

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

In the Matter of)	
)	
TERRY KEITH HAMMOND)	EB Docket No. 06-163
)	
Application for Renewal of Licensee for Station)	File No. EB-03-IH-0130
KBKH(FM), ¹ Shamrock, Texas)	File No. BRH-20050401AAA
)	Facility ID No. 81640
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 22, 2009

Released: June 22, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this *Memorandum Opinion and Order*, we dismiss the above-captioned proceeding pursuant to Section 1.92(d) of the Commission’s rules.² Based upon the evidence of his felony conviction, we conclude that Terry Keith Hammond lacks the basic requisite character qualifications to be and remain a Commission licensee, and note that such conclusion would have warranted revocation of the license for Station KBKH(FM) (the “Station”) prior to its cancellation. Our actions herein are taken pursuant to authority delegated to the Enforcement Bureau under Section 0.111(a)(17) of the Commission’s rules.³

II. BACKGROUND

2. On September 15, 2006, the Commission commenced a hearing proceeding to determine whether Mr. Hammond is qualified to be and remain a licensee, whether his license for Station KBKH(FM) should be revoked, and whether his application for renewal of the station’s license should be granted.⁴ The *Hearing Designation Order* specified numerous questions of fact and law to be determined at hearing.

3. First, the *Hearing Designation Order* found that a hearing was warranted in order to determine whether Station KBKH(FM)’s license should be revoked because Mr. Hammond’s felony

¹ As set forth herein, the Administrative Law Judge (“Presiding Judge”) dismissed Mr. Hammond’s application for the renewal of the license of Station KBKH(FM) for failure to prosecute, and the Media Bureau thereafter cancelled his authorization, deleted the station’s call letters, and ordered Mr. Hammond to cease operations. *See infra* Paragraphs 6-7.

² *See* 47 C.F.R. § 1.92(d).

³ *See* 47 C.F.R. § 0.111(a)(17).

⁴ *See Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd 10267 (2006) (“*Hearing Designation Order*” or “*HDO*”).

conviction might indicate that he lacks the basic character qualifications to be and remain a licensee.⁵ Specifically, the *Hearing Designation Order* ordered Mr. Hammond to show cause, pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended (the “Act”), why the Station’s license should not be revoked.⁶ With regard to these issues, the *Hearing Designation Order* placed the burden of proceeding with the introduction of evidence and the burden of proof on the Enforcement Bureau.⁷

4. Next, pursuant to Section 309(e) of the Act, the *Hearing Designation Order* designated Mr. Hammond’s renewal application for the Station for hearing. The *Hearing Designation Order* specified the following issues for determination: (1) whether Mr. Hammond made false certifications, misrepresentations, or otherwise demonstrated a lack of candor in applications that he filed with the Commission;⁸ (2) whether Mr. Hammond willfully and/or repeatedly violated Commission rules governing the operation, location and equipment for Station KBKH(FM);⁹ and (3) whether Mr. Hammond willfully or repeatedly failed to comply with a Commission rule requiring licensees to provide information concerning matters within the Commission’s jurisdiction.¹⁰ The *Hearing Designation Order* placed the burden of proceeding with the introduction of evidence and the burden of proof regarding these issues on Mr. Hammond.¹¹

5. Finally, the *Hearing Designation Order* provided for a determination as to whether a forfeiture should be imposed against Mr. Hammond for willfully or repeatedly failing to comply with the terms of his license for the Station and for willfully or repeatedly failing to comply with certain Commission rules.¹² Irrespective of the resolution of the issues set forth above, the *Hearing Designation Order* specified that there be a determination as to whether a forfeiture should be imposed against Mr. Hammond with respect to the apparent willful and/or repeated violations of Section 73.1015 of the Commission’s rules,¹³ in an amount not to exceed \$325,000; Sections 73.1350(a), 73.1560(b) and (d), and 73.1745(a) of the Commission’s rules,¹⁴ in an amount not to exceed \$325,000; and Section 11.35(a) of the Commission’s rules,¹⁵ in an amount not to exceed \$325,000; for any such violations that occurred or continued within the applicable statute of limitations.¹⁶

6. Pursuant to Section 1.91(c) and Section 1.221(c) of the Commission’s rules,¹⁷ the

⁵ See *id.* at 10274-275 ¶ 17.

⁶ See *id.* at 10278-79 ¶ 27.

⁷ See *id.* at 10280 ¶ 29.

⁸ See *id.* at 10279 ¶ 28(3) & (4) (internal citations omitted).

⁹ See *id.* ¶ 28(5) & (6) (internal citation omitted).

¹⁰ See *id.* ¶ 28(7).

¹¹ See *id.* at 10280 ¶ 30.

¹² See *id.* ¶ 31.

¹³ See 47 C.F.R. § 73.1015.

¹⁴ See 47 C.F.R. §§ 73.1350(a), 73.1560(b) and (d), 73.1745(a).

¹⁵ See 47 C.F.R. § 11.35(a).

¹⁶ See *HDO*, 21 FCC Rcd at 10280 ¶ 31.

¹⁷ See 47 C.F.R. §§ 1.91(c); 1.221(c).

Hearing Designation Order ordered Mr. Hammond, to file a written notice of appearance stating that he would appear on the specified hearing date and present evidence on the designated issues.¹⁸ In addition, the *Hearing Designation Order* informed Mr. Hammond that if he failed to file a written notice of appearance, the Station's renewal application would be dismissed with prejudice for failure to prosecute, his right to a hearing would be deemed waived,¹⁹ and the issues would thereafter be resolved in accordance with Section 1.92(c) of the Commission's rules.²⁰

7. The Presiding Judge determined that Mr. Hammond received a copy of the *Hearing Designation Order* but failed to file a written notice of appearance seeking to avail himself of the right to a hearing.²¹ Accordingly, the Presiding Judge concluded that Mr. Hammond waived his right to a hearing, terminated the hearing proceeding, and certified to the Commission the issues set forth in paragraph 3 above.²² Pursuant to Section 1.221(c) of the Commission's rules, the Presiding Judge also dismissed, with prejudice, the Station's renewal application for failure to prosecute.²³ The Presiding Judge did not terminate the hearing proceeding.

8. Following the dismissal of the Station's renewal application, the Media Bureau, noting that the station's license had expired, terminated Mr. Hammond's authority to operate the Station and deleted the Station's call letters.²⁴

III. DISCUSSION

A. Mr. Hammond Is Not Qualified to Be and Remain a Licensee

1. Facts

9. In connection with its investigation of a complaint alleging that the Station was not operating in accordance with its authorization, the Commission received information and documentation that Mr. Hammond had been convicted of a felony.²⁵ Specifically, on June 4, 2004, judgment on a conviction was entered against Mr. Hammond for theft of more than \$1,500 but less than \$20,000 in the

¹⁸ See *HDO*, 21 FCC Rcd at 10280-281 ¶ 35.

¹⁹ See *id.*

²⁰ See *id.*; 47 C.F.R. § 1.92(c) (providing that, whenever a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission).

²¹ See *Terry Keith Hammond*, Memorandum Opinion and Order, FCC 06M-37 (rel. Nov. 17, 2006). See also EB Exhibit 1 (affidavit of Terry Keith Hammond acknowledging receipt of the *Hearing Designation Order*).

²² See *Terry Keith Hammond*, *supra* note 26.

²³ See *id.*; 47 C.F.R. § 1.221(c) (providing that, whenever an application is designated for hearing and the applicant fails to file a written notice of appearance within the time specified, the application will be dismissed for failure to prosecute).

²⁴ See Letter from Peter H. Doyle, Chief, Audio Services Division, Media Bureau, to Terry Keith Hammond, dated January 11, 2007. Mr. Hammond filed a petition for reconsideration of the license cancellation on February 10, 2007, and supplemented that petition on June 26, 2007. The Media Bureau denied Mr. Hammond's petition for reconsideration. See *Station DKBHK(FM), Shamrock, Texas*, Letter, 22 FCC Rcd 18899 (MB Audio Div. 2007).

²⁵ See *HDO*, 21 FCC Rcd at 10268 ¶ 4 & n.8.

31st Judicial District Court of Wheeler County, Texas.²⁶ The theft occurred in 2002, prior to Mr. Hammond's acquisition of the Station, and involved Mr. Hammond altering checks written to the Station and depositing them into an account that he controlled. Mr. Hammond appealed this conviction; his appeals were denied.²⁷ Mr. Hammond was incarcerated but has since been released.²⁸

10. In addition to his theft conviction, there are other instances in which Mr. Hammond has demonstrated a propensity to ignore or evade lawful requirements prescribed by statute and Commission rules. The Commission's records reveal that Mr. Hammond engaged in multiple instances of unauthorized operation of unlicensed radio broadcast stations in California, Louisiana, and Texas prior to his acquisition of the Station. The Commission issued warning letters to Mr. Hammond concerning such unlicensed operations on March 11 and July 14, 1999²⁹ and at least one citation for the unlicensed operation of a radio station.³⁰ In addition, the *Hearing Designation Order* set forth numerous instances in which Mr. Hammond apparently violated the Commission's rules.³¹

2. Discussion

11. Section 312(a)(2) of the Act provides that the Commission may revoke any license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."³² The character of the licensee or applicant is among the factors that the Commission considers in determining whether the applicant has the requisite qualifications to operate the station for which authority is sought.³³ The Commission's character

²⁶ See *State of Texas v. Terry Keith Hammond*, Judgment of Conviction by Jury, Case No. 4010 (31st Jud. Dist. Wheeler County Ct., June 4, 2004). Mr. Hammond initially was sentenced to two years confinement in the State Jail Division, which was suspended with the requirement that Mr. Hammond be placed on community supervision for five years. On July 12, 2004, the trial court found that Mr. Hammond had violated the terms of the supervision and it was revoked.

²⁷ The 7th Court of Appeals, which reviewed the trial court's judgment, ruled that it did not have jurisdiction to consider Mr. Hammond's appeal of the felony conviction because it was not timely filed. See *Terry Keith Hammond v. State of Texas*, No. 07-04-0430-CR (7th Ct. App. Tex. Dec. 14, 2005). In addition, the Texas Court of Criminal Appeals denied Hammond's Petition for Discretionary Review of the ruling of the 7th Court of Appeals. See *Terry Keith Hammond v. State of Texas*, No. PD-0313-06 (Texas Ct. Crim. Appeals Mar. 1, 2006).

²⁸ On April 17, 2006, the 7th Court of Appeals issued its mandate ordering that Hammond's sentence be carried out, and Mr. Hammond was incarcerated in accordance with that order. Thereafter, on February 28, 2007, Mr. Hammond's application for a writ of *habeas corpus* was granted upon a finding that Mr. Hammond received ineffective assistance of counsel, and the 7th Court of Appeals remanded the case to the trial court for resentencing, but did not otherwise vacate or overturn his conviction. See *Ex Parte Terry Keith Hammond*, Cause No. 4010-A (7th Ct. App. Tex. Feb. 28, 2007) (unpublished). The trial court reportedly reduced Mr. Hammond's sentence to time served and placed him on probation for two years.

²⁹ Letter from Thomas Horan, Agent, Compliance and Information Bureau, San Francisco Office, to Lick 106.7/Keith Hammond, dated March 11, 1999 (Mr. Hammond refused to sign for this letter or acknowledge it); Letter from Stephen P. Lee, Agent, Compliance and Information Bureau, South Central Region, New Orleans, LA, to Terry Keith Hammond, dated July 14, 1999 (Mr. Hammond signed to acknowledge that he received this letter).

³⁰ Notice of Unlicensed Radio Operation, 99OR250, July 28, 1999.

³¹ See *HDO*, 21 FCC Rcd at 10279 ¶ 28.

³² 47 U.S.C. § 312(a)(2).

³³ See 47 U.S.C. § 308(b).

assessments focus on misconduct that demonstrates the licensee's or applicant's proclivity to deal truthfully with the Commission and to comply with its rules or policies.³⁴ The Commission considers "evidence of any conviction for misconduct constituting a felony" relevant.³⁵ The Commission believes that "[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and to conform to provisions of both the Act and the agency's rules and policies.³⁶

12. In this case, Mr. Hammond has been convicted of a felony.³⁷ We find that this criminal misconduct justifies a finding that Mr. Hammond has demonstrated his propensity to evade, rather than comply with laws and regulations that would include the Communications Act and the Commission's rules and policies.³⁸ Our finding in this regard is reinforced by the additional instances in which Mr. Hammond was warned or cited for unauthorized and unlicensed operation of broadcast stations prior to his acquisition of the Station. For these reasons, we find that Mr. Hammond does not possess the character qualifications required by this Commission to be or remain a licensee.

3. License Revocation

13. The Commission's character policies provide that any felony conviction is a matter predictive of licensee behavior and is directly relevant to the functioning of the Commission's regulatory mission.³⁹ The serious conviction described above mandates the conclusion that Mr. Hammond does not possess the requisite qualifications to be or remain a licensee. Based on the foregoing, we conclude, as a matter of law, that revocation of Mr. Hammond's license for the Station is mandated but for the prior dismissal of Mr. Hammond's application for the renewal of the Station's license and the subsequent termination of his authority to operate the Station. In light of our decision dismissing the above-captioned hearing proceeding, the cancellation of Mr. Hammond's license for Station KBKH(FM), and our finding that Mr. Hammond is not qualified to be and remain a licensee, we do not impose a forfeiture. We believe that these actions are a sufficient sanction in this context.⁴⁰

³⁴ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1196-98 ¶ 37 (1986), *recons. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987) ("Character Policy Statement"). See also *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 ¶ 5 (1990), *recons. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992) ("1990 Character Order"). See, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (upheld as rational Commission policy to consider any felony conviction of broadcast licensee's or applicant's principal as a relevant factor in evaluating propensity to obey the law) *cert. denied*, 532 U.S. 920 (2001)

³⁵ *1990 Character Order*, 5 FCC Rcd at 3252 ¶ 4.

³⁶ See *id.*

³⁷ See Paragraph 8, *supra*.

³⁸ See, e.g., *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14442 ¶ 11 (1998), *recons. denied*, 14 FCC Rcd 8790 (1999), *aff'd Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001).

³⁹ See *Character Policy Statement*, *supra* note 34; *1990 Character Order*, *supra* note 34.

⁴⁰ See, e.g., *KEGG Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 11768 (Enf. Bur. 2005); *Radio Moultrie, Inc.*, Order of Revocation, 18 FCC Rcd 22950 (Enf. Bur. 2003).

B. Dismissal of the Captioned Proceeding

14. As the Presiding Judge determined, Mr. Hammond waived his right to a hearing on the specified issues because he failed to file a timely written appearance as prescribed by Section 1.91(c) of the Commission's rules.⁴¹ Consequently, in accordance with Section 1.92(d) of the Commission's rules,⁴² we dismiss the hearing proceeding. We note, however, that Mr. Hammond will be required to report to the Commission the existence of the unresolved issues designated for hearing in this case in connection with any application that he may file with the Commission in the future.⁴³

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, pursuant to Section 1.92(d) and 0.111(a)(17) of the Commission's rules,⁴⁴ that the captioned hearing proceeding **IS DISMISSED**.

16. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to Terry Keith Hammond, P.O. Box 688, Shamrock, Texas 79079 and to 6700 U.S. Highway 83, Shamrock, Texas 79079.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

⁴¹ See 47 C.F.R. § 1.91(c).

⁴² See 47 C.F.R. § 1.92(d).

⁴³ Some examples of these applications include: Application for Construction Permit For a Commercial Broadcast Station (FCC 301); Application for Consent to Assignment of Broadcast Station Construction Permit or License (FCC 314); Application for Construction Permit For a Low Power FM Broadcast Station (FCC 318).

⁴⁴ See 47 C.F.R. §§ 1.92(d) and 0.111(a)(17).