

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

In the Matter of)	
)	File No.: EB-98-HU-147
Leonard D. Martin)	
)	NAL/Acct. No.: X3254-003
Houston, TX)	

FORFEITURE ORDER

Adopted: July 11, 2000

Released: July 12, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we set aside the previously issued *Forfeiture Order* in this matter,¹ and we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) against Leonard D. Martin for willfully and repeatedly violating Sections 301 and 303(n) of the Communications Act of 1934, as amended (“the Act”).² The noted violations involve Mr. Martin’s operation of a two-way radio station without Commission authorization and his refusal to allow inspections of his radio installation.

2. On March 3, 2000, the Houston Resident Agent Office (“Houston Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seventeen thousand dollars (\$17,000) to Mr. Martin for the referenced violations.³ On June 26, 2000, the Enforcement Bureau (“Bureau”) adopted a *Forfeiture Order* assessing a forfeiture of \$17,000 against Mr. Martin based, in part, on Mr. Martin’s failure to file a response to the NAL. Unbeknownst to the Bureau, Mr. Martin had, in fact, filed a response to the NAL with the Commission on April 6, 2000. However, Mr. Martin’s response was misrouted and the Bureau did not become aware of it until June 27, 2000. Because Mr. Martin actually did respond to the NAL, we will set aside the *Forfeiture Order* adopted on June 26, 2000, pursuant to Section 1.113(b) of the Commission’s Rules (“Rules”),⁴ and consider his response to the NAL in this Order.

II. BACKGROUND

3. Mr. Martin is the former licensee of amateur station KC5WHN. By letter of November 3, 1998, the Commission notified Mr. Martin of complaints concerning a station identifying as KC5WHN. The complaints asserted that the station identifying as KC5WHN was operating on frequencies which were not authorized for that station. In his telephone response to that letter, Mr. Martin denied the alleged unauthorized operation.

¹ *Forfeiture Order*, DA 00-1428 (Enf. Bur., released June 27, 2000).

² 47 U.S.C. §§ 301 and 303(n).

³ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. X3254-003 (Enf. Bur., Houston Office, released March 3, 2000).

⁴ 47 C.F.R. § 1.113(b).

4. On February 27, 1999, an agent from the Houston Office, using a mobile automatic direction finding ("MADF") vehicle, observed voice radio transmissions on frequencies 27.535 and 27.545 MHz. Frequency 27.535 MHz is allocated exclusively to Industrial radio stations. Frequency 27.545 MHz is allocated exclusively to United States Government radio stations. The transmissions were unidentified, but the operator responded to the name "Leonard." Using the MADF vehicle, the agent determined that the source of the transmissions was an antenna mounted on the residence at 4415 Spellman, Houston, Texas, which was then the address of record for Mr. Martin's amateur service license. There was no record of a Commission authorization permitting Mr. Martin to operate on 27.535 MHz or 27.545 MHz.

5. On March 15, 1999, an agent from the Houston Office, using a MADF vehicle, observed voice radio transmissions on 27.370 MHz, a frequency allocated as a "guard" frequency between authorized channels in the Citizens Band Radio Service. The operator identified himself as "Leonard." Using the MADF vehicle, the agent determined that the source of the transmissions was a vertical antenna mounted on the residence at 4415 Spellman, Houston, Texas. Immediately after his monitoring observations, the agent knocked on the door of the residence. Mr. Martin answered the door and refused the agent's request to inspect the radio station located in the residence. The agent informed Mr. Martin that his previously observed operation on 27.535 and 27.545 MHz was unlicensed and in violation of Section 301 of the Act because Mr. Martin held no Commission authorization to operate on those frequencies. The agent also informed Mr. Martin that his refusal to allow an inspection constituted violation of Section 303(n) of the Act.

6. On April 2, 1999, the Houston Office issued Mr. Martin an Official Notice of Violation ("NOV") for violations of Sections 301 and 303(n) of the Act. In Mr. Martin's April 7, 1999, response to the NOV, he stated: "I now fully understand that operation on the frequencies outlined is a violation ... that the FCC has the authority to inspect all radio installations... [and] ... I promise no further action by the Commission will be necessary to insure my complete compliance with the FCC Rules...."

7. On July 22, 1999, Mr. Martin submitted his amateur service license for KC5WHN to the Commission for cancellation. By letter of July 23, 1999, the Commission acknowledged receipt of the license, and confirmed that it was cancelled effective July 23, 1999. The letter also warned Mr. Martin that any unlicensed radio operation would constitute violation of Section 301 of the Act.

8. On October 19, 1999, an agent from the Houston Office investigated an interference complaint against Mr. Martin. The agent, using a MADF vehicle, observed voice radio transmissions on frequency 27.535 MHz, and determined that the source of those transmissions was a vertical antenna mounted on Mr. Martin's residence, at 4415 Spellman, Houston, Texas. This frequency is allocated exclusively to licensed Industrial radio stations. There was no record of a Commission authorization permitting Mr. Martin to operate on 27.535 MHz.

9. On October 26, 1999, an agent from the Houston Office, using a MADF vehicle, observed voice radio transmissions on 27.455 MHz, a frequency allocated exclusively to Industrial radio stations. Using the MADF vehicle, the agent determined that the source of those transmissions was a vertical antenna mounted on Mr. Martin's residence, at 4415 Spellman, Houston, Texas. There was no record of a Commission authorization permitting Mr. Martin to operate on 27.455 MHz. Immediately after the monitoring, the agent knocked on the door of the residence and requested permission to inspect the station located there. Mr. Martin, who answered the door, refused to allow an inspection.

10. Based on the above, on March 3, 2000, the Houston Office issued a NAL in the amount of seventeen thousand dollars (\$17,000) to Mr. Martin for violations of Sections 301 and 303(n) of the Act.

11. In his response to the NAL, Mr. Martin does not deny that he committed the referenced violations. Instead, he requests cancellation of the forfeiture proposed by the NAL. Mr. Martin contends that he is unable pay a \$17,000 forfeiture. As support for this claim, he submits copies of his 1996, 1997,

and 1998 federal income tax returns. In addition, Mr. Martin states that he is “prepared to take all steps in good faith to insure further actions by the Commission . . . will not be necessary.” Specifically, Mr. Martin states that he agrees to: permanently dismantle and sell or donate all of his radio transmitting equipment and antenna and provide proof of such to the Commission; forfeit all proceeds of such sales to the Commission or to a charitable organization of his choice, as determined most appropriate by the Commission; and permit an authorized Commission agent to inspect his residence to ensure all equipment has been removed.

III. DISCUSSION

12. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,⁵ Section 1.80 of the Rules,⁶ 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*”). Section 503(b) of the Act requires that, in examining Mr. Martin’s 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, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

13. 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.” Section 303(n) of the Act authorizes the Commission “to inspect all radio installations required to be licensed . . .”

14. Mr. Martin does not deny the violations alleged in the NAL. In view of the facts set forth above, we conclude that Mr. Martin operated without authorization on frequencies 27.535 and 27.545 MHz on February 27, 1999, 27.535 MHz on October 19, 1999, and 27.455 MHz on October 26, 1999, in willful and repeated violation of Section 301 of the Act. Additionally, we find that, on March 15 and October 26, 1999, Mr. Martin refused to make his radio installation available for inspection, in willful and repeated violation of Section 303(n) of the Act.

15. In view of his past history, we can not rely on Mr. Martin’s promises of remedial action. Mr. Martin’s most recent violations occurred despite three written warnings and at least one verbal warning from the Commission, and despite Mr. Martin’s promise, in his response to the NOV, that he would comply with the Commission’s Rules.⁸ In any event, as the Commission has stated previously, subsequent remedial action will not nullify a forfeiture penalty. *See KGVH, Inc.*, 42 FCC 2d 258, 259 (1973).

16. We have examined Mr. Martin’s response to the NAL in light of the above statutory factors and the factors set forth in the *Policy Statement*. Taking all of these factors into account, including Mr. Martin’s limited ability to pay the full amount as demonstrated in his returns, the serious nature of his violations and the continuation of his violations after warnings and promises of compliance, we conclude that cancellation of the proposed forfeiture is not justified and that the proper forfeiture amount is \$4,000.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *See* para. 6 *infra*.

IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.113(b) of the Rules, the *Forfeiture Order* (DA 00-1428) released June 26, 2000, **IS SET ASIDE**.

18. **IT IS FURTHER 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 Leonard D. Martin, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willful and repeated violation of the provisions of Sections 301 and 303(n) of the Act.

19. 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 credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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 "NAL/Acct. No. X3254-003" 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. 20554.¹¹

20. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail -- Return Receipt Requested, to Mr. Leonard D. Martin at 4415 Spellman, Houston, Texas 77035.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.