

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

In the Matter of)	
)	
Josue Alusma)	File No.: EB-02-TP-260
Naples, Florida)	NAL/Acct. No. 200232700022
)	FRN 0007-4959-97

MEMORANDUM OPINION AND ORDER

Adopted: February 23, 2004

Released: February 26, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the Petition for Reconsideration filed on February 20, 2003 by Josue Alusma (“Mr. Alusma”). Mr. Alusma seeks reconsideration of a *Forfeiture Order*,¹ in which the Chief, Enforcement Bureau, issued a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves Mr. Alusma’s operation of a radio station on the frequency of 100.5 MHz without Commission authorization. For the reasons discussed below, we reduce the forfeiture amount to five hundred dollars (\$500).

II. BACKGROUND

2. On April 20, 2002, in connection with an investigation of unlicensed FM broadcast stations in Naples, Florida, agents from the Commission’s Tampa, Florida Field Office (“Tampa Office”) observed FM radio broadcasts on the frequency 100.5 MHz. Commission records showed no authorization for this operation in Naples, Florida. 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 an automobile repair shop building at 3639 Bayshore Dr., Naples, Florida. Based on field strength measurements taken by the agents of the station’s signal, this station required a license to operate.

3. Immediately thereafter, still on April 20, 2002, the agents interviewed the lessee of the entire property who stated that part of the second floor was sub-leased to another person. In a subsequent interview, the lessee identified the sub-lessee as Mr. Alusma and Mireille Alusma of Naples, Florida, and also identified Mr. Alusma as the sub-lessee based on a comparison with the picture on a copy of Mr. Alusma’s driver’s license. The agents then went to the second floor space that was sub-leased to Mr. Alusma to attempt an inspection of the radio station. The agents saw a man leaving the vicinity of the sub-leased space whom they later identified to be Mr. Alusma based on a comparison with the picture on a copy of Mr. Alusma’s driver’s license. Several people were on the second floor and one of them approached the Commission agents to answer their questions. The agents inspected the radio station

¹ *Josue Alusma*, 18 FCC Rcd 1031 (Enf. Bur. 2003).

² 47 U.S.C. § 301.

located on the second floor in the sub-leased space and observed a radio transmitter, an RVR Model VJ1000, an exciter, RVR Model TEX20-NV, and other equipment associated with the station operation. The agents hand delivered a written warning to the person assisting with the inspection and to the lessee of the entire space providing notice that the station's unlicensed operation violated Section 301 of the Act and warning of the penalties for the operation of the unlicensed radio station.

4. On May 14, 2002, agents from the Tampa Office drove to the Naples area to determine whether the station on 100.5 MHz was still operating. Using electronic direction finding techniques, the agents determined that the station was broadcasting from an antenna mounted on a two-story commercial building consisting of several individually-owned suites, at 4995 Tamiami Trail East, Naples, Florida. Based on field strength measurements taken by the agents of the station's signal, this station required a license to operate. The agents traced the coaxial cable from the antenna down to Suite # 4995. The agents observed a man leaving the area whom they later identified as Mr. Alusma based on a comparison with the picture on a copy of Mr. Alusma's driver's license. No one was available in Suite # 4995 at the time. The agents located and interviewed the owner of Suite # 4995 who provided a copy of a lease identifying the lessee of Suite # 4995 as Mr. Alusma.

5. On August 6, 2002, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL")³ to Mr. Alusma in the amount of \$10,000 for operation of a radio station on the frequency of 100.5 MHz without Commission authorization in willful and repeated violation of Section 301 of the Act. Mr. Alusma did not file a response to the NAL, and on January 31, 2003 the Enforcement Bureau issued a *Forfeiture Order* to Mr. Alusma affirming the forfeiture amount. On February 20, 2003, Mr. Alusma filed a petition for reconsideration. In his petition Mr. Alusma requests cancellation of the forfeiture amount. Mr. Alusma argues that he did not violate any Commission rules regarding the radio station operated on 100.5 MHz in Naples, Florida. Mr. Alusma states that he hosted a show on this station and that the station was owned by Bishop Ardouin Joseph. Mr. Alusma contends that he had been told that "the station was perfectly legal" and that he didn't have any way in which to verify whether the station was in violation of the Commission's rules. Mr. Alusma also argues that he is unable to pay the forfeiture due to financial hardship. In support of his argument of financial hardship, Mr. Alusma includes various financial documents.

III. DISCUSSION

6. In *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, the Commission adopted guidelines for assessing base forfeiture amounts for violations of the Act and the Commission's rules, and "retain[ed] the discretion to take action in specific cases as warranted."⁴ The forfeiture guidelines establish a \$10,000 base forfeiture for operation without a license.⁵ In assessing the forfeiture, the Commission may adjust the base forfeiture by taking into account, *inter alia*, a violator's ability to pay and other such matters as justice may require.⁶ It is in this context, that we consider Mr. Alusma's petition for reconsideration.

7. Section 301 of the Act provides 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 a license. On April 20, 2002, agents from the Tampa Office observed a radio transmitter, an RVR Model VJ1000, an exciter, RVR Model TEX20-NV, and other equipment associated

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700022 (Enf. Bur., Tampa Office, released August 6, 2002).

⁴ 12 FCC Rcd 17087, 17093 ¶ 8, *recon. denied*, 15 FCC Rcd 303 (1999).

⁵ *Id.* at 17113.

⁶ *See* 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4).

with the operation of the radio station operating on 100.5 MHz. Contrary to Mr. Alusma's assertions regarding ownership of the unlicensed station, agents from the Tampa Office determined that the station was operating on April 20, 2002, from a location sub-leased by Mr. Alusma, and that Mr. Alusma assisted in the station's operation. On May 14, 2002, agents from the Tampa Office determined that the station on 100.5 MHz was operating from another location again sub-leased by Mr. Alusma, and that he again assisted in the station's operation. Commission records showed no authorization for this operation. Therefore, we conclude that operation of the station violated Section 301 of the Act, and that Mr. Alusma, as sub-lessee of the station's operating location and as a station operator, bears responsibility for the willful and repeated violation.⁷ In light of our finding that Mr. Alusma's violation was willful, his claim that he thought the station was legal does not mitigate the violation.⁸

8. We find however, that reduction of the proposed forfeiture amount to \$500 is appropriate. After considering the financial information submitted, we find that requiring Mr. Alusma to pay a \$10,000 forfeiture would impose a financial hardship and, consequently, we lower the monetary forfeiture to \$500.

IV. CONCLUSION

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act⁹ and Section 1.106 of the Rules,¹⁰ the Petition for Reconsideration of the Enforcement Bureau's *Forfeiture Order* in this proceeding **IS** hereby **GRANTED IN PART AND DENIED IN PART**.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act¹¹ and Section 1.80(f) of the Rules,¹² Mr. Josue Alusma, shall, within 30 days of the release of this *Order*, pay the amount of \$500 for violating Section 301 of the Act. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ 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 note the NAL/Acct. No. 200232700022 and FRN 0007-4959-97. Requests for full payment under an installment plan should be sent to: Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

⁷ In this context, "willful" means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate statutory or regulatory requirements. A violation is considered "repeated" if it continues for more than one day. See 47 U.S.C. § 312(f); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991).

⁸ We note additionally, that the written warning delivered by the agents from the Tampa Office to the unlicensed station on April 20, 2002, informed those associated with the station that the unlicensed operation violated Section 301 of the Act.

⁹ 47 U.S.C. § 405

¹⁰ 47 C.F.R. § 1.106.

¹¹ 47 U.S.C. § 503(b)

¹² 47 C.F.R. § 1.80(f)

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Mr. Josue Alusma at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau