

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

In the Matter of)	
)	
Romayne Davis)	File No.: EB-FIELDSCR-12-00002931
)	NAL/Acct. No.: 201332600005
Oakland Park, Florida)	FRN: 0022583249
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 5, 2013

Released: April 5, 2013

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Romayne Davis apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 89.5 MHz in Oakland Park, Florida. We conclude that Mr. Davis is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. In response to a complaint received on June 21, 2012, agents from the Enforcement Bureau's Miami Office (Miami Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 89.5 MHz and, on three separate occasions (i.e., June 22, July 11, and July 12, 2012), traced the source to an FM transmitting antenna located at a commercial property in Oakland Park, Florida. On June 22, 2012, the agents heard the unlicensed station conducting a live broadcast, during which the disc jockey (DJ) identified the station alternately as "Joker Boy E-N-T" and "Jungle Boy E-N-T," and announced the station's phone number. On July 11, 2012, the agents took signal strength measurements of the station's signal and determined that the signals on 89.5 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. The agents checked the Commission's records and confirmed that, in fact, no authorization was issued to Mr. Davis or to anyone else for operation of an FM broadcast station at or near the Oakland Park commercial property. On July 12, 2012, the agents inspected the unlicensed radio station and found an FM transmitter connected to the externally mounted antenna via coaxial cable, which confirmed the ability of the station to broadcast.

3. As part of the investigation, agents from the Miami Office also obtained a copy of the lease agreement for the Oakland Park commercial property housing the unlicensed radio station. The lease agreement was signed by a "Rome Davis," but it appears that "Rome" is just a short name or alternate first

¹ 47 C.F.R. § 301.

² Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

name used by Romaine Davis. Indeed, various information confirm that Rome Davis and Romaine Davis are one and the same individual—e.g., the birth date listed on the lease agreement for Rome Davis matches the birth date for Romaine Davis in official public records;³ and photographs of Rome Davis and Romaine Davis posted on an internet site show the same man.⁴ The agents also found that the lease agreement contained information connecting Mr. Davis to the station. In this respect, Mr. Davis listed his e-mail address on the agreement as “jokerboyentertainment@[redacted],” which is the same name that the agents heard during the station’s broadcast on June 22, 2012. In addition, the agents found several webpages connecting Mr. Davis directly to “Jungle Boy ENT,” “Joker Boy ENT,” 89.5 MHz, and the telephone number that was broadcast on June 22, 2012.⁵ Finally, the Florida Department of State’s Division of Corporations has public records that list Mr. Davis as the registered agent and managing member for a business called “Joker Boy Entertainment, LLC.”⁶

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁷ Section 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.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b)

³ See Lexis Nexis Enforcement Solutions database. The agents also confirmed that a “Rome Davis” is not listed in any official records.

⁴ See Facebook pages at www.facebook.com/JUNGLE.BOY.ENTERTAINMENT#!/JUNGLE.BOY.ENTERTAINMENT/photos (last visited March 26, 2013) and www.facebook.com/rome.davis.5/photos (last visited March 26, 2013).

⁵ “Romaine Davis” is listed as the “CEO & President” of “Jungle Boy ENT.,” and the following information is listed in the description of “Jungle Boy ENT.”: “Joker Boy ENT We are an all around Promotion company from clubs to concerts skys the limit.” Facebook page at www.facebook.com/JUNGLE.BOY.ENTERTAINMENT (last visited June 26, 2012). Furthermore, a Facebook page for “Rome Davis” states that Mr. Davis works at Joker Boy Entertainment and contains photographs of Mr. Davis with captions reading “89.5 Joker Boy ENT” and “89.5 FM The Newest Radio Station [Phone Number Redacted].” Facebook page at www.facebook.com/rome.davis.5?fref=ts (last visited Oct. 25, 2012). There are also independent websites that connect Mr. Davis to the station. For example, a “Noozly.com” webpage (http://noozly.com/topic/sheem/100000992478149_396613320381747/ (last visited Nov. 14, 2012)) states:

. . . ANY LOCAL ARTIST, CLUB, PROMOTER'S, LOCAL BUSINESS OWNERS LOOKING FOR ADVERTISEMENT ON THE RADIO LIVE ON AIR (89.5) INBOX ME OR GIVE ME A CALL AT [Phone Number Redacted] . . . ADD THE OFFICIAL JOKER BOY ENT PAGE J.B.E AND JOIN OUR GROUP Joker Boy Ent 89.5 FM EVERY DAY ALL DAY –Romaine Davis.

We note that the redacted phone number matched the phone number that the station announced over the air on June 22, 2012.

⁶ Florida Department of State, Division of Corporations Homepage, www.sunbiz.org (last visited June 21, 2012).

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for
(continued....)

context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

A. Unlicensed Broadcast Operations

5. Section 301 of the Act states 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 the Act and with a license granted under the provisions of the Act.¹³ For the purposes of Section 301, the word “operate” has been interpreted to mean both the technical operation of the station, as well as “the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of signals.”¹⁴ In other words, the use of the word “operate” in Section 301 captures not just the “actual, mechanical manipulation of radio apparatus,”¹⁵ but also operation of a radio station generally.¹⁶ To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”¹⁷

6. We find that the record evidence in this case is sufficient to establish that Mr. Davis violated Section 301 of the Act. As the record shows, agents from the Miami Office determined that, on June 22, July 11, and July 12, 2012, an unlicensed radio station was operating on the frequency 89.5 MHz from a commercial property in Oakland Park, Florida, leased to Mr. Davis. On June 22, 2012, the agents heard the station engage in a live broadcast. A review of the Commission’s records revealed that no license or authorization was issued to Mr. Davis or to anyone else to operate a radio station on 89.5 MHz at this location, and we believe that it was Mr. Davis who was operating the station.

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more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹⁰ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹¹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹² Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹³ 47 U.S.C. § 301.

¹⁴ See *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words “operate” and “operation” in Sections 301, 307, and 318 of the Act, and concluding that the word “operate” as used in Section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

¹⁵ *Id.*

¹⁶ *Id.* See also 47 U.S.C § 307(c)(1).

¹⁷ See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recons. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

7. As explained above with respect to Section 301, even if Mr. Davis was not physically operating the station, Mr. Davis still can be said to have “operated” the unlicensed radio on 89.5 MHz based on evidence showing that Mr. Davis exercised control over the station and its operations. In this respect, agents from the Miami Office confirmed that the commercial property housing the unlicensed station was leased by Mr. Davis, and the space appeared to be used primarily for the purposes of operating the unlicensed station.¹⁸ In addition, there is record evidence directly linking Mr. Davis to the station and its operations. On June 22, 2012, the agents heard the station identify itself on the air as “Joker Boy E-N-T” and announce the radio station telephone number on the air. This information is consistent with state corporation records showing that Mr. Davis registered a company called Joker Boy Entertainment, LLC, the same entity promoted in the broadcast. Agents also found information on several of Mr. Davis’s webpages which connect him to the station on 89.5 MHz, “Joker Boy E-N-T”, and the telephone number broadcast on the air. Moreover, the online postings that Mr. Davis created on his Facebook pages about the station and his company, Joker Boy Entertainment, LLC, suggest that Mr. Davis was using the unlicensed station, in large part, to generate advertising revenue and to promote the businesses he ran as CEO & President of Jungle Boy Entertainment.¹⁹ The foregoing facts support our finding herein that Mr. Davis consciously operated and/or otherwise was involved in the general conduct or management of the unlicensed radio station and did so on more than one day. We therefore conclude, based on the evidence before us, that Mr. Davis apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Davis is apparently liable for a forfeiture in the amount of \$10,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission’s rules, Romaine Davis is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.²²

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission’s rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture,

¹⁸ If Mr. Davis were to insist that other individuals were involved in operating the station, Mr. Davis nevertheless was instrumental in providing the ability of the unlicensed station to operate.

¹⁹ See *supra* note 5.

²⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

²² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

Romayne Davis **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Romayne Davis shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and include the NAL/Acct. No. referenced in the caption. Romayne Davis also shall e-mail the written response to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim 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 (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 C.F.R. § 1.1914.

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Romaine Davis at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau