

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

In the Matter of)	
)	
Princess K Fishing Corporation)	File Number: EB-08-HL-0044
)	
Licensee of Ship Radio Station WDB8248)	NAL/Acct. No.: 200832860001
Fishing Vessel PRINCESS K)	FRN: 0011032422
Honolulu, Hawaii)	
Documentation # 511130)	

FORFEITURE ORDER

Adopted: February 25, 2009

Released: February 27, 2009

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of five thousand, five hundred dollars (\$5,500) to Princess K Fishing Corporation, licensee of ship radio station WDB8248, in Honolulu, Hawaii, for willful and repeated violation of Section 80.89(a) of the Commission's Rules (“*Rules*”).¹ On May 29, 2008, the Enforcement Bureau’s Honolulu Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) to Princess K Fishing Corporation in the amount of \$8,000 for falsely activating an Emergency Position Indicating Radio Beacon (“*EPIRB*”), thereby engaging in superfluous communications resulting in the transmission of false distress communications. In this *Order*, we consider Princess K Fishing Corporation’s arguments that it did not willfully or repeatedly violate Section 80.89(a) of the Rules, that it is not liable for the acts of one of its employees, and that it lacks the ability to pay the forfeiture.

II. BACKGROUND

2. On February 26, 2008, the Enforcement Bureau’s Honolulu Resident Agent Office received a violation report (“*USCG Report*”) from the U. S. Coast Guard Fourteenth District Command Center (“*D14CC*”). The *USCG Report* detailed that on February 25, 2008, the *D14CC* was notified of an active 406.025 MHz *EPIRB* in their area of responsibility via the Search and Rescue Satellite (“*SARSAT*”) system. The *D14CC* determined that the *EPIRB* was registered to the fishing vessel *PRINCESS K*, home ported in Honolulu, Hawaii. Princess K Fishing Corporation is the owner of the fishing vessel *PRINCESS K*, and the licensee of ship radio station WDB8248, in Honolulu, Hawaii. The *SARSAT* fix located the *EPIRB* to open seas approximately 150 nautical miles north by northeast of Oahu, Hawaii. *USCG D14CC* efforts to contact the fishing vessel *PRINCESS K*, which had five people aboard, including an executive of the Princess K Fishing Corporation, through urgent broadcasts on several HF frequencies, were unavailing. In accordance with their protocol, the *D14CC* launched an HC-130 aircraft from Barber’s Point Air Station, Hawaii. The aircraft located the fishing vessel *PRINCESS K* approximately 18 nautical miles away from where the *EPIRB* had been located. Upon contacting the

¹ 47 C.F.R. § 80.89(a).

fishing vessel on the VHF marine channel 16, after a low pass, the master of fishing vessel PRINCESS K stated that they had thrown the old EPIRB (the one detected by the SARSAT system) overboard because they had purchased and installed a new one. There was no actual distress.

3. The USCG reported the false activation by the fishing vessel PRINCESS K to the Honolulu Office. According to the USCG Report, the D14CC expended 3.5 fixed wing aircraft hours and 6 Command Center hours at a cost of over \$35,000 to determine that this was a false alert. The D14CC also reported to the Honolulu Office that the old EPIRB was not retrieved and continued transmitting until March 1, 2008, potentially masking an actual search and rescue alert.

4. On March 26, 2008, when the fishing vessel PRINCESS K was back in port in Honolulu, agents from the Honolulu Office, along with Coast Guard personnel, interviewed the Princess K Fishing Corporation executive who was onboard the fishing vessel PRINCESS K during the incident detailed in the USCG Report. The Princess K Fishing Corporation executive stated that a new EPIRB was purchased on Oahu and installed while they were ported in Hilo, Hawaii. The executive stated that he did not have time to return the old EPIRB, so he placed it in a plastic bag and put it in storage on the vessel. Later while at sea, he advised a crew member to take care of the bag and the crew member threw it overboard, thereby activating the unit. The executive stated that he did not realize this incident occurred until the Coast Guard aircraft, while hovering over his vessel, contacted him during their search. He explained that he was not able to retrieve the old EPIRB even though Coast Guard advised that the EPIRB was still continuing to transmit.

5. On May 29, 2008, the Honolulu Resident Agent Office issued a *NAL* in the amount of \$8,000 to the Princess K Fishing Corporation.² In the *NAL*, the Honolulu Office found that the Princess K Fishing Corporation apparently willfully and repeatedly violated Section 80.89(a) of the Rules,³ by engaging in superfluous radio communications resulting in the transmission of false distress communications. Princess K Fishing Corporation filed a response ("*Response*") to the *NAL* on June 27, 2008. In its *Response*, Princess K Fishing Corporation argues it did not willfully or repeatedly violate Section 80.89(a) of the Rules, that it was not responsible for the acts of its employee, and that it lacks the ability to pay the forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *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

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832860001 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released May 29, 2008).

³ 47 C.F.R. § 80.89(a).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 80.89(a) of the Rules states that “stations must not engage in superfluous radio communication.”⁸ An EPIRB station is “a station in the maritime mobile service the emissions of which are intended to facilitate search and rescue operations.”⁹ A distress alert, such as one from an EPIRB, is considered false “if it was transmitted without any indication that a mobile unit or person was in distress and required immediate assistance.”¹⁰ The Rules require that “[i]f for any reason an EPIRB is activated inadvertently [the licensee shall] immediately contact the nearest U.S. Coast Guard unit or appropriate rescue coordination center by telephone, radio or ship earth station and cancel the distress alert.”¹¹

8. False activations of EPIRBs and other emergency locating devices, such as emergency locator transmitters (“ELTs”)¹² have the potential to severely impact the search and rescue network, resulting in responder resources being wasted and misdirected. Air searches for false EPIRB and ELT activations cost the Coast Guard thousands of dollars per search hour, as demonstrated by the USCG Report. Additional costs are incurred by rescue coordination centers, support personnel, and ground search and rescue responders. False activations also can cause harmful interference to the Sarsat system and to airplanes and vessels in the vicinity of the signal. Additionally, a false activation may conceal or prevent timely response to a legitimate distress signal.¹³ On February 25, 2008, Princess K Fishing Corporation’s fishing vessel PRINCESS K activated an EPIRB by dumping it off the fishing vessel and into the ocean 150 nautical miles north by northeast of Oahu, Hawaii. The transmissions emanating from this EPIRB caused the U.S. Coast Guard to expend valuable resources to locate the fishing vessel PRINCESS K only to find that there was no emergency and that the EPIRB station was engaging in superfluous communications caused by the actions of those onboard the fishing vessel PRINCESS K, including an executive of the Princess K Fishing Corporation. Additionally, the fishing vessel PRINCESS K took no action to contact the Coast Guard concerning this false distress alert.

9. In its *Response*, Princess K Fishing Corporation argues that it did not act willfully or repeatedly under Section 503(b) of the Act because the Honolulu Office incorrectly applied the definitions from Section 312(f) of the Act to the terms “willful” and “repeated.” Princess K Fishing Corporation asserts that the definitions of the words “willful” and “repeated” found in Section 312 of the Act, as detailed in the *NAL*,¹⁴ apply only within Section 312, that they should not be used when interpreting Section 503 and, consequently, that the Honolulu Office should have used the plain meaning of those terms when assessing liability in the *NAL*. In particular, Princess K Fishing Corporation argues that a finding of willfulness under Section 503 requires a finding of *mens rea*.¹⁵ We disagree. Section

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 80.89(a).

⁹ 47 C.F.R. § 80.5.

¹⁰ 47 C.F.R. § 80.334.

¹¹ 47 C.F.R. § 80.335(e).

¹² See 47 C.F.R. §§ 87.193 – 87.199.

¹³ See, e.g., *Grant Lam*, 22 FCC Rcd 6341 (EB 2007); *AMERI-KING Corporation*, 23 FCC Rcd 2616 (EB 2008); *Compatible Electronics*, 23 FCC Rcd 2621 (EB 2008).

¹⁴ *NAL* at para. 5.

¹⁵ *Mens rea* is defined “[a]s an element of criminal responsibility: a guilty mind; a guilty or wrongful purpose; a

312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ In other words, there is no requirement of *mens rea*. The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁹ The Commission has determined that the definition of “repeated” in Section 312(f) also applies to forfeitures assessed pursuant to Section 503(b) of the Act.²⁰ Consequently, we find no error in the Honolulu Office’s use of these definitions to assess liability to Princess K Fishing Corporation in the *NAL*.²¹

10. Princess K Fishing Corporation also argues that even if the Section 312 definition of willful applies, Princess K Fishing Corporation and its employees did not deliberately generate the false alarm. As indicated above, the definition of willful does not require an intent to violate the law. The conscious and deliberate act in this case was the disposal of the EPIRB into the ocean, which resulted in continual false alarms from February 25, 2008 until March 1, 2008.²²

11. Princess K Fishing Corporation asserts that the crew member who disposed of the EPIRB did not know what an EPIRB was and did not understand that disposing of the EPIRB in that manner would result in the false alarms. Because these actions were outside the scope of this crew member’s duties, Princess K Fishing Corporation argues that it cannot be held liable for the crew member’s actions. We disagree. The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,²³ and has “consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”²⁴ In the instant case, according to the *Response*, the

criminal intent.” *Black’s Law Dictionary* 985 (6th Ed. 1990).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²¹ Because we find that the Section 312 definitions apply to penalties assessed under Section 503, and because we find that the Honolulu Office correctly applied these definitions, we find no merit to Princess K Fishing Corporation’s argument that there is no basis for a forfeiture imposed under Section 503 in this case.

²² Princess K Fishing Corporation also asserts that the term “repeatedly” does not apply because there were not repeated false alarms. As described above and in the *NAL*, the Coast Guard did receive multiple false distress signals, over the course of several days, from the EPIRB that was disposed of by the PRINCESS K vessel.

²³ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863 – 64 (2002).

²⁴ See *American Paging, Inc. of Virginia*, 12 FCC Rcd 10417, 10420 (Wireless Bur., Enf. and Cons. Inf. Div., 1997) (quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235 (1984)).

crew member was acting on what he understood his orders were from an executive of the PRINCESS K. Unfortunately, the crew member misunderstood his orders, due to a language barrier between the crew member and the executive, and disposed of the EPIRB as described. This misunderstanding, however, does not excuse the Princess K Fishing Corporation of responsibility for the acts of this crew member which were performed, however incorrectly, in response to directives from the PRINCESS K executive.

12. Princess K Fishing Corporation also argues that it does not have the ability to pay the proposed forfeiture amount. To support this claim, Princess K Fishing Corporation supplied its federal tax returns for the three years prior to the *NAL*. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.²⁵ We have reviewed the data supplied by Princess K Fishing Corporation and we conclude that reduction of the forfeiture from \$8,000 to \$5,500 is warranted.²⁶

13. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Princess K Fishing Corporation willfully and repeatedly violated Section 80.89(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$5,500 is warranted.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Princess K Fishing Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,500 for willfully and repeatedly violating Section 80.89(a) of the Rules.²⁷

15. 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.²⁸ 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/Account Number* and *FRN Number* referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL/Account number* in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A

²⁵ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

²⁶ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

²⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 80.89(a).

²⁸ 47 U.S.C. § 504(a).

(payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Princess K Fishing Corporation shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Princess K Fishing Corporation, at its address of record, and Charles S. Lotsof, Esquire, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau