

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

In the matter of
Gabriel Dorcely
833 Midland Court
Orange Park, Florida 32065
File Number EB-02-TP-393
NAL/Acct. No. 200332700009
FRN 0004931531

FORFEITURE ORDER

Adopted: May 6, 2004

Released: May 10, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order") we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Mr. Gabriel Dorcely ("Mr. Dorcely") for willful violation of Section 301 of the Communications Act of 1934, as amended ("Act").

2. On December 2, 2002, the Commission's Tampa, Florida Field Office ("Tampa Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Mr. Dorcely for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

3. On August 6, 2002, in connection with an investigation of unlicensed FM broadcast stations in Jacksonville, Florida, agents from the Commission's Tampa, Florida Field Office ("Tampa Office") observed unidentified FM radio broadcasts on the frequency 103.9 MHz.

1 47 U.S.C. § 301.

2 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332700009 (Enf. Bur., Tampa Office, released December 2, 2002).

3 Under Section 15.239 of the Commission's Rules, 47 C.F.R. § 15.239, the use of an intentional radiator in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 microvolts/meter at three meters.

Jacksonville, Florida.

4. Also on August 6, 2002, the agents interviewed the building's lessor, who stated that the lessee of Suite 1702 was Gabriel Dorcely. The agents then went to Suite 1702 and with Mr. Dorcely's permission and in his presence, inspected the radio studio and found an FM broadcast transmitter in operation. Mr. Dorcely admitted he was the person operating the station. The agents also found various associated audio and studio equipment which Mr. Dorcely admitted owning and operating. On the same day as the investigation, one of the agents issued a Warning of Unlicensed Radio Operation to Mr. Dorcely ordering him to cease operation immediately.

5. Thereafter, on August 15, 2002, Mr. Dorcely phoned the Tampa Field Office and spoke with the agent who issued the Warning Letter. Mr. Dorcely stated that he had filed an application for a low power FM (LPFM) broadcast station and that the Commission had assigned a FRN number to him. Mr. Dorcely stated that he assumed the FCC would send him something in response to his application and claimed that he was just testing the station. In an e-mail to one of the agents, Mr. Dorcely "acknowledged the need to have a proper license." Since there currently was no filing window for applying for LPFM stations, Mr. Dorcely indicated he would wait until there was one.

6. On December 2, 2002, the Tampa Office issued a *NAL* for a \$10,000 forfeiture to Mr. Gabriel Dorcely for operating a radio station without Commission authorization in willful violation of Section 301 of the Act. In his January 14, 2003, response, Mr. Dorcely requests the Commission take into account the equity factors in his operation such as the circumstances, the nature and history of prior offenses, his degree of culpability as well as his inability to pay. He submitted no documentation substantiating an inability to pay.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) "Policy Statement"). In examining Mr. Dorcely's 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.⁵

8. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁶ Section 15.239 of the Commission Rules permits certain unlicensed low powered radio operation, but Mr. Dorcely's operation greatly exceeds the permissible power levels. Accordingly, a license was needed for the station's operation. Based on Mr. Dorcely's admissions and the agents' observations during the inspection, we conclude that Mr. Dorcely willfully violated Section 301 of the Act.⁷

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 503(B)(2)(D).

⁶ 47 U.S.C. § 301.

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

9. Mr. Dorcely claims a history of overall compliance with the Commission's Rules. However, in light of the fact that Mr. Dorcely is not a Commission licensee, we do not believe he has any history with the Commission upon which a history of overall compliance cancellation can be based.⁸

10. Mr. Dorcely's request for reduction of the forfeiture was not accompanied by his tax returns from 1999 through 2001, or any other documentation as set forth in paragraph 10 of the *NAL*. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Accordingly, there is no basis to cancel the assessed forfeiture amount due to inability to pay.

11. Finally, Mr. Dorcely requested that we consider the circumstances, degree of culpability and the nature of the violation. After careful and complete review of those factors, the dispositive fact is that the record evidence shows Mr. Dorcely knew that a license was required for an LPFM station prior to the date FCC agents first observed him transmitting on 103.9 FM without a license. He knew he had not received one. He chose to operate without a license. We reject his argument that he was simply testing the equipment. Accordingly, based on the above cited circumstances, we reject his request for mitigation.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Mr. Gabriel Dorcely **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act.

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.¹⁰ 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 reference *NAL/Acct. No. 200332700009* and *FRN 0004931531*. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail return receipt to Mr. Gabriel Dorcely, 752 Blanding blvd., #116, Orange Park, FL 32073.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ See *Odino Joseph*, 18 FCC Rcd 16522, 16524 (Enf. Bur. 2003).

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

¹⁰ 47 U.S.C. § 504(a).