

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

In the Matter of)	
)	
Whisler Fleurinor)	File No.: EB-11-MA-0123
)	NAL/Acct. No.: 201232600006
Fort Lauderdale, Florida)	FRN: 0020655106
)	

FORFEITURE ORDER

Adopted: February 8, 2013

Released: February 8, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Whisler Fleurinor for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).¹ The violations involved Mr. Fleurinor's operation of an unlicensed radio transmitter on the frequency 99.5 MHz in Fort Lauderdale, Florida.

II. BACKGROUND

2. The Enforcement Bureau's records reflect that Mr. Fleurinor has been cited multiple times for unlicensed operation of a radio broadcast station since 2008. The first instance was on January 14, 2008, when the Bureau's Miami Office issued a Notice of Unlicensed Operation (NOUO) to Mr. Fleurinor after it was determined that he was operating a radio station on the frequency 97.7 MHz from a commercial property in Fort Lauderdale, Florida.² The NOUO warned Mr. Fleurinor that operation of an unlicensed station violated the Act and the Commission's rules and could result in further enforcement action.³ On March 16 and August 24, 2010, agents from the Miami Office used direction-finding techniques to determine that an unlicensed broadcast station operating on the frequency 99.5 MHz was located in a commercial property in Fort Lauderdale, Florida, which according to Florida property records was owned by Mr. Fleurinor.⁴ During the August 24, 2010 inspection of the unlicensed station, Mr. Fleurinor admitted

¹ 47 U.S.C. § 301.

² See *Whisler Fleurinor*, Notice of Unlicensed Operation (Enf. Bur., Miami Office rel. Jan. 14, 2008) (*First NOUO*). The Miami Office received a return receipt for the *First NOUO* signed by Mr. Fleurinor and a response to the *First NOUO* signed by Mr. Fleurinor's attorney. See Letter from Rocco G. Marucci, P.A. to Stephanie Dabkowski, Resident Agent, Miami Office (Jan. 22, 2008). In the response, Mr. Fleurinor's attorney stated that "Mr. Fleurinor had no intention of violating any federal or state laws with respect to any radio transmissions from his business. He has advised that he will have the equipment checked to insure that it complies with the FCC levels and does not violate any laws or regulations."

³ *Id.*

⁴ *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011) (*First NAL*).

to owning the antenna and transmitter.⁵ After confirming the violation, Mr. Fleurinor was hand-delivered another NOUO.⁶

3. Despite receipt of the second NOUO, agents from the Miami Office confirmed on August 31, 2010 that transmissions on 99.5 MHz were still emanating from the antenna located on Mr. Fleurinor's commercial property.⁷ Consequently, on March 4, 2011, the Miami Office issued the first of two Notices of Apparent Liability (NAL) to Mr. Fleurinor for operating an unlicensed radio station, in violation of Section 301 of the Act.⁸ The *First NAL* proposed a \$20,000 forfeiture, which included an upward adjustment in view of the record evidence that Mr. Fleurinor continued to operate the radio station despite receiving prior notices of the violation.⁹ Mr. Fleurinor responded to the *First NAL*, acknowledging the violations, but urging cancellation or reduction of the forfeiture based on an inability to pay claim.¹⁰ On October 20, 2011, the South Central Region of the Enforcement Bureau issued a Forfeiture Order, affirming its findings in the *First NAL*, but agreed to reduce the forfeiture amount to \$500 based solely on Mr. Fleurinor's inability to pay claim.¹¹ Thereafter, Mr. Fleurinor paid the \$500 forfeiture.

4. On August 10, November 3, and December 7, 2011, agents from the Miami Office used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 99.5 MHz, and again traced it to Mr. Fleurinor's commercial property in Fort Lauderdale, Florida, the same address which was identified in the *First NAL*.¹² As a result, the Miami Office issued to Mr. Fleurinor a second Notice of Apparent Liability for Forfeiture (*Second NAL*) on February 1, 2012, which proposed a \$25,000 forfeiture.¹³ The proposed forfeiture included a \$15,000 upward adjustment because of the deliberate nature of the violation, given that Mr. Fleurinor had already been fined and issued multiple NOUOs for the same violation.¹⁴ Mr. Fleurinor submitted a response to the *Second NAL*, denying that he violated the Act or any FCC order.¹⁵ More specifically, Mr. Fleurinor asserts that "there [has] been no radio transmission of any kind for at least 6 months, [and that] there is no radio equipment at this location."¹⁶ Mr. Fleurinor also asserts that the "only remnant of any radio equipment is a roof antenna . . .

⁵ *Id.* at 2478, para 3.

⁶ *Id.* & n.3.

⁷ *First NAL*, 26 FCC Rcd at 2479.

⁸ *See supra* note 4.

⁹ *Id.*

¹⁰ *See* Letter from Lewis H. Goldman, P.C., attorney for Mr. Fleurinor, to Diane Law-Hsu, Regional Counsel, South Central Region, Enforcement Bureau (Aug. 2, 2011) (on file in EB-10-MA-0048).

¹¹ *Whisler Fleurinor*, Forfeiture Order, 26 FCC Rcd 14437 (Enf. Bur. 2011) (forfeiture paid).

¹² *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 489 (Enf. Bur. 2012) (*Second NAL*). A comprehensive recitation of the facts and history of this case can be found in the *Second NAL* and is incorporated herein by reference.

¹³ *Id.*

¹⁴ *Id.* at 491, para. 6.

¹⁵ *See* Letter from Rocco C. Marucci, P.A., Counsel for Whisler Fleurinor, to Stephanie Dabkowski, Resident Agent, Miami Office at 1 (Mar. 30, 2012) (on file in EB-11-MA-0123) (*Second NAL Response*). Mr. Fleurinor requested and obtained an extension in which to submit a response to the *NAL*.

¹⁶ *Id.* at 1.

which has been and continues to be unconnected and not operational.”¹⁷ Finally, Mr. Fleurinor states that he is unable to pay the forfeiture in any event and, therefore, urges cancellation on that basis as well.¹⁸

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁹ Section 1.80 of the Commission’s rules (Rules),²⁰ and the *Forfeiture Policy Statement*.²¹ In examining Mr. Fleurinor’s response, Section 503(b)(2)(E) 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 culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²² We have considered Mr. Fleurinor’s response to the *NAL* in light of these statutory factors and find that neither cancellation nor reduction of the forfeiture is warranted for the reasons discussed below.

A. Unlicensed Broadcast Operations

6. We affirm the *NAL*’s finding that Mr. Fleurinor violated Section 301 of the Act.²³ 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.²⁴ As reflected in the *NAL*, agents from the Miami Office determined that unlicensed radio transmissions on the frequency 99.5 MHz emanated from the antenna located on top of Mr. Fleurinor’s commercial property on August 10, November 3, and December 7, 2011. Mr. Fleurinor admits in his *NAL Response* that the antenna at issue was his, but denies that he was operating the unlicensed station on the specified dates by asserting that any radio transmission had already ceased “at least 6 months” ago and that the radio equipment has since been “unconnected.”²⁵

7. We do not find Mr. Fleurinor’s assertions to be credible, given the more reliable record evidence adduced by the Miami Office over a period of several months, and in view of Mr. Fleurinor’s past history of repeated noncompliance despite promises to comply. The Bureau’s uncontroverted evidence shows that the Miami agents, during each of the three dates of the investigation, observed no other antennas in the general vicinity of Mr. Fleurinor’s antenna, rendering Mr. Fleurinor’s antenna as the definitive source of the unlicensed radio transmissions. The transmissions were also operating on the same frequency (i.e., 99.5 MHz) that Mr. Fleurinor previously conceded to using for his unlicensed radio operations. The consistency of the results of the agents’ direction-finding techniques over three different months make it highly unlikely that the agents erred in their determination as to the source of the unlicensed radio transmissions. Further, Mr. Fleurinor has not submitted any objective evidence that would raise questions about the accuracy of the agents’ findings or any evidence that could support his

¹⁷ *Id.*

¹⁸ Mr. Fleurinor also proposes to settle the proceeding with a payment of \$500 and with no admission of guilt. The Bureau respectfully declines his offer.

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80.

²¹ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²² 47 U.S.C. § 503(b)(2)(E).

²³ *See NAL*, *supra* note 12.

²⁴ 47 U.S.C. § 301.

²⁵ *Second NAL Response* at 1.

assertions. Therefore, based on the evidence before us, we are convinced that Mr. Fleurinor willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment (again) without the required Commission authorization.

B. Denial of Inability to Pay Claim

8. We also deny Mr. Fleurinor's request that we cancel the \$25,000 proposed forfeiture based on his inability to pay claim. As indicated above, Section 503(b)(2)(E) of the Act states that, in determining the amount of a forfeiture penalty, the Commission will take into account the nature, circumstances, extent, and gravity of the violation 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.²⁶ We have reviewed Mr. Fleurinor's financial documentation, which, under ordinary circumstances, and standing alone, may arguably support a reduction of the forfeiture.²⁷ We emphasize, however, that an individual's ability (or inability) to pay a forfeiture is just one of the factors we consider in determining the appropriate forfeiture penalty for violations of the Act and the Rules.²⁸ In this instance, we find that all the aforementioned Section 503(b)(2)(E) factors militate against cancellation or reduction of the forfeiture notwithstanding Mr. Fleurinor's purported financial circumstances.

9. The record evidence in this case shows that Mr. Fleurinor is a repeat offender, having already received and paid a forfeiture for the very same violations at issue here; and has been in violation, either continuously or intermittently since at least 2008. With respect to the more recent violations, there is no question that Mr. Fleurinor was fully aware that his actions violated the Act. As such, his repeat violations of the statute demonstrate a complete disregard for the Commission's authority. Moreover, Mr. Fleurinor's further violations of the Act after being issued a Forfeiture Order (that substantially reduced a \$20,000 proposed forfeiture in the *First NAL* to \$500 based solely on consideration of his inability to pay claim) convinces us that the previous \$500 forfeiture imposed (which he has paid) was not a sufficient deterrent. There simply is nothing on the record in this case, including the documents that Mr. Fleurinor submitted in support of his inability to pay claim, that warrants any leniency or mitigation of the proposed forfeiture amount.²⁹ Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$25,000 is warranted.³⁰ We also caution Mr. Fleurinor that future violations of the same kind may result in more severe enforcement action, including but not limited to higher monetary forfeitures, criminal prosecution, and the *in rem* seizure of his equipment.

IV. ORDERING CLAUSES

10. 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(f)(4) of the Commission's

²⁶ 47 U.S.C. § 503(b)(2)(E).

²⁷ Indeed, we have already substantially reduced the forfeiture proposed against Mr. Fleurinor in the *First NAL* from \$20,000 to \$500 based on his inability to pay claim, yet he continued with his unlicensed radio operations. As we have previously warned unlicensed radio operators found in violation of Section 301, future violations of the same kind may result in significantly higher forfeitures which may not be reduced due to financial circumstances. *See, e.g., Michael W. Perry*, Forfeiture Order, 27 FCC Rcd 2281, 2284, para. 8 (2012) (fined for unlicensed radio operations).

²⁸ *See id.* at 2283-84, para. 8.

²⁹ *See, e.g., Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corporation*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

³⁰ If Mr. Fleurinor believes that paying this amount presents financial difficulties, we note that he could always pursue an installment plan to lessen the immediate impact of the forfeiture.

rules, Whisler Fleurinor **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act.³¹

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.³² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³³ Whisler Fleurinor shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁴ 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. 20554.³⁵ 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.

³¹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

³² 47 C.F.R. § 1.80.

³³ 47 U.S.C. § 504(a).

³⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁵ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Whisler Fleurinor at his address of record and to his attorney, Rocco G. Marucci, P.A., at 116 Southeast 6th Court, Fort Lauderdale, FL 33301.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau