

Federal Communications Commission
Washington, D.C. 20554

October 21, 1998

In reply refer to:
1800C1-GU
98060041
98070022

Released: October 22, 1998

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Lesnick Communications, Inc.
Licensee, Radio Station WTWR-FM
7 South Monroe Street
Monroe, MI 41861

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

Background. On February 20, 1998, the Commission received a complaint from Stephen Martin and Heather Beauman of Temperance, Michigan. This complaint involves an event produced by Barbara Baumgartner and presented by Station WTWR-FM, Monroe, Michigan. Specifically, the complainants allege that they each paid \$5.00 as admission to an October 26, 1997, bridal show called "Bride Ideas: 1997 Bridal Exposition and Fashion Show" and entered a drawing for a \$6000 bridal prize package giveaway. They indicate that only future brides and grooms were allowed to register for the drawing and that entrants had to be present to win. Mr. Martin's name was selected as the winner of the grand prize. The complainants state that the value of the prize package they received was far less than the \$6000 that was promised and that, after repeated calls to the station, they still had not been awarded all the prizes that were promised. The complainants also allege that, in their conversation with Assistant Station Manager Herb Coty, they were advised that the licensee claimed not to be responsible for the prizes awarded in the contest.

In our April 21, 1998, letter we stated to you that the complaint posed possible violations of two Commission rules - Section 73.1216 (licensee-conducted contests) and Section 73.1211 (broadcast of lottery information).

In your May 29, 1998, response, you state that you do not believe any lottery was involved because there was no consideration required to participate in the prize drawing, there were no other eligibility requirements, and there was no charge for obtaining entry blanks or for entering the drawing. You claim that there was a \$5.00 admission fee to the hall, which all persons coming to the exposition paid when entering the hall, whether or not they registered for the drawing. You also state that the above-mentioned

contest was advertised over the air on WTWR-FM, but that it was not a licensee-conducted contest. You explain that Bride Ideas, which is owned by Barbara Baumgartner, presented the October 1997 bridal exposition and fashion show and that the licensee was not a sponsor. You state that, at the time of the contest, Ms. Baumgartner was an account executive for WTWR, and she operated Bride Ideas independently of her sales duties for the station. You explain that upon receiving our letter, you contacted some of the merchants and determined that a prize package valued at only \$4900 had been awarded. You claim that you contacted Bride Ideas to ensure that the winner's complaints had been resolved and were told the matter was being handled. You admit that the total prize was still about \$1100 short of the advertised \$6000. You state that the General Manager has met with one of the complainants, Stephen Martin, and offered him an additional \$1300 in cash but that the complainants refused the offer. On June 29, 1998, we received a further letter from the complainants arguing that the prize package still was not of the value that was advertised.

A lottery contains the elements of chance, prize, and consideration. There is no dispute that this promotion featured a prize and that the winner was selected by chance. The question is whether consideration was required for participation. We find that it was. While it is true that people attending the bridal show could have elected not to fill out the entry form, they were nevertheless required to be present to win, and their presence necessitated the payment of the \$5.00 admission fee. Further, there has been no showing that the entry fee went to any entity other than the contest promoter(s). Since the elements of a lottery were present and since the station admits to broadcasting promotions of it, we conclude that the licensee violated Section 73.1211 of the Rules.

We also find that the licensee violated Section 73.1216 for failing to conduct a contest substantially as announced or advertised. Although you claim that the licensee was not a sponsor of the contest, you have submitted copies of your on-air announcements promoting the contest, in which you state "Tower 98 presents Bride Ideas." Moreover, promotional material submitted by complainants states "Tower 98 WTWR FM presents Bride Ideas." Accordingly, based on the material before us, we find that you co-sponsored the event and the drawing. While you are now willing to give Mr. Martin cash that arguably will more than cover the shortfall to the \$6000 prize, you did not take steps to look into the matter and did not make such an offer until after the Commission inquired about it.

Sanction. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Lesnick Communications, Inc. is hereby advised of its apparent liability for a forfeiture of FOUR THOUSAND dollars (\$4,000), for its apparent and willful and repeated violations of Sections 73.1211 and 73.1216 of the Commission's Rules. The amount specified was determined in accordance with the Commission's Forfeiture guidelines. See In the Matter of The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997). Although the guidelines specify \$4,000 forfeitures for each violation, we are assessing a single \$4,000 forfeiture because of the nature of this case and the fact that the violations arose from the same incident.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. §1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION



Roy J. Stewart
Chief, Mass Media Bureau

Attachments will not be published in the FCC Record.