

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

In the matter of)	
)	
Everald Oliver Brown)	File No.: EB-02-TP-575
2409 North Hastings Street)	NAL/Acct. No. 200332700018
)	FRN 0007-9511-06
Orlando, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2004

Released: November 5, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny an August 29, 2003 petition for reconsideration (“petition”) filed by Everald Brown, who seeks reconsideration of a July 22, 2003 *Forfeiture Order*,¹ in which the Enforcement Bureau imposed a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves Mr. Brown’s operation of an FM broadcast station on the frequency 95.9 MHz without Commission authorization.

II. BACKGROUND

2. On October 30, 2002, two agents from the Commission’s Tampa, Florida Field Office (“Tampa Office”) working in the Orlando, Florida, area observed an FM radio station operating on 95.9 MHz. The voice broadcasting on the radio station identified the station only as “95.9.” Commission databases showed no record of a broadcast station licensed for 95.9 MHz in the Orlando area. Using direction-finding equipment and techniques, the agents determined where the station was operating. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.³ The Commission’s records showed that no license had been issued for this operation.

3. Still on October 30, 2002, the Tampa Office agents inspected the station broadcasting on 95.9 MHz at the determined location, the Rum Runner Caribbean Restaurant and Lounge. The manager of the restaurant led the agents to a room containing the radio station. A man at the controls of the radio station was introduced as Everald Oliver Brown, the “DJ” of the station. The agents recognized Mr. Brown’s voice as the one they had heard broadcasting on 95.9 MHz earlier in the day. The manager stated that the radio station had been operating at the restaurant for about two weeks. After being warned by the agents about the unlicensed operation, Mr. Brown turned off the transmitter.

¹ *Everald Oliver Brown*, 18 FCC Rcd 15188 (Enf. Bur. 2003) (“*Forfeiture Order*”).

² 47 U.S.C. § 301.

³ Section 15.239(b) of the Commission’s Rules, 47 C.F.R. § 15.239(b), provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 10,462 times.

4. On March 31, 2003, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Mr. Brown in the amount of ten thousand dollars (\$10,000) for apparent willful violation of Section 301 of the Act.⁴ Mr. Brown did not file a response to the NAL, and on July 22, 2003, the Bureau issued the subject *Forfeiture Order* finding Mr. Brown liable for a \$10,000 monetary forfeiture for willful violation of Section 301 of the Act.⁵

5. In his petition, Mr. Brown states that he did not respond to the NAL because he thought it was only a warning letter. Mr. Brown asserts that he “had no knowledge of the FCC’s rules and regulations nor that [his broadcasting] was unlawful.” He also claimed that he was not the owner or operator of that station; that he had been told that the license was being applied for by others; that he has since registered with the American Radio Network (“ARN”) to go through the legal steps to become a radio broadcaster; and lastly, that he will send the Commission a copy of his credit report which would show his inability to pay the proposed forfeiture. To date, the Commission has not received a copy of Mr. Brown’s credit report.

III. DISCUSSION

6. The forfeiture amount in this case has been assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,⁸ (“Policy Statement”). Section 503(b) of the Act requires that the Commission, in examining Mr. Brown’s petition 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 require.⁹

7. Section 301 of the Act prohibits unauthorized radio operation: “No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”¹⁰ Mr. Brown’s claim that he did not know the station was operating illegally, and his subsequent registration with the ARN does not negate the willfulness of the violation.¹¹ Moreover, Mr. Brown’s claim that he is not responsible for the illegal operation of the station because he was not “the owner and operator” of that station is without merit. Regardless of whether Mr. Brown is the station’s “owner,” it is undisputed that, at the time of the inspection, he was the station’s *actual* operator and was in charge of the station. Mr. Brown, therefore, was responsible for the station’s operation in violation of

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200334700018 (Enf. Bur., Tampa Office, released March 31, 2003).

⁵ *Forfeiture Order* at 15188.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 U.S.C. § 301.

¹¹ 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), *recon. denied*, 7 FCC Rcd 3454 (1992).

Section 301 of the Act at the time of the inspection.¹² Similarly, Mr. Brown's claim that the agent had stated he, the agent, was issuing only a warning is not exculpatory.¹³ Based on Mr. Brown's admissions with respect to operating the station and the agents' observations during the inspection, we conclude that Mr. Brown willfully violated Section 301 of the Act.

8. Finally, Mr. Brown contends that he cannot pay the proposed forfeiture amount but has submitted no financial documentation to support this claim. As stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture on the basis of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.¹⁴

9. We have examined Mr. Brown's petition pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mr. Brown willfully violated Section 301 of the Act and find no basis for cancellation or reduction of the \$10,000 monetary forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁵ and Section 1.106 of the Rules,¹⁶ Mr. Brown's petition for reconsideration of the July 22, 2003, *Forfeiture Order* is **DENIED**.

11. 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.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, 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, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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. 20554.¹⁸

¹² See *Jhony Desinor*, 19 FCC Rcd 14137 (Enf. Bur. 2004) (finding an individual similarly liable for unauthorized radio operation).

¹³ Mr. Brown's claim that the agent stated he was issuing only a warning is not corroborated by the agent; regardless, the dispositive facts are that Mr. Brown violated Section 301 of the Act, and thus a sanction is appropriate

¹⁴ *NAL* at ¶ 11.

¹⁵ 47 U.S.C. § 405.

¹⁶ 47 C.F.R. § 1.106.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to Mr. Everal Oliver Brown, 2409 North Hastings Street, Orlando, Florida 32808-4320.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau