

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

FILED/ACCEPTED

FEB 28 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
JOSEPH W. HARTMANN, JR.)	WT DOCKET NO. 06-220
)	
Applicant for New License in the Amateur)	FCC File No. 0002462228
Radio Service)	

To: Joseph W. Hartmann, Jr.

ENFORCEMENT BUREAU'S MOTION
TO DISMISS APPLICATION WITH PREJUDICE
AND
TERMINATE HEARING

1. The Enforcement Bureau ("Bureau"), pursuant to Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221, hereby requests the Presiding Administrative Law Judge to dismiss with prejudice the above-captioned application of Joseph W. Hartmann, Jr. ("Hartmann") and terminate this hearing proceeding. In support whereof, the following is shown.

2. On December 11, 2006, the Wireless Telecommunications Bureau, pursuant to delegated authority, released *Joseph W. Hartmann, Jr.*, Hearing Designation Order, DA 06-2487 (WTB, Dec. 11, 2006) ("HDO"). The HDO designated the above-captioned application for hearing on issues relating to false certifications, misrepresentations, and lack of candor by Hartmann. In order to avail himself of the opportunity to be heard, the HDO, among other things, required Hartmann, in person or by his attorney, to file with the Commission, within 20 days of the mailing to him of the HDO, a written appearance

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stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the HDO. See HDO at ¶ 9.

3. Subsequently, in *Joseph W. Hartmann, Jr.*, Order, FCC 06M-40 (ALJ, Dec. 19, 2006), the Chief Administrative Law Judge assigned this proceeding to the Presiding Administrative Law Judge. The Chief Administrative Law Judge ordered a prehearing conference to be held in Washington, DC, on February 13, 2006.

4. A summary of the HDO was properly published in the Federal Register, thereby providing Hartman with constructive notice of the HDO. See Notice, Federal Communications Commission, *Joseph W. Hartmann, Jr., Application for New License in the Amateur Radio Service*, 72 Fed. Reg. 3846-3847 (Jan. 26, 2007). In addition, the HDO was timely mailed to Hartmann via Certified Mail – Return Receipt Requested at the address specified by him in his application. Curiously, however, the envelope containing the HDO was returned unopened to the Commission by the United States Postal Service. Affixed to the enveloped was a label from the United States Postal Service indicating that the item had been unclaimed by Hartmann and providing a different address for Hartman than the one specified in his application.

5. Thereafter, in order to assure that Hartmann received actual notice of the HDO and to provide Hartmann with a full and fair opportunity to enter a written appearance, the Presiding Judge took the extraordinary action of directing that copies of the HDO be mailed to Hartmann at: (a) the address specified by him in his application; (b) the address provided by the United States Postal Service; and (c) a third possible address for Hartman gleaned from Hartmann's previous Commission filings. In addition, the Presiding Administrative Law Judge e-mailed a copy of the HDO to Hartmann. See *Joseph W.*

Hartmann, Jr., Memorandum Opinion and Order, FCC 07M-05 (ALJ, Jan. 29, 2007) (“MO&O”). In his MO&O, the Presiding Administrative Law Judge ordered Hartmann to file, on or before February 23, 2007, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the HDO. The Presiding Administrative Law Judge also cancelled the February 13, 2007, prehearing conference and rescheduled it for March 27, 2007.

6. By e-mail directed to the Presiding Administrative Law Judge, Hartmann wrote on February 7, 2007:

Mr. Steinberg i am writing you in regards to this letter. i do not have the resources to obtain legal counsel for this hearing nor have the resources for driving to hearing in Washington, D.C. is there another way we can please have a phone conference in regards to this matter. please write back with your reply. [sic]

On February 8, 2007, the Presiding Administrative Law Judge forwarded the above-referenced e-mail to Bureau counsel. On February 21, 2007, Hartmann sent an identical e-mail again to the Presiding Judge. The Presiding Judge duly forwarded Hartmann’s second e-mail to Bureau counsel the next day.

7. Hartmann’s application should be dismissed with prejudice, and this hearing should be terminated. Pursuant to Section 1.221(c) of the Commission’s rules:

Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for a good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

8. In the instant case, despite having received constructive *and* actual notice of the HDO, Hartman has not taken any steps to perfect his appearance at the hearing. In this regard, he has neither filed a timely written appearance stating that he will appear on

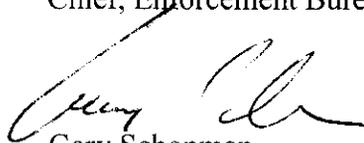
the date fixed for hearing and present evidence on the issues specified in the HDO nor has he shown good cause for failing to do so. To the contrary, in the only communications received from him to date in this proceeding, Hartmann affirmatively represented in identical e-mails to the Presiding Judge that he lacks both the money to appear in person at his hearing and the money to retain legal counsel to act on his behalf. Under any reasonable interpretation of Section 1.221 of the Commission's Rules, such communications cannot be construed as written appearances. Substantively, the e-mails do not contain the information required of a written appearance because they fail to state or even suggest any intention by Hartmann to appear and provide evidence on the designated issues. Procedurally, the e-mails are unavailing because they were never filed with the Commission. In addition, the e-mails were never served by Hartmann on Bureau counsel. As such, they constitute prohibited *ex parte* communications in this restricted proceeding. In the final analysis, if nothing else, the e-mails from Hartmann are akin to notices that Hartmann is effectively waiving, and has waived, his right to a hearing in this case.

9. The Bureau submits that Hartmann has been afforded all the process – and then some – to which he is due. Despite the fact that the HDO was published in the Federal Register, that far more than 20 days have passed since the initial mailing of the HDO to Hartmann, that multiple additional copies of the HDO were mailed and e-mailed to Hartmann, and that the Presiding Administrative Law Judge's firm deadline of February 23, 2007, has lapsed, Hartmann has done nothing to comply with the fundamental obligations embodied in Section 1.221 of the Commission's Rules. If Hartman's e-mail requests to participate by telephone are references to the prehearing

conference, they clearly do not rise to the level of written notices of appearance contemplated by Section 1.221. Alternatively, if Hartmann's requests to participate by telephone are references to the extent to which he anticipates meeting his burdens at trial, they clearly are inconsistent with the Commission's rules of procedure for conducting evidentiary hearings.

10. For the foregoing reasons, Hartmann has failed to satisfy the requirements of Section 1.221. His captioned application should be dismissed with prejudice for failure to prosecute, and this proceeding should be terminated.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary Schonman
Special Counsel
Investigations and Hearings Division

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February 28, 2007

CERTIFICATE OF SERVICE

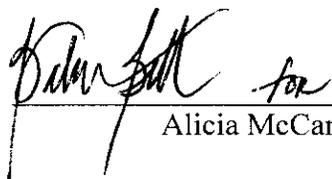
Alicia McCannon, an Industry Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 28th day of February 2007, sent by first class United States mail copies of the foregoing "Enforcement Bureau's Motion to Dismiss Application with Prejudice and Terminate Proceeding" to:

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Joseph W. Hartmann, Jr.
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Administrative Law Judge Arthur I. Steinberg*
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Alicia McCannon

* Hand-Delivered