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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-689

DISPATCHED BY 40193

In re Applications of	)	MM DOCKET NO. 93-87
	)	
RAYMOND W. CLANTON	)	File No. BPH-911216MC
	)	
LOREN F. SELZNICK	)	File No. BPH-911216MD
	)	
For Construction Permit for a	)	
New FM Station on Channel 279A	)	
In El Rio, California	)	

MEMORANDUM OPINION AND ORDER

Issued: October 29, 1993; Released: November 1, 1993

1. Under consideration are the following:

Letter to Raymond W. Clanton's Counsel, dated October 12, 1993 from Counsel for Loren F. Selznick ("Selznick");

Supplement to Notification of Witness for Cross-Examination, filed October 22, 1993, by Selznick; and

Opposition to Notice of Appearance for Cross Examination, filed October 26, 1993, by Ray W. Clanton ("Clanton").

2. In her notice dated October 12, 1993, Selznick noticed Raymond Clanton to be examined at the November 4, 1993 hearing session on:

(i) his other media interests (including his divestiture pledge with respect to the Ojai, California radio station);

(ii) his proposal to accommodate his other business interests (including the Verde Fund Park in Sedona, Arizona) in order to effectuate his full-time integration pledge in this case;

(iii) his claim to past residence credit in California prior to his commencement of full-time residence in Arizona; and

(iv) his claim for past broadcast experience as a "production volunteer" at certain cable system/radio stations in Arizona and California.

3. In the Supplement to Notification of Witness for Cross-Examination, Selznick elaborated on the scope of cross-examination that she seeks. According to Selznick the record is unclear as to when Clanton would sell his current business (a Fun Park). Also unclear is whether Clanton would be willing to take a loss on the sale of his Fun Park. Selznick argues that the answer to these questions bear on Clanton's ability to effectuate his integration pledge. In support of its arguments, Selznick points to evidence that "clouds" Clanton's pledge.

a. Clanton has a five-year note for the 20 acre real estate on which the Fun Park is located.

b. Clanton's current plan is to develop eight more acres in the future.

c. Clanton is devoting 70 hours-per-week to running the Fun Park.

d. Clanton has taken out two other personal loans for the Fun Park that are secured by real estate in California that is owned by Clanton.

e. Clanton does not have a prospective purchaser for the Fun Park. He refused to provide any financial information about the cost of or liabilities of the Fun Park.

f. Clanton has yet another business, a research company.

g. Clanton is interested in real estate investments and owns rental property that requires him to perform certain given tasks that are covered in the agreements.

h. Clanton owns his home in Arizona that has to be cared for.

i. Clanton is in escrow on another piece of property <u>in Arizona</u> that is separate from the Fun Park and on which he hopes to build a golf course. If he is successful in the FM case, he will <u>not</u> sell this property but will hold it for investment.

4. Additionally, Selznick claims that one aspect of Clanton's written direct testimony is flatly contradicted by his deposition testimony, mainly that he will resign any employment or other commitments he may have, whereas

at the deposition he stated that he would not sell his Arizona investment property.

5. Selznick also wants to test Clanton's assertions as to the amount of time he spent at each of his different residences.

6. Also Selznick wants to test Clanton's broadcast experience.

7. Clanton opposes the Notice on both procedural and substantive grounds. Despite Selznick's tardiness (three days late) the Supplement has been given due consideration because Clanton has not been unduly prejudiced by the tardiness.

8. However, on the merits Clanton's opposition to Selznick's notice IS SUSTAINED for the reasons stated therein.

9. Integration. Clanton has stated in plain words that he will sell the Fun Park and in a manner that will leave Clanton free to devote his full time to the radio station from the day it starts broadcasting. Clanton's current work schedule at the Fun Park has no bearing on his integration pledge. Commission precedent allows applicants to be gainfully employed or pursue business interests during the pendency of the application. Nor does the fact that Clanton currently does not have a prospective purchaser have a bearing on Clanton's pledge.

10. Selznick wants to examine Clanton's Fun Park financial structure, because if the figures fall right for her, she might be able to argue that a prudent business person (read Clanton) would not be willing to take a heavy loss on the sale of the Fun Park and consequently would renege on his promise to sell and to integrate full time. This line of inquiry was denied at deposition because it was clearly a classic fishing expedition. It does not serve as an adequate basis for examination on the comparative issue.

11. Further, Clanton notes that his research company that develops sports products is a sole proprietorship and will be dissolved if his application is granted. And that the "duties" connected with the real estate he owns consist of supervising repairs when they may be needed and periodic short visits to the tenants.

12. Clanton also states that although his Arizona residence requires care presently it will be sold when Clanton moves to El Rio.

13. Lastly, Clanton notes that although he owns land in Arizona that he will not sell if awarded a grant, he does not plan to develop the property but merely hold it for investment.

14. In light of the foregoing, there is no basis for questioning Clanton's ability to fulfill his integration statement.

15. Local residence and civic activities. Selznick seeks to inquire how Clanton determined the claimed percentages of time spent in this service area but does not demonstrate that Clanton's claim of past local residence is

incorrect in any way. Clanton notes that this topic was covered at Clanton's deposition. Selznick also would like to ascertain where certain of Clanton's claimed civic activities took place. Clanton notes that if his direct case is defective on this score, that point may be raised in proposed findings.

16. Broadcast experience. Clanton was not asked any question about his broadcast experience at his deposition. Again, if Clanton's direct case is deficient on this point, the objection may be raised in proposed findings.

17. Other media interest. Clanton has none. He has a 20% interest in a pending application for a non-commercial FM station at Ojai, California. Pending applications do not constitute media interests.

18. In light of all of the foregoing, Clanton's Opposition to Notice of Appearance for Cross-Examination IS SUSTAINED, and Clanton need not appear for cross-examination at the scheduled November 4, 1993 hearing session.

IT IS SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak

John M. Frysiak
Administrative Law Judge