Commission authorization prior to assuming station control, pursuant to Section 310(d) of the Act and Section 73.3540 of the Commission's rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules¹¹ 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.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the [NAL/Acct. No.] referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹³

10. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified

⁷ On this date the Commission granted the appropriate assignment of license application from Hackler to Harris. *See* File No. BALH-19990927AAM.

⁸ Including the station's 1999 gross revenues, Harris' three-year average gross income is approximately \$44,000. Harris' average personal income for the same years is substantially less – only \$15,649.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ *See* 47 C.F.R. § 1.1914.

Mail Return -- Receipt Requested to Counsel for Kenneth Paul Harris, Sr., Cary Tepper, Esq. at Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, D.C. 20016-4120.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau