

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

## MM Docket No. 93-135

In re Applications of

THE PETROLEUM V. File No. BRH-890601VB  
NASBY  
CORPORATION

For renewal of License of  
Station WSWR(FM)  
Shelby, Ohio

THE PETROLEUM V. File Nos. BTCH-921019HX and  
NASBY CORPORATION BTCH-921019HY

For transfer of control of  
Station WSWR(FM)  
Shelby, Ohio

## MEMORANDUM OPINION AND ORDER

Adopted: March 11, 1996;

Released: March 20, 1996

By the Commission:

1. This Memorandum Opinion and Order remands this proceeding for further hearings concerning the question of whether Thomas L. Root will have continuing influence over Petroleum V. Nasby Corporation (Nasby) in the event that its application for renewal of Station WSWR(FM) in Shelby, Ohio is granted. The Review Board granted Nasby's application for renewal with a condition, in view of Root's criminal convictions, that Root's family divest their interest in Nasby. *The Petroleum V. Nasby Corp.*, 10 FCC Rcd #6029, recon. granted in part, 10 FCC Rcd 9964 (Rev. Bd. 1995).<sup>1</sup>

## I. BACKGROUND

2. Nasby's renewal application was designated for hearing to determine the impact on its qualifications of the fact that one of its principals, Thomas L. Root, was convicted of felonies. *The Petroleum V. Nasby Corp.*, 8 FCC Rcd 4035 (1993). At the time Nasby filed its renewal application on June 1, 1989, Root was its corporate secretary and one of its three directors, as well as its general counsel and communications counsel. He terminated each of these positions by April 25, 1990. Throughout most of the license term, Root also owned approximately 34 percent of Nasby's

stock. However, transfers occurring at around the time that Nasby filed its application first briefly raised Root's interest to slightly over 54 percent and then resulted in the disposition of his entire ownership interest on June 23, 1989. (These transfers will be discussed in greater detail below.) 10 FCC Rcd at 6029-30 ¶ 4.

3. Between May 21, 1990 and January 1, 1991, Root was indicted in federal courts in the District of Columbia and Illinois and in state courts in North Carolina and Florida on numerous criminal charges, which arose from Root's representation of FM radio applicants before the FCC, notably in connection with an entity called Sunrise Management Corporation. Between October 6, 1990 and June 23, 1992, Root was convicted, pled guilty, or pled no contest to multiple counts of fraud (including wire fraud, securities fraud, and altering, forging, or counterfeiting public records), violations of securities laws, conspiracy, racketeering, and transporting stolen monies obtained by fraud. He was sentenced to two 15 year and one 33 month prison terms, all to be served concurrently. None of Root's misconduct involved Nasby. 10 FCC Rcd at 6030 ¶¶ 4-6.

4. As previously mentioned, Root was involved in transfers of Nasby stock occurring at around the time that Nasby filed its renewal application. As of May 29, 1989 (three days before Nasby filed its application), Root owned 120.25 of Nasby's 500 outstanding shares in his own right and an additional 50 shares as custodian for his minor children, giving him control of a total of 34.05 percent of Nasby's stock. The next day, May 30, Root acquired an additional 100 shares from the family of David L. Williamson, WSWR(FM)'s former general manager, raising Root's interests to 54.05 percent. 10 FCC Rcd at 6032-33 ¶ 23.

5. In a series of transactions immediately thereafter, Root reduced his holdings. On May 31, Root transferred the 50 custodial shares to his wife, Kathy G. Root (who already owned 33 shares in her own right), thereby reducing his interest to 220.25 shares or 44.05 percent. On June 1, Root further reduced his holdings in two separate transactions. In the first, he transferred 50 shares to Nasby's treasury in return for forgiveness of a debt, thus reducing the total number of outstanding shares to 450 and his holdings to 170.25 shares or 37.83 percent. In the second, he transferred 100 shares to a trust for his children, the trustee of which was his wife's mother, Arlene Geer. Finally, on June 23, Root transferred his remaining 70.25 shares (15.61 percent) to his parents, Thomas F. and Joanne Root. Nasby proposes that the 70.25 shares will be transferred from Root's parents to a law firm in payment for legal services performed on behalf of Root individually. As a result of these transactions, Root currently owns no shares of Nasby; his family owns 278.25 shares, or 61.83 percent of Nasby's outstanding shares.<sup>2</sup> Approval of the pending transfer application covering the proposed transfer to the law firm would reduce the Root family's holdings to 208 shares, or 46.22 percent. *Id.* Although the foregoing transactions resulted in a transfer of control of Nasby from Root, no attempt was made to obtain prior Commission approval, as required by 47 U.S.C. § 310(d). Nasby now asks the Commission to approve these transactions *nunc pro tunc*.

<sup>1</sup> Before the Commission are: (1) the Mass Media Bureau's Application for Review, filed July 5, 1995, and an Opposition, filed October 30, 1995, by Nasby; and (2) Application for Review, filed October 13, 1995, by Nasby, and an opposition, filed

October 30, 1995, by the Bureau.

<sup>2</sup> Root's parents already owned 25 shares before obtaining 70.25 shares from Root. See Bureau Exh. 12 at 11.

## II. REVIEW BOARD

6. The Board, affirming an Initial Decision by Administrative Law Judge Edward Luton (ALJ), held that Root's criminal convictions, although reflecting serious misconduct by a key principal of the licensee, did not warrant denial of Nasby's license. See *Petroleum V. Nasby Corp.*, 9 FCC Rcd 6072 (I.D. 1994). The Board found that: (1) with the exception of a one or two day period, Root did not own a majority of Nasby's stock; (2) he did not control the day-to-day operation of the station; (3) his misconduct did not involve WSWR(FM); and (4) the remaining owners of Nasby were unaware of his illegal activities. In view of these factors, the Board concluded that the licensee, minus Root, was qualified for renewal. 10 FCC Rcd at 6031-32 ¶¶ 18-21. The Board also affirmed the ALJ's finding that the unauthorized transfer of control of Nasby did not warrant the denial of renewal, since the failure to obtain Commission approval was the result of "neglect" rather than deceit. 10 FCC Rcd at 6029 ¶¶ 2-3, 6032 ¶ 22, 6033 ¶ 27.

7. Nevertheless, the Board placed a condition on the renewal of Nasby's license because of the "unusual circumstances" of this case. The Board noted that the removal of Root as an owner of Nasby was accomplished by a voluntary transfer of stock, which resulted in Root's wife, parents, and children's trust owning a majority of Nasby's stock. The Board further noted that Root's mother Joanne, has become Nasby's corporate secretary and one of its three directors, positions that Root himself formerly occupied. The Board found that only the divestiture of stock owned by Root's family to third parties unrelated to Root would provide assurance that Nasby would not require scrutiny to determine the potential impact of Root's presence. The Board required the divestiture of the Root family shares within 60 days. It also required Root's mother to relinquish her positions with Nasby. 10 FCC Rcd at 6033 ¶¶ 24, 26. On reconsideration, the Board extended the deadline for divestiture to six months. 10 FCC Rcd at 9964-65 ¶¶ 3-7.

## III. THE PLEADINGS

8. Both Nasby and the Mass Media Bureau filed applications for review of the Board's decision. Both object to the Board's imposition of a divestiture requirement, but for diametrically opposed reasons. The Bureau finds it inconsistent that the Board found Nasby qualified but nevertheless required divestiture by Root's family members. In the Bureau's view, either Root's misconduct "fatally infects" Nasby, or Nasby is entitled to unconditional renewal. Mass Media Bureau's Application for Review at 7. The Bureau asserts that Root could still control the licensee through his family members, who hold their interests through Root's "maneuvering." Mass Media Bureau's Application for Review at 5. Nasby, in its application for review, argues that its license should be renewed unconditionally. According to Nasby, the Board had no basis to find that the stock transfers were intended to facilitate Root's removal (as opposed to providing for his children) or that Root can influence Nasby through his family. In particular, Nasby objects to the implication that Joanne Root "succeeded" her son as an officer and director of Nasby, since she was associated with Nasby for several years. Nasby stresses that Root was never involved in the day-to-day operations of the station and that he was removed as an officer, director, owner, and counsel of Nasby before his convictions. Nasby

asserts that it would be "incomprehensible" that Nasby would allow itself to be influenced by Root. Application for review at 4.

## IV. DISCUSSION

9. We believe that the existing record should be supplemented to facilitate a determination of whether Root may potentially influence the licensee's affairs in the event that WSWR(FM)'s license is renewed. Although the Board declined to disqualify Nasby, it was clearly concerned about the potential for such influence in light of the "unusual circumstances presented by this case." The Board's divestiture requirement reflects this concern. We agree with the Board and the Bureau that, despite Nasby's contentions to the contrary, Root's divestiture of his stock does not necessarily wholly eliminate questions as to his potential influence. The basis of our concern is not simply that Root's family retains an interest in WSWR(FM). As we have long held, family relationship alone is insufficient to warrant an inference that family members are acting in concert. See *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 170 ¶ 13 (1980). See also *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920, 1922 ¶ 12 (1992). Rather, we find that the specific facts of this case require further hearings in this regard.

10. We are concerned that Root may have demonstrated, in leaving Nasby, the ability to allocate control over the licensee. Before departing Nasby, Root, who was already Nasby's largest individual stockholder, acquired from the Williamson family the only other large individual interest in Nasby, giving him more than 50 percent of Nasby's stock. See paragraphs 4-5, *supra*; Bureau Exh. 12. His departure left his family with more than 60 percent of Nasby's ownership. Even after the proposed spinoff to the law firm, the family will hold just under 50 percent of the stock, nearly three times the next largest individual interest (that of the law firm). Although the transfer of these key interests in Nasby occurred approximately a year before Root's first indictments, there is nevertheless the potential that they were made in anticipation of those events. This being so, a question remains whether the transactions were intended truly to sever Root's connections with the licensee or whether they were intended merely to shield those connections from scrutiny. We note, for example, that even after he transferred his stock interests, Root retained his positions as director, corporate secretary, and counsel until just before his indictments. See 10 FCC Rcd at 6029-30 ¶¶ 4-5. Moreover, the record indicates that Root was not candid with Nasby's other principals as to the reasons for his actions and that Root participated in Nasby's affairs after he was indicted by helping to prepare an ownership report. *Id.* at 6030-31 ¶¶ 11-12. The existing record does not illuminate the issue beyond Nasby's unsubstantiated contentions, and the evidence regarding Root's character does not provide any basis for assuming that there is an innocent explanation for his actions affecting Nasby's ownership.

11. In view of the foregoing, we do not wish to rely either on the precedent cited above involving mere family relationships or on contentions unsupported by record evidence. The record should therefore be supplemented as to the circumstances of all of the 1989 transfers and as to Root's relationship with his family with respect to Nasby then, now, and in the future. This will enable the ALJ, in the first instance, and the Commission, ultimately, to judge

the credibility of the claims concerning Nasby's qualifications. A determination can then be made whether renewal -- conditional or not -- would be appropriate. We will therefore remand this proceeding for further hearings to explore these questions.

#### V. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, That Mass Media Bureau's Application for Review, filed July 5, 1995, and the Application for Review, filed October 13, 1995, by Petroleum v. Nasby Corporation ARE GRANTED in part and DENIED in part and that this proceeding IS REMANDED to the Presiding Judge for proceedings consistent with the preceding paragraph and for preparation of a supplemental initial decision.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary