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

FCC 94M-296

In re Applications)	MM Docket No. 93-241 ✓	
DARRELL BRYAN)	File No. BPH-920109MA	41639
SBH PROPERTIES, INC.)	File No. BPH-920123MD	
For Construction Permit for a)		
New FM Station on Channel 276A)		
in Tusculum, Tennessee)		

MEMORANDUM OPINION AND ORDER

Issued: April 21, 1994 ; Released: April 25, 1994

1. Under consideration are the following:

Second Motion to Enlarge Issues, filed February 15, 1994, by SBH Properties, Inc. ("SBH");

Supplement to Second Motion to Enlarge Issues, filed March 3, 1994, by SBH;

Opposition to Second Petition to Enlarge Issues, filed March 14, 1994, by Darrell Bryan ("Bryan");

Reply to Opposition to Second Petition to Enlarge Issues, filed March 31, 1994, by SBH;

Motion for Acceptance of Supplement to Opposition to Second Motion to Enlarge Issues, filed April 18, 1994, by Bryan; and

Supplement to Opposition to Second Petition to Enlarge Issues, filed April 18, 1994.

2. SBH seeks a financial issue against Bryan alleging that his financial posture is flawed and therefore inadequate under Commission's standards. SBH's petition is deemed timely filed and raises questions of basic qualification.

3. According to SBH three of the equipment items to be utilized by Bryan have been listed as "used." In his deposition Bryan allowed that he had not obtained price quotes for used equipment in writing and had no agreement with any supplier to provide any used equipment at the prices he relied upon.

4. SBH also alleges that a significant number of the itemized equipment costs reflected on Bryan's itemization of construction and operation costs are underestimated to the total amount of \$52,422. Additionally, some equipment which is needed for normal and proper operation of the station is not included and their cost would raise the shortage in equipment cost to \$57,596.

5. SBH also alleges that Bryan had not listed in his construction and operation costs the costs of debt service for the first month's operation. Also not taken in account were costs for electricity during the construction stage.

6. SBH states that although Bryan is relying on a \$38,500 surplus the surplus may not be available to cover any shortfall in either his equipment or operating expenses because Bryan had included legal and engineering costs in his overall estimate and that a portion of the surplus would be used for this purpose.

7. SBH states that Bryan's Greene County Bank commitment letter is deficient because the collateral requirement as to the pledge of stock is vague, and there are no repayment terms.

8. In response, Bryan states that he had acquired a new written estimate for new equipment, except for two designated used items, which is only a little more than 5% higher than his December 1991 estimate. Bryan states that SBH allowed \$47,000 for a 11 kilowatt transmitter but that his requirement won't require that large a size and his estimate of \$17,200 is proper. SBH figures \$26,996 for a 300 foot tower, but Bryan has a price quote for \$16,000. The difference for the two items between the SBH and Bryan versions is over \$40,000. Bryan also alleges that some expense items, which he mentions, were listed on the high side.

9. Bryan also contends that his bank commitment letter is not deficient because (1) identifies the borrower, i.e., Darrell Bryan; (2) indicates the amount of the loan, i.e., \$175,000; (3) identifies the specific use of the proceeds, i.e., "for the purpose of constructing and operating a new FM radio station in Tusculum, Tennessee"; (4) specifies a repayment term and particular interest rate, i.e., Prime plus 1.50% over 15 years; and (5) identifies specific conditions, i.e., lien on acquired assets and stock pledge if Bryan incorporates.

10. In its reply, SBH questions the \$16,000 tower cost quote Bryan received from American Aviation because it is not indicated that installation of the antenna and transmitter line, site preparation and foundation are included. SBH believes that the quote is a mere accommodation because it is from a firm whose president is Bryan's engineer. One of SBH's sources said that in light of the cost quoted by American Aviation, the Bryan tower would have to be used equipment. SBH's two sources listed costs at \$37,500 and \$26,996.

11. SBH also notes that Bryan's application reflects a proposal for a two-bay antenna while his written cost estimate lists cost for a six-bay antenna. If Bryan were to utilize a two-bay antenna his costs are understated by \$38,339. Bryan's engineering statement of Garrett Lysiak notes that the maximum number of bays which Bryan's antenna may contain is four. The cost of a transmitter for use with a three or four bay antenna would be somewhere between Bryan's cited price \$17,200 (six bay) and the cost of a transmitter with a two-bay antenna at \$49,000.

12. Additionally SBH notes that Bryan cited costs for a 7/8-inch transmission line, but Lysiak's engineering statement calls for a 1-5/8 inch transmission line. The shortfall would amount to \$5,573.

13. SBH lists other cost discrepancies which show that in addition to the cost of his tower and transmitter Bryan has understated a number of his itemized cost estimates by at least \$18,923.

14. In light of all the foregoing, a serious question exists whether Bryan has understated the cost of construction in his application and whether he had at the time of filing his application sufficient funds to meet the costs of construction and operation, and whether he is financially qualified at the present time. The requested issues are warranted and will be specified.

15. SBH also seeks an obstruction of discovery issue contending that initially Bryan stated that documents relating to his claimed civic activities and his broadcast experience had been produced whereas none had been produced. At deposition Bryan stated that he did have documents. In his opposition Bryan claims he has no documents except for framed certificates and plaques which he was not required to produce. It appears that the requested issue is not warranted.

Accordingly, IT IS ORDERED that the Motion for Acceptance of Supplement to Opposition to Second Motion to Enlarge Issues, filed April 18, 1994, by Bryan IS GRANTED and the Supplement IS ACCEPTED.

IT IS FURTHER ORDERED that the Second Petition to Enlarge Issues, filed February 15, 1994, by SBH Properties, Inc. IS GRANTED to the extent indicated, and the following issues ARE ADDED against Darrell Bryan:

To determine whether Bryan is presently financially qualified;

To determine whether Bryan was financially qualified at the time it so certified;

To determine whether Bryan's financial certification was false; and

To determine in light of the evidence adduced under the foregoing issues the effect on Bryan's basic qualifications.

IT IS FURTHER ORDERED that the following procedural schedule IS ESTABLISHED:

June 24, 1994

- Completion of discovery.

- July 8, 1994 - Exchange of applicant's direct case.¹
- July 13, 1994 - Notification of witnesses desired for cross-examination.*
- July 19, 1994 - Filing of oppositions to witnesses notification.*
- July 26, 1994 - Commencement of hearing at 10:00 a.m. in the offices of the Commission.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak
Administrative Law Judge

¹ Applicants ARE DIRECTED to submit exhibits numbered consecutively from the last numbered exhibit from previous hearing. All exhibits will be assembled in a binder with each exhibit bearing a number with a tab on each document. An index containing a descriptive title of each exhibit shall be submitted. The exhibits will be serially numbered. A prefix will be used to indicate the party sponsoring the exhibits. Each exhibit shall be separately and consecutively paginated, including attachments. If stipulations are entered into, they are to be executed by counsel, prepared as joint exhibits, suitably bound, tabbed and paginated.

* The documents shall be hand served.