

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

FCC 14M-20
10042

In the Matter of)	WT Docket No. 11-7
)	
GLENN A. BAXTER)	FCC File No.0002250244
)	
Application to Renew License for)	
Amateur Radio Service Station KIMAN)	

ORDER

Issued: June 20, 2014

Released: June 20, 2014

In its filing dated March 27, 2014, the Enforcement Bureau (“Bureau”) requests that the Presiding Judge, pursuant to Section 1.1910(b)(2) of the Commission’s rules,¹ commonly known as the Red Light Rule, dismiss the pending application of Mr. Glenn A. Baxter for renewal of the license of Amateur Radio Service Station KIMAN. For the reasons provided below, the Presiding Judge must defer on the Bureau’s request.

Background

In 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture to Mr. Baxter.² Consequently in 2006, the Bureau issued a monetary forfeiture penalty of \$21,000.00,³ which Mr. Baxter did not pay nor make any arrangements to pay. The United States Attorney’s Office for the District of Maine filed a complaint in the United States District Court for the District of Maine in October 2010 to collect the forfeiture from Mr. Baxter.⁴ In 2012, the District Court granted partial summary decision for the United States, imposing a total monetary forfeiture of \$10,000.00 against Mr. Baxter.⁵ That judgment has since become final.

On November 7, 2013, at the request of the Bureau, the Office of the Managing Director (“OMD”) mailed an updated Notice of Withholding of Action (“Notice”) to Mr. Baxter at his address of record, as well as his other known addresses.⁶ The Notice informed Mr. Baxter that he was delinquent in the payment of his debt and that he must pay, or make arrangements to pay, that debt within 30 days, or the Commission would take steps to dismiss his pending application for renewal of license.⁷

¹ 47 C.F.R. § 1.1910(b)(2).

² *Glenn A. Baxter*, Notice of Apparent Liability for Forfeiture, File No. EB-04-BS-111 (EB, Boston Office June 7, 2005).

³ *See* Glenn A. Baxter, Forfeiture Order, File No. EB-04-BS-111, 21 FCC Rcd. 3071 (EB, Northeast Region 2006).

⁴ *United States v. Glenn A. Baxter*, *Order on Motion of Summary Judgment*, 841 F.Supp.2d 378, 380 (D.Me 2012).

⁵ *Id.* at 398.

⁶ *See* Enforcement Bureau’s Request for Dismissal of Application and Termination of Proceeding, Exhibit A (filed March 27, 2014) (“Request”).

⁷ 47 C.F.R. §1.190 (b)(2).

On March 27, 2014, the Bureau filed a Request for Dismissal of Application and Termination of Proceeding (“Request”). The Bureau requests that the Presiding Judge dismiss the pending application in accordance with the Red Light Rule. Per Section 1.1910(b)(3) of the Commission’s rules, “[i]f a delinquency [on a debt owed to the Commission] has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to [Section 1.1910(b)(2),] the application or request for authorization will be dismissed.”⁸ The Bureau states that it has been more than four months since OMD served its Notice on Mr. Baxter informing him that the Commission would dismiss his pending application under the Red Light Rule if he failed to pay his debt or make satisfactory arrangements to do so.⁹ The Bureau presents letters from the United States Attorney’s Office for the District of Maine and OMD confirming that Mr. Baxter has neither paid nor made satisfactory arrangements to pay the amount due.¹⁰ Because the Red Light Rule provides that a pending application will be dismissed upon proper Commission notice for failure to timely pay a delinquent debt, and the record demonstrates Mr. Baxter remains delinquent on a debt to the Commission despite prior notice, the Bureau argues that the Presiding Judge must dismiss Mr. Baxter’s pending application with prejudice.¹¹ The Bureau contends that the Presiding Judge has the authority to dismiss Mr. Baxter’s application under Section 1.243(f) of the Commission Rules, which affords the Presiding Judge broad authority to “regulate the course of the hearing.”¹²

Mr. Baxter responded to the Request with an e-mail to the distribution list for this proceeding consisting solely of an insult directed to counsel for the Bureau. He also sent approximately four e-mails unrelated to the Request or the proceeding. Mr. Baxter did not submit a substantive opposition to the Request.

Discussion

The merits of the Bureau’s argument for dismissal under the Red Light Rule are convincing. The Notice sent to Mr. Baxter recited a clear, specific demand for payment and a complete explanation of the consequences for failing to comply. To assure delivery, a copy of the updated Notice was mailed to three addresses, delivery to two of which were successful.¹³ The record shows that Mr. Baxter’s \$10,000.00 forfeiture remains unpaid and he has made no arrangement to pay it.

However, the Bureau’s Request cannot be granted. The Bureau relies on an overly broad interpretation of Section 1.243(f). That Section authorizes the Presiding Judge to “[r]egulate the course of hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings.”¹⁴ The Bureau believes that this language grants the Presiding Judge the authority to rule on all substantive matters related to an application pending before him.¹⁵ However, even though the authority granted by Section 1.243(f) is broad and plenary, and “invests the presiding officer with great latitude,”¹⁶ that broad

⁸ 47 C.F.R. §1.1910 (b)(3).

⁹ Request at 3, ¶ 5.

¹⁰ See Request, Exhibits B and C.

¹¹ Request at 3, ¶ 6

¹² *Id.*

¹³ Request, Exhibit C at 2.

¹⁴ 47 C.F.R. § 1.243(f).

¹⁵ Request at 4, ¶ 7.

¹⁶ *Equal Employment Opportunity Commission*, 38 F.C.C.2d 33, 38 ¶ 7 (1972) (citing *Selma Television, Inc.*, 3 FCC 2d 63, 64 ¶ 4 (1966)).

authority has certain limits. Specifically, the Presiding Judge does not have authority to decide issues that fall outside the scope of the issues designated for hearing.¹⁷ The Red Light Rule issue as presented by the Bureau has not been designated in the Hearing Designation Order. Nor has the Bureau requested that the issues in this proceeding be enlarged to include the Red Light Rule issue. Therefore, the Presiding Judge does not have the authority to dismiss Mr. Baxter's application under the Red Light Rule.

Conclusion

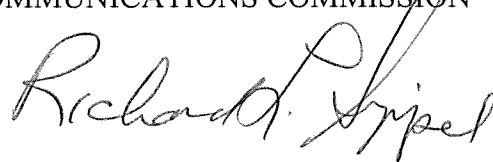
As the Bureau seeks action that lies outside of the Presiding Judge's authority, its Request will be denied. However, facts provided by the Bureau convince that the Red Light Rule as applied to Mr. Baxter's situation is appropriate and likely to succeed. Accordingly, the Presiding Judge will grant a continuance in this case pending decision on the Red Light Rule issue by the Commission, or by the appropriate Bureau or Office via delegated authority. Finally, upon dismissal of Mr. Baxter's application by appropriate authority, this proceeding will be terminated by the Presiding Judge upon motion of the Bureau.

Rulings

Accordingly, **IT IS ORDERED** that the Bureau's Request **IS DEFERRED** to the Enforcement Bureau for referral to an appropriate authority.

IT IS FURTHER ORDERED that this proceeding **IS CONTINUED** pending decision on the Red Light Issue by the Commission, or by the appropriate Bureau or Office, and upon proper motion for termination directed to the Presiding Judge by the Enforcement Bureau.

FEDERAL COMMUNICATIONS COMMISSION¹⁸

A handwritten signature in black ink that reads "Richard L. Sippel". The signature is written in a cursive, flowing style.

Richard L. Sippel
Chief Administrative Law Judge

¹⁷ See *Pricilla L. Schwier*, 4 FCC Rcd 2659, 2659 n.2 (1989). (concluding that the authority to regulate the course of a hearing does not include the authority to require the submission of information that falls outside the scope of the designated or requested issues).

¹⁸ Courtesy copies of *Order* e-mailed on issuance to Mr. Baxter and Enforcement Bureau counsel.