

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

In the Matter of	)	
	)	
Hacienda San Eladio, Inc.	)	File Number EB-06-SJ-005
Licensee of Station WRRE	)	
P.O. Box 1460	)	NAL/Acct. No.200632680004
Las Piedras, PR 00771-1460	)	
Facility ID # 54564	)	FRN 0008032708
	)	

**FORFEITURE ORDER**

**Adopted:** September 26, 2006

**Released:** September 28, 2006

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand eight hundred dollars (\$8,800) to Hacienda San Eladio, Inc. (“Hacienda”), licensee of station WRRE in Juncos, Puerto Rico, for willful and repeated violation of Sections 73.1350(a) and 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve Hacienda’s failure to operate its station in accordance with the terms of its station authorization and its failure to maintain a complete public inspection file.

**II. BACKGROUND**

2. On February 8, 2006, agents from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) conducted an inspection of station WRRE located in Juncos, Puerto Rico. The agents found that the station’s public file did not contain any radio issues/programs lists. WRRE’s station authorization requires that the station utilize a two-tower directional array during the day and night. The agents found the station operating in non-directional mode. The station’s engineer stated that the station had been operating in omni-directional mode for more than one year. The agents found no evidence that special temporary authority had been sought or granted to authorize omni-directional operation.

3. On May 3, 2006, the Resident Agent of the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$11,000 to Hacienda.<sup>2</sup> Hacienda filed a response to the *NAL* dated June 1, 2006.

**III. DISCUSSION**

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and*

<sup>1</sup> 47 C.F.R. §§ 73.1350(a), 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632680004 (Enf. Bur., San Juan Office, released May 3, 2006).

<sup>3</sup> 47 U.S.C. § 503(b).

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*<sup>5</sup> In examining Hacienda'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.<sup>6</sup>

5. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. WRRE's station authorization requires that the station utilize a two-tower directional array during the day and night. On February 8, 2006, WRRE was operating in non-directional mode. The station's engineer stated during the inspection that station WRRE had been transmitting with a non-directional pattern for more than a year.

6. Section 73.3526(a)(2) of the Rules requires commercial broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>7</sup> Section 73.3526(e)(12) requires licensees to place in the public inspection file, for each calendar quarter, a list of the programs that have provided the station's most significant treatment of community issues during the preceding three month period.<sup>8</sup> Copies of these lists must be maintained in the file until final action has been taken on the station's next renewal application. On February 8, 2006, in response to a request to inspect the station's public file, the station could not produce any radio issues/programs lists.

7. In its response to the *NAL*, Hacienda does not deny that the violations occurred. Based on the evidence before us, we find that Hacienda willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Sections 73.1350(a) and 73.3526 of the Rules by failing to operate its station in accordance with the terms of the station authorization and failing to maintain a complete public inspection file for public inspection.

8. In its response to the *NAL*, Hacienda requests that the forfeiture be cancelled or reduced based on its efforts to comply with the Rules and its overall history of compliance with the Rules. Hacienda argues that following the inspection it promptly hired an engineer to inspect its equipment and applied for special temporary authority to operate. Hacienda also asserts that it has taken steps to ensure its public file is complete. Corrective action taken to come into compliance with the Rules and cooperation with agents is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>11</sup> However, we have reviewed Hacienda's record and conclude a reduction of the forfeiture to \$8,800 based on history of compliance is appropriate.

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<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>8</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>9</sup> 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).

<sup>10</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>11</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

9. We have examined Hacienda's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. We find no basis for cancellation of the forfeiture, but do find that reduction of the forfeiture amount from \$11,000 to \$8,800 based on Hacienda's history of compliance is appropriate.

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>12</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>13</sup> Hacienda San Eladio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,800 for violation of Sections 73.1350(a) and 73.3526 of the Rules.

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.<sup>14</sup> 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>15</sup>

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Hacienda San Eladio, Inc. at its address of record; and an additional copy to Hacienda's legal counsel, Frank R. Montero, Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> St., 11<sup>th</sup> Floor, Arlington, VA 22209.

#### FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.