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

In the Matter Of Ronald Brasher, Patricia
Brasher, and DLB Enterprises, Inc. dba
Metroplex Two-Way Radio Service

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EB Docket No. 00-156

Before: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EXCEPTIONS
OF PATRICIA BRASHER

Submitted September 8, 2003

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Summary/Statement Of The Case/Questions of Law

Statement of the Case: Defendants contend that the Court's Decision is contrary to the dictates of 5 U.S.C. §556(c) and standards of proof articulated in *In the Matter of TeleSTAR, Inc* 2 FCC Rcd. 5, at ¶ 23 (1995) and the burden of proof which the Court properly assigned to the Bureau, yet the Bureau did not meet. Rather, the Decision is based on facts contradicted within the record, which contradiction was provided no decisional weight, and the Court's acceptance of total veracity of that testimony provided by opposing witnesses, which veracity is not found in the record evidence. Therefore, based on a preponderance of all evidence contained in the record, the Court could not have reasonably found Defendants culpable. Accordingly, the Decision should be reversed on review.

Questions of Law Presented: The specific questions of law are, for the Commission's convenience and reference, articulated in the titled sections and subsections of the brief. However, the general questions of law are as follows: Whether the Court erred in its finding of improper specific intent in the actions taken by Defendants, absent evidence of Defendants' knowledge that their actions were, perhaps, not in strict accord with the agency's rules; and whether the Court erred in failing to give weight to any material evidence which contradicted the conclusions put forth by the Bureau; and whether the Court erred in holding that the actions taken by Defendants warrant revocation and disqualification. Defendants claim that the Court did so err and that such error is material and subject to the Commission's reversal on review.

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EXCEPTIONS

1. In accord with 47 C.F.R. § 1.276, Patricia Brasher (“Brasher”), President of DLB Enterprises, Inc., dba Metroplex Two-Way Radio Service (“DLB”) hereby submits exceptions to those findings published in the Initial Decision of Administrative Law Judge Arthur I. Steinberg, *In the Matter of Ron Brasher, et al* , EB Docket No. 00-156 (Released August 8, 2003) (“Decision”). The Decision found in favor of the Enforcement Bureau (“Bureau”) regarding the issues presented therein and Brasher requests, upon review, that the Commission reverse or modify the Decision based on the following, issues of law and fact, based on those standards of proof contained at ¶¶ 2-4 of Ron Brasher’s Exceptions filed in this matter.

1. Misrepresentations And Lack of Candor: Issue (a): Whether the Court erroneously found that Brasher had engaged in misrepresentation and/or lack of candor before the Commission.

2. The Court concluded that, “[t]he findings of fact establish, and it concluded, that Ron Brasher made multiple misrepresentations of fact to, and concealed material information from, the Commission in applications he filed with the Commission in the names of others.” Decision at ¶ 111, and that “Patricia Brasher was complicit in the misrepresentations made by Ron.” *Id* The Parties dispute this finding and request that, upon review, the Commission reverse the Court’s conclusion.

(A). Whether the Court improperly ignored the pro se status of the Brashers.

3. By ignoring the pro se status of the Brashers during all times relevant, the Court did not determine whether the Brashers’ lack of knowledge undermines the necessary finding of specific

intent to deceive, thus, the Court erred. A fuller recitation of this issue is contained at Section I(A) of the Exceptions of Ron Brasher in this matter which recitation is incorporated herein.

(B). Whether the Court erred in its finding that Defendants' motive in filing the subject applications evinces an intent to deceive.

4. The Court's equation of motive with intent without examining the issue of knowledge regarding the alleged wrongdoing, is clearly error. A fuller recitation of this issue is contained at Section I(B) in the Exceptions of Ron Brasher filed in this matter which are incorporated herein.

(C). Whether the Court erred in finding that the Defendants engaged in misrepresentation in their use of the Sumpters as licensees.

5. The issue regarding the use of the Sumpters as licensees was whether their names were affixed to documents without the knowledge or consent of the Sumpters. A secondary issue is whether unauthorized affixing of such signatures was shown to have been performed by the Brashers. And, if so, whether such actions were performed by the Brashers with the intent to deceive the Commission. As to the first issue, the evidence is fully contradictory. As to the second, the evidence does shows that such finding is impossible. And, as stated in Section I(B) above, the intent to deceive is not shown.

6. As the Decision properly reports, there was contradictory evidence regarding whether the names of the Sumpters were employed with their knowledge, participation, and consent. The Sumpters claimed full ignorance as to the matter and offered alternative theories to how their names might have appeared on applications and licenses, without their knowledge or participation. The Brashers contended that the applications filed on behalf of the Sumpters were prepared with the Sumpters' knowledge and consent.

7. The Decision, however, found entirely in favor of the Bureau on all of the above three elements, namely, that the Brashers had falsified or caused to be falsified the relevant documents,

without the knowledge and consent of the Sumpters, and that such had been performed with a intention to deceive the Commission. That the Court chose to believe entirely the testimony of the Sumpters was expressed in glowing terms within the Decision at paragraph 148 wherein the Court found, based on its “reading of the cold transcript” that it would “[award] full credit to the testimony of the Sumpters,” finding that “their testimony was forthright, candid, and entirely believable.” Brasher avers that a cold reading of the transcript, or more correctly, the record evidence demonstrates that the Court’s awarding of full credit to the Sumpters’ testimony was not justified or reasonable. Indeed, the record evidence demonstrates that the Sumpter testimony was replete with inconsistencies, illogical statements, and obvious falsehoods. The Court’s decision to accept *en toto* the testimony of the Sumpters is contradicted by the record evidence and any reasonable preponderance thereof.

8. *As an initial matter, the Court’s failure to employ the whole record includes the Court’s overlooking the Sumpters’ motive to prevaricate. Following receipt of the Net Wave pleading and subsequent correspondence from the Commission, the Sumpters were paralyzed with fear. Jim Sumpter and Jennifer (Sumpter) Hill testified that they were fearful of losing their CPA licenses.(Tr. 1891-1892, 2201, 1099, 1103, 2201, 1366, 1101) Melissa Sumpter testified that she feared the loss of her registered nurse (RN) license.(Tr. 1100-1102, 1367, 2201, 969, 1367-1368) Norma Sumpter feared that she could be thrown in jail.(Tr. 2201) Thus, with the filing of the Net Wave Petition, fear ran rampant through the Sumpter family. Not only did they fear that they might be subject to criminal prosecution and monetary fines, as testified, but also they also feared the loss of their careers and livelihood. This testimony and the Court’s lack of treatment of it is telling. Although the Court found that the Brashers were sufficiently motivated to deceive the*

Commission for the sole purpose of obtaining a few additional radio channels, the Court did not recognize the suspect nature of the Sumpters' testimony when motivated by extreme fears, motivations far more potent than expanding a radio system.

9. Nor did the Court provide sufficient weight to the fact that the Sumpters/Brashers were part of an extended, close-knit, family unit and that the family unit was only split apart following the receipt of the Net Wave petition and after the Sumpters, independent of the Brashers, had several closed meetings among themselves, (Tr. 2202-04, 1965-66, 1413-15, 1104) whereat it was decided to cut the Brashers loose. Thus, the record shows that the Sumpters prepared fully among themselves and in secret what defensive strategy they would commonly employ in the provision of testimony. (Tr. 1966-67, 1793, 1859)

10. On November 29, 1997, Melissa Sumpter signed and sent to Defendants a letter wherein she stated, among other things, that, "I know you had used my name but I understood that if a channel was awarded then you would immediately transfer it to your name." (Tr. 1347, 1371; EB Ex. 53) On November 29, 1997, Jennifer (Sumpter) Hill and Norma Sumpter signed and sent letters to Defendants with the same assertion as Melissa's letter noted above. (Tr. 1064; EB Ex. 56.; EB Ex. 47) In her testimony, Jennifer (Sumpter) Hill states that she was not surprised that there was an application in her name (Tr. 1117), that she recalled signing a radio application in the early '90's (Tr. 1119) and, with great specificity, Jennifer describes the discussions she had with the Brashers when she signed this application as to why the Brashers needed to submit an application in her name.¹ Melissa also remembers signing an application back in the early '90's

¹ Tr. 1119. After testifying that she thought she signed a radio application in the early 90's, FCC counsel, Mr. Knowles-Kellett, posed the following question to Jennifer (Sumpter) Hill, "Do you know if you had a discussion of what it [something her Aunt Pat gave her to sign] was

(Tr. 1315). Jennifer and Melissa also claimed that their only knowledge regarding their individual participation in FCC related matters dates back to the early 1990's, and that they had nothing to do with the T-band applications filed in 1996. They claim that their statements in the letters of November 29th relate to the applications they allegedly signed in the early '90's.(Tr. 1346) Jim and Norma support their daughters' claims and, furthermore, claim their own individual ignorance to that 1996 T-band applications.

11. To be believable, the Sumpters' testimony required confirmation by the Bureau's presentation of application information or licenses which arose out of Jennifer and Melissa's alleged participation in signing applications in the "early 1990s." The Bureau did not present even a single shred of evidence which showed that any such applications were filed with the Commission or prepared by anyone. The Sumpters' bald assertions were entirely unsupported. The Court makes *nothing of the Bureau's obvious failure and the more obvious implication that such failure represented, that the Sumpters lied.*

12. The November 29, 1997 letters, read in context of when each was sent and in conjunction with Jennifer (Sumpter) Hill's testimony recited in Footnote1, fully demonstrate that the feigned ignorance of the Sumpters regarding the 1996 T-band licenses is not credible. The content of the letters and Ms. Hill's testimony are fully consistent with the Sumpters' knowledge of their participation in the preparation of the subject applications. Her testimony shows that she

at that time?" In response, Ms. Hill stated, "It seems like the discussion, and I can't remember exactly who discussed it, when and what, but it always seemed to be the discussion was that Ron could only acquire so many licenses in his name, okay? And if I had a license in my name, he could have them transferred to him, so he was trying to get these licenses and he would get them in our names and have them transferred to him. But I don't know who discussed that or how I know that, I just know that's always how it was discussed. And I never asked questions. End of story."

willingly signed a document related to forwarding the T-band licenses and thereby acquiesced to, and had full knowledge of, the filing of a 1996 T-band application in her name.²

13. The record does not show any reason the Sumpters' participation would have been useful in the early 1990s. Jennifer's testimony that her participation arose out of some, then existing need of the Brashers to obtain channels which DLB could not obtain without such assistance, is unsupported by record evidence. In the Decision, the Court relies upon the Brashers' having engaged in the use of Sumpters' names for the express purpose of dealing with the limitations arising out of Section 90.313(c). However, the record demonstrates that problem caused by application of the rule section did not arise until immediately prior to the filing of the subject T-band applications. Thus, the Court's findings are clearly contradictory. The Court cannot assign motive to the Brashers in the early 1990s which the Court also found came to exist in 1996.

14. Jennifer states with great particularity the substance of conversations surrounding her signing of a radio application. The substance of that conversation being that DLB needed licenses, that DLB could acquire only so many licenses in its and the Brashers' respective names, that either DLB or the Brashers could apply for licenses in Jennifer's name and, lastly, that once a license was granted, the Brashers would transfer such license out of Jennifer's name, *see*, Footnote 1. Although Jennifer claims this was in the early '90's, nothing in the record shows that the Brashers were in need of licenses in the early '90's, that the Brashers applied for licenses in Jennifer's name in the early '90's, and that Brashers could only apply for a certain number of

² Use of another's name, with permission, to sign an accurate filing held not intentionally misleading. *In re Application of Alden Communications*, 3 FCC Rcd. 5047 ¶ 5 (1998).

unidentified licenses in their own names in the early '90's.³ Rather, as late as June 26, 1996, an application filed in the name of Patricia Brasher awarded five T-band channels based on a single application under the call sign WPJI362 (EB Ex. 19 at 296) and a license was awarded to Ron Brasher for five channels under call sign WIL990.(EB Ex. 19 at 359) Thus, the record shows that the Brashers' knowledge of the limitation contained within Section 90.313(c) was obtained *following* the date that those applications were prepared, because the licenses evince that prior to that date, the Brashers believed and the Commission's grants confirmed that multiple channels could be obtained on a single license.

15. All evidence and logic, outside of the harmonized testimony of the Sumpter family arising from closed family meetings, demonstrates fully that the Sumpters' shared claims regarding applications in the early 90's is fully unsupported, is attributable to participation in the T-band applications and licenses of 1996, and is simply not believable.

16. With Jennifer and Melissa admitting to having signed applications or documents related to a FCC license application, a preponderance of the evidence should have led the Court to conclude that Jennifer and Melissa, in fact, signed documents related to the 1996 T-band applications— evidencing full knowledge and awareness of the subject applications. The Court's ringing endorsement to the Sumpters' testimony at paragraph 148 of the Decision is clearly contradicted by the record evidence.

17. Additionally, the Sumpters all testified that it was their common procedure to forward all FCC related mail that each received to the Brashers. (Tr. 1054-55, 1844-45, 1954, 2077-79,

³ The record only shows that Norma, not any other Sumpter, filed for and was granted a license in the early '90's, which license was used for a phone that was put into Jennifer's car.

1375) In so testifying, each of the Sumpters admitted receiving such mail. Yet, the record evidence demonstrates that there are only two reasons why any such mail would have ever been sent to any of the Sumpter family: the licenses granted to Norma and, much earlier Jim, for use of end units, and the T-band applications and licenses of 1996. Since there exists no evidence that a license was granted to Jennifer or Melissa at any time prior to 1996, there is no reason why Jennifer and Melissa would be receiving mail from the FCC or a frequency coordinator prior to the filing of the 1996 T-band applications. Again, the Sumpters' sworn ignorance regarding the subject licenses is contradicted by the record evidence, a contradiction unnoted in the Decision.

18. Further, Jennifer testified that she received directly from the Commission at her home the request for construction information (FCC Form 800A) to verify construction of the T-band facility licensed in her name under call sign WPJR740 and that upon receiving it, she threw it out, because, in her words, "I was angry. I felt like [Ron] was blowing me off." (Tr. at 1061). By Jennifer's testimony, the 800A was in a landfill, but the record evidence shows that Ron Brasher filled out the 800A and requested through Jim that Jennifer sign the 800A (Tr. at 1061-1062 and 1966 and 1978). Jennifer misrepresented facts to the court. No other conclusion is possible. Taking into consideration Jennifer's testimony and the November 29th letters of both Jennifer and Melissa, *see*, ¶ 10 above, reason compels one to conclude that Jennifer and Melissa were fully aware of the 1996 T-band applications filed in their names. And given the Sumpters' concerted efforts to avoid any consequences of their knowing participation in the applications, a preponderance of the evidence leads one to conclude that all the Sumpters were fully

knowledgeable about the 1996 T-band applications.⁴ Further, after their receiving the Net Wave Petition, none of the correspondence from the Sumpters to Defendants, except the one letter from Jim referenced in Footnote 4 herein, states that they did not consent to the filing of applications in their respective names in 1996.

19. The Sumpters presented at trial, without prior notice to the Brashers, a credit card receipt showing the purchase of gas in Junction, Texas on June 23, 1996, by Jim Sumpter. (Tr. 1797-98, 2032, Eb. Ex. 70) Although the date is questionable in its relevance given the fact that June 23rd is a day following that date upon which the Brashers testified that the “client copies” were executed by the Sumpter women at a meeting where Jim was not present, the Court nonetheless gives great weight to this document. Decision at ¶ 147 The relevance added to the document arises out of Jim and Norma’s testimony that the gas was purchased when together they went to visit a sick aunt on that weekend, including the previous day of June 22nd, when the client copies were alleged to have been signed in accord with the date shown on those copies. (Tr. 2032-2041, 1797, 1805-1810) Accordingly, standing alone the receipt only tends to prove the absence from the Dallas area of Jim Sumpter on a date following the relevant date. However, the receipt does not explain, even with the convenient testimony of Jim and Norma, the contradictory testimony of Ms. Bolsover that the signatures on the client copies appear to be the genuine signatures of Norma, Jennifer and Melissa.

⁴ The Defendants note that at all times relevant only Jim Sumpter stated that he had no knowledge that his name had been used. *See* EB Ex. 39. However, Jim Sumpter later stated by letter dated December 20, 1997, directed to Ron Brasher that, “My application for a license was your idea and strictly for your benefit.” *See*, EB Ex. 40. The Defendants further note Norma Sumpter’s letter dated December 20, 1997, directed to the Brashers wherein Norma states, “My application for a license was your idea and strictly for your benefit.” *See*, EB Ex. 48.

20. Brasher finds Jim and Norma's tale beyond questionable and respectfully directs the Commission's attention to the fact that this trip was never brought to light in the years preceding the hearing. Norma allegedly remembered this trip the Thursday before her testimony and shared this recollection with her family, the Sumpters' counsel and Bureau counsel.(Tr. 2032-33) However, counsel for the Parties were not made privy to this revelation until the day of Jim's testimony. (Tr. 1808-1816) The Court's decision to allow the entrance of the evidence fully prejudiced Defendants and their rights to due process, including the ability to examine and consider the evidence prior to trial.

21. With the Court having dismissed Jennifer and Melissa, who returned to Texas, the Defendants could not ask them whether Norma always accompanied Jim when Jim visited his aunt in Junction, or whether Norma did so on the relevant date. No affidavit was presented from the aunt confirming the tale.

22. Brasher avers that the Court erred in accepting the testimony and documentary evidence in the first instance, since such acceptance was done without providing to Defendants an ability to adequately challenge the veracity of the witnesses statements or the relevance of the receipt, thus, reducing to a nullity the Defendants due process rights. However, even following the questionable introduction of this evidence, the Court erred in failing to weigh the manner by which this evidence was entered and the Defendants inability to challenge such surprise evidence, instead assigning wholehearted credence and great relevance to the receipt.

23. The Brashers testified that Norma, Melissa, and Jennifer visited the Brasher home on the 22nd and executed the client copies.(Tr. 403-409, 825-26) Jim was not in attendance and his visit to Junction fully explains his absence from that meeting. The executed client copy with Norma's

signature upon it, dated on June 22, places Norma at the Brasher home. The credit card receipt dated June 23rd does not contradict this evidence.

24. The Decision found, in large part relying upon the surprise evidence, that the client copies were fraudulently produced. (Decision at ¶ 146) In essence, the Court found that the signatures of the Sumpter women were forged onto the client copies. Yet, this finding cannot withstand simple logic. The Sumpter applications equaled four, one each in the names of Jim, Norma, Melissa and Jennifer. yet, only three of the client copies were executed. There is no client copy with Jim Sumpter's signature upon it because, as Jim testified, he was in Junction. No weight is given to this fact.⁵ If, as found, the Brashers had been forging signatures, they would have forged all four, not stopping short at three. That the Court did not note or give weight to this unexplained "restraint" by the Brashers demonstrates that the Court did not take into consideration all of the record evidence and the logical inferences therefrom.

25. A careful reading of Ms. Bolsover's testimony does not support the Court's conclusions. With regard to the original applications, Ms. Bolsover's testimony is summarized as follows: (i) She found that the signatures and dates found on the original applications of Norma, Jennifer and Melissa appear to have been written by one writer; however, she was unable to identify the writer. (Tr. 2304); (ii) She found that it is "probable" that the signatures on the original applications of Norma, Jennifer and Melissa were written by the same person. (Tr. 2321-22) Of the three basic categories of identification (positive identification, highly probable, and probable) employed by Ms. Bolsover, "probable" is the least certain. (Tr. 2300); (iii) She was able to

⁵ Indeed, as the Brashers' accountant, Jim's signature would have been the one most readily available to the Brashers for the purpose of tracing, lifting or copying.

determine that the signatures on the original applications of Jim, Norma, Jennifer and Melissa were not their genuine signatures.(Tr. 2345); (iv) She eliminated Ron Brasher as the writer of the signature appearing on Jim's original application. (Tr. 2319); (v) She was unable to determine if the writer of Jim's original application was the same writer of the original applications for Norma, Jennifer and Melissa– "[t]he characteristics were not the same." (Tr. 2321); (vi) She was specifically requested to identify the author of the original applications for Jim, Norma, Jennifer and Melissa; however, she was unable to identify the author. (Tr. 2343-45) She could not identify or eliminate anybody as the author. (Tr. 2345)

26. Brasher avers that Ms. Bolsover's testimony is inconclusive and, subsequently, any reliance on this testimony, and inferences derived therefrom, are highly debatable. All this testimony proves is that she could not testify as to who put pen to paper on the original applications of the Sumpters. Although Ms. Bolsover states that the signatures appearing on these original applications are not the genuine signatures of each Sumpter, she could not identify or eliminate any of the relevant parties as the true writer. Specifically, after reviewing numerous handwriting examples⁶ from all family members, Ms. Bolsover could not determine who wrote the names on the original applications. Thus, the Bureau cannot be deemed to have met its burden in proving that the Brashers knowingly caused improperly executed documents to be filed with the Commission.

27. That Ms. Bolsover testified that Ron was not the penman of the subject signatures on the

⁶ The Brashers willingly provided to the Bureau several examples of their handwriting, including ten original signatures for analysis. Despite the Brashers' willing cooperation in the study, Ms. Bolsover did not find that either Ron or Patricia was the person who signed on behalf of the Sumpters.

original applications and could not testify regarding who else might have penned the signatures, Ms. Bolsover's testimony does not forward the Bureau's case an inch. In fact, the Bureau loses substantial evidentiary ground. The Bureau's case is that the Brashers caused the signatures to be penned on the applications by persons other than the Sumpters, and at a time when the signing was not under scrutiny. Yet, despite the lack of scrutiny and during a time when the Brashers were found by the Court to be cavalier in their actions before the agency, Ms. Bolsover's testimony does not show that either of the Brashers caused the signatures to be affixed, thus, no improper motive or action can be assigned to the Brashers arising out of the execution of the original applications.

28. Brasher respectfully notes that even if the Sumpters did not execute the original applications, such absence of original signatures does not support a finding of misrepresentation. The Commission has found *In The Matter of Danville Television Partnership*, 16 FCC Rcd. 9314 (2001) ("*Danville*"), that where a party signed the name of another to a document that was submitted to the Commission, and the person signing the document reasonably believed that the other party consented to such act, that no motive to misrepresent was present. In *Danville* the Commission also properly took note of the fact that, at the time of the document's filing, the parties were not then adversarial, and it seemed unlikely that the other party would have withheld consent to the signing of their name. There exists substantial evidence on the record that the Sumpters and Brashers were extremely close during the relevant time during which the original applications were filed and that the Sumpters would have consented to the preparation of applications in their name. Yet, the closeness of the family unit was not taken into consideration by the Court in its Decision and, thus, the court's conclusion is at odds with *Danville*.

Knowledge and acquiescence to the signing of one's name vanquishes all notions of forgery and, thus, any finding of misrepresentation. Numerous decisions of various courts is fully consistent with this approach.⁷

29. Given the status of the Sumpters and Brashers, a close family unit, the Court must have, in accord with *Danville*, looked beyond the denials of the Sumpters to determine whether additional evidence of consent or acquiescence by the Sumpters was present. With the Bureau unable to provide any evidence of the penman of the signatures and, in fact, ruling out Ron Brasher, the issue then moves from one of forgery by the Brashers, since none could be shown, to one of knowledge and consent. As shown above at ¶¶ 10-18 above, it is apparent that the Sumpters had knowledge of the applications having been filed in their names.

⁷ A signature to an instrument may be attached by (1) the hand of a party thereto, (2) by the hand of another at the request of a party, or (3) by means of the mark of a party when he is unable to write his name, *Pitney v Pitney*, 202 P. 940 (Cal. App. 1 Dist. 1921); *see, also, Kadota Fig Ass'n of Producers v. Case-Swayne Co et al.*, 167 P.2d 523, 527 (Cal. App. 3 Dist. 1946) where it was found that a party may adopt his signature written by another person, as valid and binding, by subsequent approval or ratification, even though the signature was originally forged; *see, also, Volandri v. Hlobil*, 339 P.2d 218, 220-221 (Cal. App. 1959) “[o]rdinarily, the law requires that a principal be apprised of all the facts surrounding a transaction before he will be held to have ratified the unauthorized acts of an agent. However, where ignorance of the facts arises from the principal’s own failure to investigate and the circumstances are such as to put a reasonable man upon inquiry, he may be held to have ratified despite the lack of full knowledge”; *citing, Hutchinson Co. v Gould*, 181 P. 651, 653 (1919); *see, also, Locke, Ratification of Forged or Unauthorized Signature*, 7 P.O.F. 2d 675, 682 where a principal accepts property as a consequence of an unauthorized act and retains such property after discovering the circumstances without repudiating the act, this conduct indicates an intent to ratify; *see also Hefner v. Vandolah*, 62 Ill. 483 (1872) where it was found that to establish ratification, it is not necessary that there had been any previous agency created; *see, also, Unauthorized or Forged Signature*, 3 Am. Jur. 2d Agency § 192 (1986) which gives a checklist of facts and circumstances tending to establish that the signature of one person forged on an instrument by another was effectively ratified by the person whose name was signed. Such facts and circumstances include: ratifier’s knowledge, ratifier’s failure to repudiate transaction, and ratifier’s recognition and approval of similar forgeries by signer.

30. Further, as in *Danville*, it is uncontroverted that the Sumpters and Brashers were not adversarial during the relevant period and, thus, in combination with the other record evidence, no finding of misrepresentation is appropriate. Additionally, the record evidence shows that both Jim and Norma had been Commission licensees in the past (the record shows that Jim retained an end user license in the late eighties (Tr. 347-48, 540), and Norma received a 900 MHz license in the early '90's (Tr. 390, 2124, Eb. Ex. 42 at 2)) thus, their willingness to be a Commission licensee is fully established. In fact, Norma specifically states in her hearing testimony that there was no reason why she would not have complied if Defendants would have asked that she participate in the filing of the 1996 T-band applications.(Tr. 2227-29) Since the Court remarkably accepted the testimony of Jennifer and Melissa regarding their participation in applications prepared in the early 90's, the Court should have inferred that equal consent would have been given for participation in the 1996 T-band applications. Accordingly, the Court could not have reasonably concluded, applying *Danville*, that a misrepresentation had occurred.

31. The Brashers and Sumpters were a close family unit who spent much time together (Tr. 1793); Patricia Brasher and Norma Sumpter were sisters that spent just about every Saturday together (Tr. 1073); Jennifer and Melissa quite often accompanied Norma and Patricia on their weekend shopping trips (Tr. 426-27, 826); the Brashers employed Jim as the accountant for their business and stopped by his office quite frequently (Tr. 84, 1739); both Jim and Norma were prior holders of FCC licenses via their close relationship to the Brashers (Tr. 540, 347-48, 390, 2124, EB Ex. 42 at 2); and Norma testified that she would have participated in the T-band channels if asked by the Brashers.(Tr. 2227-28) Accordingly, the evidence provided by all witnesses shows that the Brashers knew that the Sumpters would not refuse to participate in the

preparation and filing of the subject applications. The record shows that the Brashers asked family members, Thomas Lewis and Carolyn Lutz, if they would like to apply for licenses (Tr. 1158, 707); yet, the Court did not consider why the Brashers would ask some family members, but act inconsistently with others. In sum, the Court's conclusion regarding the Brashers' alleged actions is at odds with the record and the standards articulated in *Danville*.

32. With regard to the three client copies for Norma, Jennifer and Melissa, Ms. Bolsover's testimony is summarized as follows:(i.) She determined that Norma Sumpter probably wrote the signature on the subject client copy. (Tr. 2326); (ii.) She determined that Jennifer Hill probably wrote the signature on the subject client copy. (Tr. 2326); (iii.) She determined that Melissa Sumpter probably wrote the signature on the subject client copy. (Tr. 2326-27); (iv.) She believed that the signatures appear to be the genuine signatures of Norma, Jennifer and Melissa. (Tr. 2361); (v.) Her certainty is "probable" because of the poor quality of the photocopies she was given to inspect. (Tr. 2327); (vi.) She determined that, in her expert opinion, there was nothing to suggest that the signatures were traced, but that the photocopies were so poor, she really couldn't see. (Tr. 2335-36) She could not tell if any of the signatures were put on the client copies by any means other than having been originally written on the pages by the represented party. (Tr. 2363); (vii.) She determined that there was no basis to conclude that the signatures appearing on documents sent to the Brashers signed by Norma, Jennifer and Melissa, were cut and pasted onto the client copies. (Tr. 2340); (viii.) She determined that the dates on the client copies of Norma and Jennifer were the same handwritten entry. Tr. 2343-44. "The two dates were identical." (Tr. 2361); and (ix.) She did not find any evidence that someone had attempted to "simulate" the signatures. (Tr. 2350-52)

33. Despite the obvious conclusions provided by Ms. Bolsover regarding the Sumpter women's signatures, at Decision at ¶¶ 95-96, the Court appears to counter the Bureau's expert witness' testimony with the testimony of Jim and Norma regarding their alleged joint trip to Junction, Texas. Oddly, the Court's efforts to defeat one of the Bureau's witnesses is based on the contradictory testimony of additional Bureau witnesses, Jim and Norma, whose testimony conflicts with the testimony of Ms. Bolsover. More specifically, the Court relied on the testimony of Ms. Bolsover only to the extent that it might support the Court's conclusion that Jim and Norma were truthful, then discounted the remainder of Ms. Bolsover's testimony, pitting Bureau witnesses' testimony against each other.

34. The Court further relies on Ms. Bolsover's statements that she could not be more certain about the signatures on the client copies due to the quality of the copies, including she could not testify whether the signatures were original to the copies, *see*, Decision at ¶ 97. Remarkably, the Court found what the expert witness could not. The Court's Decision concludes that it has this ability, and found that the signatures were not original to the client copies. Accordingly, the Court replaced improperly the record evidence with its own opinion. Even more troubling is that the Court's Decision shifted the burden of proof from the Bureau to the Parties. In effect, the Court found that absent a definitive statement from the expert witness that the signatures were original to the client copies, the Court was free to conclude that the signatures were not original to the documents. Although the Court is allowed to make inferences, the Court must have before it record evidence upon which to draw and Ms. Bolsover's testimony does not provide such evidence.

35. To support its conclusion, the Court reviews the testimony given by Ms. Bolsover regarding

the date appearing on the client copies. (Decision at ¶¶ 145-46) The relevance of this testimony is somewhat vague given the fact that since the expert witness testified that the signatures were genuine, any issue regarding the dating of two of the client copies is almost entirely moot.

However, Ms. Bolsover states that two of the three executed client copies appear to evidence a mechanically reproduced date, i.e. a photocopy of the date. Again, the Court overlooks a lacuna of logic in employing this opinion as evidence of mischief. If, as the Court concludes, the client copies are not genuine, then why would the date be mechanically produced on only two of the three copies? Obviously if the Brashers were intending to falsify a set of documents, the method would be equal across all. Yet, Melissa's client copy does not show any evidence that anyone reproduced a date mechanically thereon. That two copies might evince a mechanically produced date, while one does not, evinces moreover that the copies were prepared in the normal course and not pursuant to some deceptive means. That Melissa's copy does not evince a mechanically produced date leaves the Court with evidence that shows that Melissa's client copy contains her genuine signature, without any further implied taint via the date. Thus, the Court's conclusion would need to stand against the unrebutted testimony of Ms. Bolsover that Melissa's client copy appeared genuine in all respects.

36. Again, the Bureau does not explain the alleged "restraint" of the Brashers in the purported creation of the client copies. As explained above at ¶ 24 herein, the Bureau could not and did not attempt to explain why the Brashers would allegedly forge the Sumpter women's signatures onto client copies, but not Jim Sumpter's. Now, the Bureau cannot explain and does not explain why the Brashers would allegedly "doctor" the date on two of the executed client copies, but not on the third. A logical preponderance of the evidence would have concluded that, at best, the

Bureau provided no evidence of misrepresentation regarding the client copies as it relates to the dates thereon. Rather, the expert witness testimony could be found to be nothing more than a small allegation in proving the Bureau's questionable theory and that the Court's resulting conclusion required an unjustified leap of logic, skipping ahead to a conclusion of fact and law, for which no factual avenue exists, if, indeed the condition of the dates on the two client copies is relevant for any purpose.

37 Not bothered by a plain reading of the record, in its Proposed Findings of Fact and Conclusions of Law, the Bureau, in an failed attempt to meet its burden, employs an unsupportable and highly questionable spin on the testimony and facts to generate an inference favorable to its case as to the legitimacy of the client copies. The Bureau states, in pertinent part, that "[i]n addition, the handwriting expert's observations about the 'Client Copies' indicate that signatures were lifted from other documents.⁸" The Bureau further states, "[i]ndeed, once [the Brashers] obtained signatures from the Sumpters in early 1998, it had the means to lift such signatures and place them on other documents."⁹ The Commission can easily determine for itself that the Bureau's statements are fully contradicted by the testimony of Ms. Bolsover and are mere conjecture without the benefit of even a single relevant fact. Nowhere in Ms. Bolsover's testimony does she find any indication that the signatures on the client copies were "lifted." (Tr. 2335-36) Quite the contrary, she found that there were no indications that the signatures were

⁸ See, Bureau's Proposed Findings of Fact and Conclusions of Law ¶ 108, wherein the Bureau's employment of the year 1998 is unexplained as the Bureau does not describe which documents circa 1998 on which the Sumpter women's signatures appeared were supposedly used by the Brashers.

⁹ Presumably this would have included Jim's signature, but the Bureau is again not bothered by the absence of a client copy showing Jim's signature.

lifted; she could not tell if any of the signatures were put on the client copies by any means other than having been originally written on the pages by the represented party. (Tr. 2350-52) To insinuate that the Brashers lifted signatures received from the Sumpters in 1998 is questionable in its own right. To determine if the signatures were the same as those found on the client copies, or if such could have been used in some way to produce the client copies, the Bureau, itself, requested that Ms. Bolsover review copies of documents signed by the Sumpters during the relevant time period, which documents were earlier sent to the Brashers. Ms. Bolsover testified that there was no basis to conclude that the signatures on these documents were copied onto the client copies. (Tr. 2340)

38. The Court's conclusions regarding the client copies demonstrates fully the misapplication of the evidence equal to the Bureau's unsupported conclusions. The Court commences with a conclusion and works backwards to justify that conclusion. At paragraph 145 of the Decision, the Court concludes that the client copies were fabricated by the Brashers. Then, striking a single match to the record evidence the Court notes the issue of the allegedly mechanically reproduced dates on Norma's and Jennifer's client copies. From this the Court concluded that deceptive tampering was evident. From that the Court concludes that the tampering extended to the signatures. From that the Court concludes that all three client copies (including Melissa's for which there is not even a scintilla of evidence which might even suggest a problem) were faked. From this the Court concludes that Jim and Norma's remembrance of the trip to Junction was correct. And finally, the court concludes that all testimony regarding the client copies provided by the Brashers was false. Ergo, the Court concluded that since Ms. Bolsover testified that a date had been mechanically reproduced on two of the client copies, that all of the remainder of the

Court's conclusions of fact and law are fully supported. This line of reasoning is incredible. In sum, it demonstrates that the Decision is based on a single, questionable inference, that the testimony regarding the mechanical reproduction of a date on two or three client copies equals total culpability and justification for disqualification of the Defendants.

39. Stated another way, the Court found that because a date might have been mechanically reproduced on two of the three client copies, (i) all testimony given by the Sumpters is entirely credible; (ii) all testimony given by the Brashers is false; and (iii) the Brashers are liable for misrepresentation. What makes this reasoning more incredible is that there is no evidence or opinion or stated fact which demonstrates that the mechanical reproduction of the date is even relevant to the issue at bar, except as one joins the Court in its catapult ride to damning conclusions, skyrocketing over all other record evidence which demonstrates that a contrary conclusion is not only entirely probable, but far, far more likely. Given the fact that the burden of proof remained on the Bureau for this issue, the Court's finding that the burden was satisfied based on nothing more than the condition of the date on two client copies is beyond the pale of reasonableness and evinces clear judicial error.

(D). Whether the Court erred in its finding that the Defendants' use of O.C. Brasher's name was a misrepresentation or evinced a lack of candor.

40. The Court failed to find evidence of intent to deceive the Commission regarding the use of O.C. Brasher's name and, thus, the Court's finding was in error. A fuller recitation of this issue is contained at Section I(D) of the Exceptions of Ron Brasher filed in this matter which recitation is incorporated herein.

(E). Whether the Court erred in finding that the Brashers' actions related to the Ruth Bearden license warrant disqualification.

41. The Court's treatment of this issue does not take into proper consideration Ron Brasher's

effort to mitigate any harm upon the processes of the Commission. A fuller recitation of this issue is contained at Section I(E) of the Exceptions of Ron Brasher filed in this matter which recitation is incorporated herein.

(F). Whether the Court erred in its finding that the Defendants misrepresented facts in their Opposition to the Net Wave Petition.

42. The Court failed to examine carefully the record evidence and apply plain meaning to language, thus, resulting in error in its finding. A fuller recitation of this issue is contained at Section I(F) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein.

(G). Whether the Court erred in its finding that the Defendants misrepresented facts regarding the Sumpters's applications and licenses during the investigation and hearing on this matter.

43. The Court's finding that the Sumpter testimony was "forthright, candid, and entirely believable," Decision at ¶148, was in error and its finding regarding the Defendants reflected that error. A fuller recitation of this issue is contained at Section I(G) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein.

(H). Whether the Court erred in finding that Defendants had engaged in misrepresentation or lack of candor in the investigation and hearing related to the license issued in the name of O.C. Brasher.

44. The Court erred by failing to base its finding on record evidence which fully contradicts the findings with the Decision. A fuller recitation of this issue is contained at Section I(H) of the Exceptions of Ron Brasher filed in this matter which recitation is incorporated herein.

(I). Whether the Court erred in finding that the Defendants lacked candor in their participation with the Bureau's investigation and the hearing.

45. The Court erred by failing to base its finding on record evidence which fully contradicts the findings within the Decision. A fuller recitation of this issue is contained at Section I(I) of the Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein

II. Real Party-in-Interest/Unauthorized Transfer of Control/Abuse of Process: Issues (b) and (c): Whether the Court erred in finding that Defendants had abused the Commission's Processes via violations of the real party-in-interest standards and rules against unauthorized transfers of control.

(A). Whether the Court erred in finding that Defendants had engaged in abuse of the Commission's processes.

46. The Court erred in failing to apply relevant law to the record facts of this matter. A fuller recitation of this issue is contained at Section II(A) of the Exceptions of DLB Enterprises, Inc.

filed in this matter which recitation is incorporated herein

(B). Whether the Court erred in finding that an unauthorized transfer of control or violation of the real party-in-interest rules had occurred.

47. The Court erred in not taking into account the specific facts on the record and in applying an incorrect legal standard. A fuller recitation of this issue is contained at Section II(B) of the

Exceptions of DLB Enterprises, Inc. filed in this matter which recitation is incorporated herein

III. Whether the Court erred in its disqualification of the Brashers and DLB.

48. The record evidence and applicable legal standards do not support disqualification. A fuller recitation of this issue is contained at Section III of the Exceptions of Ron Brasher filed in this

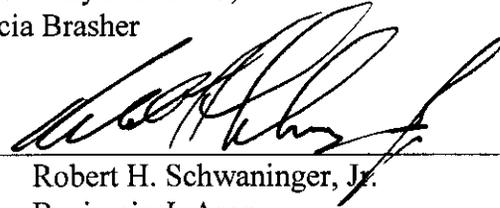
matter which recitation is incorporated herein

Conclusion

49. For the reasons shown herein and for good cause shown, the Patricia Brasher respectfully requests that the Court's Decision be reversed on review or modified to allow the Defendants to pay a forfeiture commensurate with factually supported findings of fact and conclusions of law.

Respectfully submitted,
Patricia Brasher

By



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Dated: September 8, 2003

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing Exceptions was served by hand delivery/courier to the below listed parties on this 8th day September, 2003.

Hon Arthur I Steinberg
Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Judy Lancaster, Esq.
Mr. William Knowles-Kellett, Esq.
Federal Communications Commission
Enforcement Bureau
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Washington, DC 20554

A handwritten signature in black ink, appearing to read "Otis Robinson", is written over a horizontal line.

Otis Robinson