

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

In the Matter of)	
)	
Gwendolyn May)	Facility ID No. 25713
Former Permittee of Deleted Low Power)	
Television Station DK15CC, San Antonio, TX)	
)	
Application for Assignment of Construction Permit)	File No. BAPTTL-19900112IA
for Deleted Low Power Television Station)	
DK15CC, San Antonio, TX)	
)	
Application for Major Modification of Construction)	File No. BMPTTL-19891208YD
Permit for Deleted Low Power Television Station)	
DK15CC, San Antonio, TX)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2016

Released: June 21, 2016

By the Commission:

1. By this *Memorandum Opinion and Order*, we deny an Application for Review filed by Ms. Gwendolyn May (May),¹ the former permittee of deleted low power television station DK15CC, San Antonio, Texas (Station or DK15CC), challenging a letter decision by the Chief of the Video Division, Media Bureau (Division), denying her Petition for Reconsideration (Petition). The Petition sought review of the Division’s: (1) rescission of its grant, as premature, of the above-captioned application for assignment of the permit for the Station to Faith Pleases God Church Corporation; and (2) dismissal of that application and her major modification application for the Station, also captioned above, because her construction permit for the Station had automatically expired due to her failure to have constructed by the permit deadline.² In the AFR, May contends that the Division’s rescission of its grant of the assignment application was not proper³ and that equity warrants reinstatement of the permit and the assignment and modification applications.⁴

2. Upon review of the AFR, we conclude that May has failed to demonstrate the Division has erred. May takes issue with the Division’s conclusion that the construction permit expired as a matter of law on October 24, 1989, the extended construction deadline, when she had failed to construct the Station, and was automatically forfeited as of that date. Section 319(b) of the Act provides that a construction permit “will be automatically forfeited if the station is not ready for operation within the time specified....”⁵ Reflecting this statutory provision, under the then-applicable provision of the Commission’s rules, “A construction permit shall be declared forfeited if the station is not ready for

¹ Application for Review of Gwendolyn May (filed Jan. 23, 2006) (AFR).
² Application for Assignment of Construction Permit K15CC, San Antonio, TX, Letter Decision, 20 FCC Red 20155 (Vid. Div. 2005).
³ AFR at 6.
⁴ AFR at 4-5.
⁵ 47 U.S.C. § 319(b).

operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.”⁶ The Commission’s official records confirm that the construction permit expired on October 24, 1989,⁷ and May has failed to provide any evidence to the contrary. May had no permit to assign when she filed the application for approval of its sale. For the same reason, we also find that the Division’s dismissals of the assignment and modification applications, each filed after the permit had expired, were warranted. Because the construction permit had expired and was automatically forfeited, we need not consider the appropriateness of the Division’s rescission of its grant of the assignment application. Even if the Division had not rescinded its grant in error of the assignment application, again, May had no authorization to assign.⁸

3. We also reject May’s contention that equity warrants reinstatement of the construction permit and assignment and modification applications. Having already sought and successfully obtained the replacement of the permit after it had expired due to her failure to timely construct earlier in 1989,⁹ May knew or should have known that her failure to have constructed by the October 24, 1989 extended deadline resulted in the permit’s automatic expiration, yet she failed to timely seek reinstatement of the expired permit.¹⁰ Any lapse in time between the forfeiture of the permit and the Division’s letter to her explaining that it was setting aside the grant of the assignment application and dismissing it and the modification application did not prejudice her. At the time that she sought the Commission’s approval of the modification and assignment of the forfeited permit, she should have been aware that she had nothing to modify or assign. Moreover, such delay does not alter the fact that the subject construction permit was automatically forfeited upon expiration and without any requirement that the Commission notify May of

⁶ See 47 C.F.R. § 73.3599 (1985).

⁷ See Construction Permit Authorization for File No. BMP TTL-19890420IA, available at: http://licensing.fcc.gov/prod/cdbs/pubacc/Auth_Files/127886.pdf. May acknowledges the existence of an electronic version of the authorization with a stated expiration date of October 24, 1989. AFR at 3. She even includes a copy of the authorization with her AFR. May questions why the electronic version of the Station’s construction permit authorization contains references to a 1998 rulemaking order when the extended construction permit was granted in 1989. This was merely the result of the Commission’s online database system, which automatically populates such information when an electronic copy of a license authorization is requested. It has no bearing on the authenticity of the permit and the construction deadline specified therein, despite May’s speculation to the contrary. AFR at 5.

⁸ See e.g., *Vidcom Marketing, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1945 (Dom. Fac. Div. 1991) (license forfeited for failure to construct cannot be assigned); *International Broadcasting Network*, 2 FCC Rcd 2544 (1987) (staff error in granting LPTV authorization, an error of which the licensee should have been aware, can be corrected).

⁹ “May was granted a construction permit on August 24, 1987, with an expiration date of February 24, 1989, which May allowed to expire. [File No. BPTTL-19810331JH]. On April 20, 1989, May filed an application to replace the expired permit, and that application was granted on April 24, 1989, with an expiration date October 24, 1989.” [File No. BMP TTL-19890420IA] Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Ms. Gwendolyn May, c/o Steven T. Yelverton, Esquire, 1800E3-JLB (Jan. 21, 2005). As noted in the Division’s January 21, 2005 letter denying May’s Petition for Reconsideration of the dismissal of the assignment application, the October 24, 1989 construction deadline is consistent with the Commission’s database. Moreover, the Division’s grant of a six-month extension from the April 24, 1989 grant date on the permit was consistent with the Commission’s then-rule allowing the reinstatement of expired permits, which provided, “If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.” 47 C.F.R. § 73.3534(e) (1988).

¹⁰ Then-Section 73.3534(e) of the Rules required the holder of an expired permit seeking its replacement to file an application seeking such action within 30 days of the expiration date of the authorization sought to be replaced. 47 C.F.R. § 73.3534(e)(1988). May failed to so file by that deadline here, which was November 23, 1989. Nevertheless, she proceeded to file the assignment and modification applications.

that fact.¹¹ In approving the assignment, the staff had accepted May's implicit representation in the assignment application that the permit that she sought to assign was still in effect, a representation that was without basis. Her decision to close on the assignment of her expired permit on April 9, 1990, before finality of the Division's grant of the assignment application and, notwithstanding the pendency of the Petition for Reconsideration of that grant filed by Louis Martinez on March 12, 1990, was a business risk that she chose to assume.¹² Indeed, she knew at the time that she had failed to timely construct the facility. Furthermore, the Commission has no record that she sought to extend the permit and May has not provided any evidence to the contrary. Under these circumstances, we find that equity does not warrant reinstatement of the applications and affirm the Division's actions.

4. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Gwendolyn May **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ See 47 C.F.R. § 73.3599 (1985).

¹² See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Ms. Gwendolyn May, 1800E3-JLB (Nov. 14, 2002) ("November Division Letter"). In her AFR, May contends that Martinez failed to raise the issue of her failure to have constructed in his Petition. AFR at 2. Because the Division's erroneous grant of the assignment application in reliance upon May's representation that she had an authorization to assign after it had expired, the Division properly set aside the grant when it became aware that the representation had no basis in fact. See *supra* para. 2.