

COMMONWEALTH OF KENTUCKY
34TH JUDICIAL CIRCUIT
WHITLEY CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-00552

FIRST STATE BANK OF THE SOUTHEAST, INC.,

PLAINTIFF,

VS.

MOTION TO HOLD DEFENDANTS
JONATHAN SMITH & CHOICE RADIO CORPORATION IN CONTEMPT

CHOICE RADIO CORPORATION, ET AL.,

DEFENDANTS.

Comes the Plaintiff, First State Bank of the Southeast, Inc. ("FSB"), by counsel, and moves the Court for an order holding the Defendants, Jonathan Smith ("Smith") and Choice Radio Corporation ("Choice Radio"), in contempt for violating the Court's order of October 12, 2020 (the "Order"), which enjoined them from attempting to sell or transfer radio station WTBK-FM. FSB additionally states as follows:

On October 12, 2020 the Court entered the Order enjoining an attempted sale by Choice Radio of radio station WTBK-FM. In that Order, the defendants Choice Radio and Smith were specifically "enjoined from proceeding with any sale of WTBK-FM, FCC facility ID no. 39774"; a copy of the Order is attached as Exhibit 1. Nevertheless, Choice Radio is proceeding with efforts before the Federal Communications Commission (the "FCC") to sell or transfer radio station WTBK-FM in violation of both the Order and FSB's security interest, determined to be valid, perfected, and first priority, so that Choice Radio's proposed transferee, Manchester Communications, Inc. ("MCI"), may then turn right around and transfer radio station WTBK-FM to an Strategic Impact Marketing Consulting Corporation ("Strategic"), an entity which has defendant Karen Moses as its President and shares the same principal office address as Choice

Radio. What's more, MCI has appeared in this case and the issue of whatever security interest or other interest it may have against radio station WTBK-FM has been fully and finally adjudicated by this Court, yet it colludes with Smith and Choice Radio in attempting to circumvent the Order and FSB's senior security interest. Attached as Exhibit 2 are copies of the applications filed by Choice Radio and Smith, and by MCI, for FCC consent for Choice Radio to sell WTBK-FM to MCI and for MCI to then sell the station to Strategic, and attached as Exhibit 3 is a printout from the FCC's website on March 31, 2022, showing that the status of both of these applications (File Nos. BALH-20200903AAL and BALH-20200903AAN, respectively, the "WTBK-FM Applications") as "accepted for filing" and still pending, meaning that Choice Radio and Smith, and MCI, are still "proceeding" to sell and "attempting to sell" WTBK-FM to this date, contrary to this Court's Order, well over a year later.

Furthermore, FSB has petitioned the FCC to sell certain of Choice Radio's stations, including WTBK-FM, which this Court has likewise determined that FSB has a valid, perfected first priority security interest against, but Smith and Choice Radio are deliberately attempting to thwart the sale through obstructionist tactics and filings with the FCC, namely a "Petition to Deny" filed March 8, 2021 nearly five months after the Order which are in bad faith and contrary to the Order, and on issues against which the Court has already ruled against them. A copy of Smith and Choice Radio's FCC Petition to Deny is attached as Exhibit 4, with FSB's opposition attached as Exhibit 5.

These acts by Choice Radio and Smith—Choice Radio's President¹ and only shareholder²—are in direct violation of the Order, with no respect for matters that have been

¹ See the attached Exhibit 6, Kentucky Secretary of State records listing Smith as President of Choice Radio.

² See the attached Exhibit 4, a Choice Radio FCC filing admitting that Smith is the sole shareholder of Choice Radio.

fully and finally litigated in this Court. FSB requests that Smith be fined and/or jailed, and that Choice Radio be fined, and that one or both pay FSB's reasonable attorney fees incurred in seeking relief and enforcement of the Order, or alternatively, that Smith and Choice Radio purge their contempt by immediately requesting that the FCC dismiss Choice Radio's application to transfer WTBK-FM to MCI and withdrawing the Petition to Deny FSB's FCC applications to transfer the stations.

Respectfully Submitted,

/s/ C. BISHOP JOHNSON

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COUNSEL FOR THE PLAINTIFF

NOTICE

The foregoing motion will come on for hearing before the Hon. Kent Hendrickson, as Special Judge of the Whitley Circuit Court, in the Harlan Circuit Courtroom on April 14, 2022 at 9:00 a.m.

CERTIFICATE OF SERVICE

I certify filing the foregoing through the Kentucky Court of Justice Electronic Filing Pilot Project,
this 1st day of April, 2022, which, pursuant to e-Filing Rule 6(3)(c), serves a copy upon:

Larry Conley
714 S. Main St.
Corbin, KY 40701

John Aubrey
Mariah Aubrey
214 Town Branch Rd.
Manchester, KY 40962

I certify serving the foregoing by US Mail, postage prepaid, also on April 1, 2022, upon:

Choice Radio Corporation
Jonathan Smith
201-A E. Main St.
Stanford, KY 40484

Choice Radio Corporation
Jonathan Smith
PO Box 390
Stanford, KY 40484

/s/C. BISHOP JOHNSON
C. BISHOP JOHNSON

EXHIBIT 1

COMMONWEALTH OF KENTUCKY
34TH JUDICIAL CIRCUIT
WHITLEY CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-00552

ELECTRONICALLY FILED

FIRST STATE BANK OF THE SOUTHEAST,

PLAINTIFF,

VS.

CHOICE RADIO CORPORATION,
JONATHAN L. SMITH,
KAREN MOSES-BOWLING,

DEFENDANTS.

ORDER ENJOINING ATTEMPTED SALE OF WTBK FM

*** **

This matter is before the Court upon the Motion of the plaintiff, First State Bank of the Southeast, seeking an Order holding the defendants in contempt and enjoining the attempted sale of a portion of the assets upon which the Bank holds a perfected lien by virtue of this Court's Amended Judgment entered November 20, 2019 and with the Court having considered the Motion and heard argument of counsel and being sufficiently advised **IT IS HEREBY ORDERED** that the Motion is **SUSTAINED** and the defendants, Choice Radio Corporation, Jonathan L. Smith, and Karen Moses-Bowling are **HEREBY ENJOINED** from proceeding with any sale of WTBK (FM), FCC facility ID no. 39774. The defendants are hereby **PERMANENTLY ENJOINED** from attempting to sell or liquidate any of the assets and collateral upon which the Bank holds a perfected first lien as set forth within this Court's Amended Judgment entered November 20, 2019.

SO ORDERED THIS THE 8th DAY OF OCTOBER 2020.

Filed

18-CI-00552 10/12/2020 Gary W. Barton, Whitley Circuit Clerk

Entered

18-CI-00552 10/12/2020

Gary W. Barton, Whitley Circuit Clerk

NOT ORIGINAL DOCUMENT

NOT ORIGINAL DOCUMENT

CBISHOP JOHN 10/18/2020 09:49:36 AM

86886

/s/ Kent Hendrickson

HON. KENT HENDRICKSON, SPECIAL JUDGE
WHITLEY CIRCUIT COURT, DIVISION I

DISTRIBUTION TO:

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714 S. Main Street
Corbin, KY 40701

Hon. John Aubrey
214 Town Branch Road
Manchester, KY 40962

Clerk's Initials & Date

Entered

18-CI-00552 10/12/2020

Gary W. Barton, Whitley Circuit Clerk

Filed

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