

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

In the Matter of)	
)	
Alexandre Pierre Abelard)	File No. EB-03-TP-092
AKA Abelard Pierre)	
7961 Gladiolus Dr., Apt. 304)	NAL/Acct. No. 200332700025
Fort Myers, FL 33908)	
)	FRN 0008948150

FORFEITURE ORDER

Adopted: September 29, 2004

Released: October 1, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seventeen thousand dollars (\$17,000) to Alexandre Pierre Abelard, aka Abelard Pierre, for willful violation of Sections 301 and 303(n) of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve his operation of a radio station without Commission authorization and refusal to allow a Commission inspection of his transmitting apparatus.

2. On May 20, 2003, the FCC’s Tampa, Florida Field Office (“*Tampa Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Alexandre Pierre Abelard proposing a forfeiture in the amount of seventeen thousand dollars (\$17,000).² Mr. Pierre responded to the *NAL* on June 5, 2003.

II. BACKGROUND

3. On March 3, 2003, the FCC’s Tampa Field Office (“*Tampa Office*”) received a complaint from the Federal Aviation Administration that an unlicensed radio station operating on 103.3 MHz in Fort Myers, Florida was causing interference to aircraft communications on 119.000 MHz. Commission records showed no license issued for a station on that frequency in the Fort Myers area. Using direction-finding techniques on March 4, 2003, the agents determined the source of the signal on 103.3 MHz to be a one-story strip business building at 2217 Fowler Street, Fort Myers, Florida. The agents also observed a spurious radio emission on the aviation frequency 119.000 MHz emanating from the same location. The agents took field strength measurements of the station’s signal and determined that the station’s field strength was 2,367 times greater than the permissible level for unlicensed low power FM operation³.

¹47 U.S.C. §§ 301, 303(n).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700025 (Enf. Bur., Tampa Office, released May 20, 2003).

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.

Thus, the station required a license to operate.

4. The agents approached the building and knocked on the door of 2217 Fowler Street. No one responded to the door and no lights were on inside, but several minutes later an adult male drove up and parked directly in front of 2217 Fowler Street. The agents interviewed the man and he identified himself with a driver's license as Alexandre Pierre Abelard ("Mr. Pierre") of 7961 Gladiolus Drive, Apt. 304, Fort Myers, Florida.

5. Mr. Pierre stated that he was the lessee of Suite 2217. The agents told Mr. Pierre about the radio signals and the license requirement, and requested to inspect the transmitter. Mr. Pierre declined to allow the inspection, stating that he was not the operator of the station. He stated that he was sub-leasing a back room of the suite to a friend and that only the friend had a key to the door of the back room where the transmitter was located, but that he would turn off the power to the room from his front office. The agents repeated their request to inspect the room containing the transmitter, explaining the Commission's legal authority to inspect radio installations and the need to inspect the station inside Mr. Pierre's suite because the station was operating illegally and causing harmful interference to aviation communications. Mr. Pierre again refused the request. Mr. Pierre then entered 2217 Fowler Street and shortly thereafter the radio signals stopped.

6. On March 5, 2003, the agents returned to 2217 Fowler Street, Ft. Myers, Florida and interviewed Mr. Pierre. Mr. Pierre stated that the transmitter had been picked up earlier that day by its owner, and showed the agents into the back room where the transmitter had been. The agents noticed that the backroom had no lock, required no key to enter and was freely accessible from Mr. Pierre's suite, contrary to his statement made the day before. Mr. Pierre claimed that he was the original owner of the transmitter, had sold it to an individual he could identify only as "Jean Louis," but could provide no evidence of the transaction, or a phone number, address or even the existence of a "Jean Louis." Mr. Pierre stated that he owns two businesses and runs "Radio Independance" on the internet at www.radioindependance.com/. That web address describes itself as the "Haitian Radio Network."

7. In his response to the NAL, Mr. Pierre claimed that he was "not operating an illegal station as stated," that the agents had the opportunity to inspect the premises and were "given the name of the owner of the device in question which did not have anything to do with me." Mr. Pierre further stated that the agent had left a non-working number for the individual to contact him. Mr. Pierre provided no information as to the identity, whereabouts or telephone number for "Jean Louis" and stated merely that he was refuting the allegations and wanted the matter "put to rest."

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission's Rules ("Rules"),⁵ 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) ("*Forfeiture Policy Statement*"). In examining Mr. Pierre'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 such other matters as justice may

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

require.⁶

9. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 15.239 of the Commission's Rules⁷ permits certain unlicensed low powered radio operation, but the operation at Mr. Pierre's location exceeded the permissible unlicensed low power limits. Section 303(n) of the Act gives the Commission the authority to inspect all radio installations associated with stations required to be licensed.

10. Mr. Pierre's response to the *NAL* is entitled to no credibility whatsoever. He stated that the room in which the transmitter was located was sub-leased to another individual and that he did not have a key to the door of the back room. In fact, the door to the back room housing the transmitter had no lock, required no key to enter and was freely accessible to Mr. Pierre. Further, Mr. Pierre stated that he would shut down the transmitter on March 4, 2003, thus showing he had control of the transmitter. Mr. Abelard refused to allow an inspection of his station and later claimed that he had sold the transmitter to an individual he could identify only as "Jean Louis," but could provide no evidence of the transaction or a phone number, address or even the existence of a "Jean Louis." Mr. Pierre's response to the *NAL* was equally devoid of any identifying information regarding the purported "Jean Louis."

11. We find that Mr. Pierre willfully⁸ violated Sections 301 and 303(n) of the Act on May 4, 2003 by operating radio transmitting equipment without authorization from the Commission and refusing to allow an inspection of the operating transmitter. Mr. Pierre has submitted nothing warranting mitigation of the forfeiture amount and we find no basis for cancellation or reduction of the \$17,000 forfeiture proposed for these violations.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,⁹ Alexandre Pierre Abelard aka Abelard Pierre **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for willfully violating Sections 301 and 303(n) 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 credit card through the Commission's Credit and Debt Management

⁶47 U.S.C. § 503(b)(2)(D).

⁷ See footnote 3, *supra*.

⁸Section 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).

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

¹⁰ 47 U.S.C. § 504(a).

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. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8TH Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. 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

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Alexander Abelard Pierre aka Abelard Pierre, 7961 Gladiolus Drive, Apt. 304, Fort Myers, FL 33908.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹¹See 47 C.F.R. § 1.1914.