

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

In the Matter of )
DONALD W. KAMINSKI, JR. ) File No. EB-00-IH-0348
Licensee of Station KHWK(FM), Tonopah, NV ) NAL/ Acct. No. 200132080012
FRN 0010014504
Facility ID No. 17239

FORFEITURE ORDER

Adopted: December 15, 2003

Released: December 17, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the "Act"), and section 1.80 of the Commission's rules, we impose a monetary forfeiture of Four Thousand Dollars (\$4,000.00) on Donald W. Kaminski, Jr., licensee of Station KHWK(FM), Tonopah, Nevada, for his willful failure to respond to a written Commission inquiry in violation of section 73.1015 of the Commission's rules.

II. BACKGROUND

2. The Commission, by the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a monetary forfeiture based upon Mr. Kaminski's failure to respond to our inquiry concerning the ownership and operation of Station KHWK(FM), Tonopah, Nevada and a related FM translator, K240BS. The NAL was sent by certified mail to Mr. Kaminski, and the return receipt reflects that he received it. However, Mr. Kaminski did not file a written statement in response to the NAL.

1 47 U.S.C. § 503(b) (2002); 47 C.F.R. § 1.80 (2002).

2 47 C.F.R. § 73.1015 (2002).

3 Donald W. Kaminski, Jr., Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 10707 (EB 2001).

4 The NAL was sent to Mr. Kaminski by Certified Mail Return Receipt Requested to the address of record for Station KHWK(FM). The United States Postal Service certified mail return receipt does not indicate the date of delivery but bears his signature.

5 See Donald W. Kaminski, Jr., 16 FCC Rcd at 10709, ¶ 8.

### III. DISCUSSION

3. Section 73.1015 of the Commission's rules provides:

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. No applicant, permittee, licensee, or person who files an expression of interest shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. (note omitted).

4. As detailed in the *NAL*, Mr. Kaminski failed to respond in writing to our inquiry. In addition, Mr. Kaminski did not file a written response to the *NAL* to suggest otherwise. Therefore, we conclude that imposition of a forfeiture is warranted.

5. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.<sup>6</sup> In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>7</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>8</sup> As set forth above, we conclude under this standard that Mr. Kaminski is liable for a forfeiture for the willful violation of section 73.1015 of the Commission's rules.

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<sup>6</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). “Repeated” merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

<sup>7</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>8</sup> *See, e.g., SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

6. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000.00 for failure to respond to Commission communications.<sup>9</sup> The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "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 such other matters as justice may require."<sup>10</sup> In this case, taking all of these factors into consideration, we find that the *NAL* properly proposed that the base forfeiture amount is the appropriate sanction for the violation described above. Consequently, Mr. Kaminski is liable for a forfeiture of Four Thousand Dollars (\$4,000.00).

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. §§ 0.111, 0.311 and 1.80, Donald W. Kaminski, Jr. FORFEIT to the United States the sum of Four Thousand Dollars (\$4,000.00) for willfully violating 47 C.F.R. § 73.1015.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, within thirty (30) days of the release of this Forfeiture Order. See 47 C.F.R. § 1.80(h). The payment MUST INCLUDE the FCC Registration Number (FRN) (0010014504), and also should note the *NAL/Acct. No.* (200132080012). If the forfeiture is not paid within that time, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504(a).

9. IT IS FURTHER ORDERED that a copy of this Forfeiture Order SHALL BE SENT, by Certified Mail Return Receipt Requested, to Mr. Donald W. Kaminski, Jr. at his address of record, P.O. Box 1669, Tonopah, Nevada 89049.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>9</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), recon. denied 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

<sup>10</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27.