

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

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

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, we issue a monetary forfeiture in the amount of four thousand five hundred dollars (\$4,500) to Hacienda San Eladio, Inc. (Hacienda), owner of antenna structure number 1222789 (the Antenna Structure), located in Juncos, Puerto Rico, for its willful and repeated violation of Section 17.57 of the Commission's rules (Rules).¹ The noted violation involved Hacienda's failure to notify the Commission upon a change in ownership information for the Antenna Structure.

II. BACKGROUND

2. On February 27, 2012, the Enforcement Bureau's San Juan Office (San Juan Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)² to Hacienda for its apparent violation of Section 17.57 of the Rules. Hacienda submitted a response to the *NAL* requesting cancellation or reduction of the proposed \$4,500 forfeiture, because "Hacienda inadvertently overlooked filing an update with the Commission regarding the Antenna Structure's ownership. When apprised of the oversight via the *NAL*, Hacienda immediately remedied the matter and filed the FCC Form 854 to update the Commission's records."³

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁴ Section 1.80 of the Rules,⁵ and the

¹ 47 C.F.R. § 17.57.

² *Hacienda San Eladio, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2086 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ Letter from Francisco Montero, Fletcher, Heald & Hildreth, P.L.C., to San Juan Office, South Central Region, Enforcement Bureau, at 1 (May 3, 2012) (on file in EB-11-SJ-0049) (*NAL Response*).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

Forfeiture Policy Statement.⁶ In examining Hacienda'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.⁷ As discussed below, we have considered Hacienda's response in light of these statutory factors, and find that cancellation or reduction of the forfeiture is not warranted.

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.⁸ It is undisputed that Hacienda acquired the Antenna Structure in 2003 and, as of January 23, 2012, had not updated the ownership information for the structure in the Antenna Structure Registration (ASR) database. In fact, Hacienda did not update its ownership information until April 23, 2012.⁹ In its *NAL Response*, Hacienda does not contest that it failed to update the ownership information, but states that the violation was inadvertent.¹⁰ The Commission has held, however, that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.¹¹ Thus, based on the evidence before us, we find that Hacienda willfully and repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission upon a change in ownership information for the Antenna Structure.

5. We now consider Hacienda's assertion that the proposed forfeiture failed to take into account the nature and circumstances of the violation, namely that the violation resulted from a "single oversight." We disagree. The Commission has long held that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.¹² We find no grounds to depart from the well established Commission precedent in this case. Hacienda also questions the upward adjustment, alleging that a single oversight is not a "repeated and somehow willful flagrant disregard" of the Rules.¹³ The term "repeated" means "more than once, or where the act is continuous, for more than one day."¹⁴ Here, the violation existed continuously for over eight years. Section 1.80 of the Rules

⁶ *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*).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 17.57.

⁹ *NAL Response*, Declaration of Pablo Reyes Martinez, Vice President of Hacienda San Eladio, Inc. *See also* Antenna Structure Registration Database for antenna structure number 1222789.

¹⁰ *NAL Response* at 1-2.

¹¹ *See, e.g., USA Teleport, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 6431, 6434, para. 9 (Enf. Bur. 2011) (ignorance of a filing requirement does not negate willfulness of failure to file); *Heidelberg College*, Forfeiture Order, 24 FCC Rcd 11923, 11924, para. 6 (Media Bur. 2009) (unintentional failure to file timely license renewal is willful).

¹² *See, e.g., America Movil, S.A.B. de C.V., Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (administrative oversight or inadvertence is not mitigating factor); *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹³ *NAL Response* at 2.

¹⁴ 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").

includes “repeated or continuous violation” as one of several upward adjustment criteria when deciding upon a forfeiture amount.¹⁵ Thus, we conclude the upward adjustment of the base forfeiture¹⁶ was warranted given the repeated nature of the violation.¹⁷

6. Finally, Hacienda claims that the Commission should consider that it promptly filed the FCC Form 854 upon receipt of the *NAL*. We decline to reduce or cancel the proposed forfeiture on these grounds. Hacienda’s post-*NAL* submission of an FCC Form 854 does not nullify or mitigate the violation, because corrective action to come into compliance with the Rules is expected.¹⁸ Therefore, based on our review of the record, we hereby affirm the *NAL* and assess a forfeiture in the amount of \$4,500.

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(f)(4) of the Commission’s rules, Hacienda San Eladio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand five hundred dollars (\$4,500) for violation of Section 17.57 of the Commission’s rules.¹⁹

8. 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.²⁰ 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.²¹ Hacienda San Eladio, Inc. 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.²² 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.

¹⁵ 47 C.F.R. § 1.80. *See also Forfeiture Policy Statement*, 12 FCC Rcd 17087.

¹⁶ The *NAL* stated “[b]ecause 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” and cited a case which imposed an upward adjustment in forfeiture due to the duration of the violation. *NAL*, 27 FCC Rcd at 2088. Thus, the apparent violation was considered egregious due to the eight-year duration of the violation.

¹⁷ *Cf. P&Y Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 1444 (Enf. Bur. 2011 (imposing a \$3,000 forfeiture for failing to update antenna structure ownership information for three years) (forfeiture paid).

¹⁸ *See, e.g., International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010) (holding post-inspection remedial compliance efforts do not warrant mitigation of forfeiture).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.57.

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

9. 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. 20554.²³ 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.

10. **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 Hacienda San Eladio, Inc. at PO Box 437, Rio Blanco, PR 00744-0437, and to its counsel, Francisco Montero, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.