

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

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| In the Matter of |) | |
| |) | |
| Hacienda San Eladio, Inc. |) | File No.: EB-11-SJ-0049 |
| |) | NAL/Acct. No.: 201232680002 |
| Owner of Antenna Structure # 1222789 |) | FRN: 0008032708 |
| Juncos, Puerto Rico |) | |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 27, 2012

Released: February 27, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Hacienda San Eladio Inc. (Hacienda), owner of antenna structure number 1222789 (the Antenna Structure), located in Juncos, Puerto Rico, apparently willfully and repeatedly violated Section 17.57 of the Commission's rules (Rules)¹ by failing to notify the Commission upon a change in ownership information for the Antenna Structure. We conclude that Hacienda is apparently liable for a forfeiture in the amount of four thousand five hundred dollars (\$4,500). In addition, we direct Hacienda to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that updated ownership information for the Antenna Structure has been submitted to the Commission.

II. BACKGROUND

2. According to a radio station purchase agreement submitted to the Commission by Radio Emanuel, Inc. (Radio Emanuel), Hacienda acquired an AM broadcast station, Station WRRE, and a 300 foot tower in Juncos, Puerto Rico from Radio Emanuel on April 16, 2003.² Although antenna structure number 1222789 was not specifically listed in the agreement, the Antenna Structure is located in Juncos, Puerto Rico and is the location of Station WRRE's radio transmitter.³ Commission records show no other antenna structure in Juncos, Puerto Rico owned by Hacienda or Radio Emanuel. As of January 23, 2012, the Commission's Antenna Structure Registration database listed Radio Emanuel as the owner of the Antenna Structure.

¹ 47 C.F.R. § 17.57.

² See Radio Station Purchase Agreement, Exhibit 5 to File No. BAL-20030221AAP.

³ The Antenna Structure is also 95.7 meters or 314 feet in overall height above ground. See Antenna Structure Registration database for antenna structure number 1222789.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act),⁴ 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. 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.⁵ 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 Act⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

A. Failure to Update Ownership Information for the Antenna Structure

4. Section 17.57 of the Rules requires owners of registered antenna structures to immediately notify the Commission, using FCC Form 854, upon any change in structure height or change in ownership information.¹⁰ According to Commission records, Hacienda acquired the Antenna Structure on April 16, 2003. As of January 23, 2012, Hacienda still had not filed the required FCC Form 854 to update the Antenna Structure’s ownership. Based on the evidence before us, we find that Hacienda apparently willfully and repeatedly violated Section 17.57 of the Rules by failing to notify the Commission of a change in ownership for the Antenna Structure.

B. Proposed Forfeiture and Reporting Requirement

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to file required forms or information is \$3,000.¹¹ In assessing the

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ 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 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 . . .”).

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 47 C.F.R. § 17.57.

¹¹ *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.

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.¹² Because Hacienda has failed to notify the Commission regarding the change in ownership for over eight years, we find this violation particularly egregious and warranting an upward adjustment of \$1,500.¹³ Maintaining current ownership contact information in the Antenna Structure Registration database is particularly important, because it enables the Commission and individuals to notify the structure owner promptly in the event of a lighting failure or other malfunction. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Hacienda is apparently liable for a forfeiture in the amount of \$4,500.

6. We direct Hacienda to submit a written statement pursuant to Section 1.16 of the Rules¹⁴ signed under penalty of perjury by an officer or director of Hacienda stating that it has submitted an FCC Form 854 to the Commission to update the ownership information for the Antenna Structure. This statement must be provided to the San Juan Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

7. 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, Hacienda San Eladio, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand five hundred dollars (\$4,500) for violation of Section 17.57 of the Commission's rules.¹⁵

8. **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 and Order, Hacienda San Eladio, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Hacienda San Eladio, Inc. **SHALL SUBMIT** a statement as described in paragraph 6 to the San Juan Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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 (payment type code). Requests for full payment under an installment plan should be

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See *U.S. Jetting, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 12-63 (Enf. Bur. rel. Jan. 20, 2012) (upwardly adjusting forfeiture amount due to length of apparent violation).

¹⁴ 47 C.F.R. § 1.16.

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.57.

sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Hacienda San Eladio, Inc. shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

11. 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 1.80(f)(3) and 1.16 of the Rules.¹⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, U.S. Federal Building, Room 762, Hato Rey, PR 00918 and include the NAL/Acct. No. referenced in the caption. Hacienda San Eladio, Inc. also shall email the written response to SCR-Response@fcc.gov.

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

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Hacienda San Eladio, Inc. at PO Box 437, Rio Blanco, PR 00744-0437.

FEDERAL COMMUNICATIONS COMMISSION

William Berry
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).