

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

In the Matter of)	
)	
Odino Joseph)	File No. EB-02-TP-300
c/o Noah's Ark Baptist Church)	NAL/Acct. No. 200232700020
576 11 th Street North)	FRN 0007-3087-3
Naples, Florida 34102)	

FORFEITURE ORDER

Adopted: August 14, 2003

Released: August 18, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”) we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Mr. Odino Joseph (“Mr. Joseph”) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violation involves Mr. Joseph’s operation of a radio station without Commission authorization.

2. On August 5, 2002, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Joseph for a forfeiture in the amount of ten thousand dollars (\$10,000).² Mr. Joseph filed a response to the *NAL* on September 24, 2002.

II. BACKGROUND

3. On April 22, 2002, the Tampa Office received a complaint from a Naples, Florida broadcaster regarding an unlicensed FM radio station operating on 104.3 MHz in the Naples area. On May 14, 2002, two agents from the Tampa Office drove to the Naples, Florida area to investigate the complaint of unlicensed operation on 104.3 MHz. As the agents approached the Naples area they detected an FM radio station on 104.3 MHz. Using electronic direction finding techniques, the agents positively identified the source of the transmissions to be an antenna mounted on a tower attached to the back of Suite #530 in a strip mall located at 11th Street North, Naples, Florida. The agents determined that the station exceeded the permissible level for a non-licensed low-power radio transmitter by 31,953 times. Accordingly, a license was required for operation of this station. FCC records show no license has been issued for the operation of an FM broadcast station at this location. Thus, the station operated in violation of 47 U.S.C. § 301. The agents approached Suite #530 and interviewed a man near the suite. This man stated that he subleased Suite #530 along with a “Pastor Odino” but that it was “Pastor Odino” who operated the radio station. This man identified to the agents the location of the radio station behind locked doors inside Suite #530. Inside Suite #530, the agents found a handwritten note with the words “Pastor Odino” and a telephone number. The agents observed a van parked in front of the strip mall. On the van were signs

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700020 (Enf. Bur., Tampa Office, released August 5, 2002).

with the words “Noah’s Ark Baptist Church” along with an address that identified the location of the church as another suite in the same strip mall. The signs also listed a telephone number and the name “Pastor Odino Joseph” as the church’s pastor. The agents contacted Pastor Odino Joseph at the phone number found during the investigation. During this call, Mr. Joseph admitted to the operation of the unlicensed radio station on 104.3 MHz and promised to cease operation until a license could be obtained.

4. On August 5, 2002, the Tampa Office issued an *NAL* for a \$10,000 forfeiture to Mr. Joseph for operating a radio station without Commission authorization in willful violation of Section 301 of the Act. Mr. Joseph filed a response to the *NAL* on September 24, 2002. In his response, Mr. Joseph admits that he operated radio transmitting equipment, but requests cancellation or reduction of the forfeiture amount. Mr. Joseph asserts that although the violation was willful, it was not intentional. Mr. Joseph argues that the facts of this case do not warrant an upward adjustment of the forfeiture amount.³ Further, Mr. Joseph contends that all of the downward adjustment criteria are applicable.⁴

5. In support of his argument regarding the downward adjustment criteria, Mr. Joseph indicates that his violation is minor. Mr. Joseph states that the second criterion, good faith or voluntary disclosure, is also applicable because he did not attempt to conceal the origin of his broadcast or evade detection. Mr. Joseph also maintains that the signal strength of his transmissions was greater than he intended, which was only to reach within a couple of miles from his church. Mr. Joseph adds that he cooperated with the Commission’s agents and terminated all transmissions upon request. In addition, Mr. Joseph argues that he has a history of overall compliance. Finally, Mr. Joseph asserts that payment of the proposed \$10,000 forfeiture would impose a financial hardship on him and submits financial information for 1999, 2000, and 2001 in support of this assertion.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Commission’s Rules (“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*”). In examining Mr. Joseph’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.⁷

7. Mr. Joseph acknowledges in his response to the *NAL* that he operated radio transmitting equipment without a license. Accordingly, we conclude that Mr. Joseph willfully violated Section 301 of the Act and a forfeiture amount of \$10,000 was properly assessed. The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.⁸ Rather, the term “willful” simply requires that the violator

³ See 47 C.F.R. § 1.80(b)(4) Note to Paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (egregious misconduct; ability to pay/relative disincentive; intentional violation; substantial harm; prior violations of any FCC requirements; substantial economic gain; and repeated or continuous violation).

⁴ See 47 C.F.R. § 1.80(b)(4) Note to Paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (minor violation; good faith or voluntary disclosure; history of overall compliance; and inability to pay).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 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

(continued...)

knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.⁹ Moreover, the *NAL* in this case proposed the base forfeiture amount of \$10,000 for the violation¹⁰ and did not apply any of the upward adjustment criteria. Thus, Mr. Joseph's arguments that the upward adjustment criteria are inapplicable are irrelevant.

8. Mr. Joseph's claim that the violation was minor is not supported by the facts. Specifically, we do not believe that a non-licensed FM operation that exceeds the level for permissible non-licensed low power operation by more than 31,953 times is a minor violation. Moreover, we are not persuaded that a reduction on the basis of good faith or voluntary disclosure is warranted in this case. There is no evidence that Mr. Joseph made any efforts to correct or voluntarily disclose the violation prior to our investigation of this matter.¹¹ Also, Mr. Joseph purports to have a history of overall compliance with the Commission's Rules to support his claim for reduction of the forfeiture. However, in light of the fact that Mr. Joseph is not a Commission licensee, we do not believe he has any history with the Commission upon which a history of overall compliance reduction can be based. Furthermore, although Mr. Joseph has terminated all transmissions, remedial action taken to correct a violation is not a mitigating factor.¹² Finally, based on the financial documentation provided by Mr. Joseph, we conclude that payment of the proposed \$10,000 would impose a financial hardship on Mr. Joseph. Therefore, we will reduce the forfeiture from \$10,000 to \$1,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Mr. Odino Joseph **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for willful violation of Section 301 of the Act.

10. 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.¹⁴ 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. 200232700020 and FRN 0007-3087-3. 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. 20554.¹⁵

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and

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regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ See, e.g., *Radio One Licenses, Inc.*, FCC 03-101 (released July 22, 2003).

¹² See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

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

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.

certified mail return receipt requested to Mr. Odino Joseph, 576 11th Street North, Naples, Florida 34102, and to his counsel, Marc L. Shapiro, Esq., 720 Goodlette Road North, Suite 304, Naples, Florida 34102.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau