

UNITED STATES
v.
URBAN E. CACHELIN

IBLA 96-365

Decided May 27, 1999

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer, rejecting application to purchase trade and manufacturing site and canceling trade and manufacturing site claim. AA-53534.

Affirmed.

1. Alaska: Trade and Manufacturing Sites

A decision rejecting a trade and manufacturing site application will be affirmed when the applicant fails to overcome BLM's prima facie case of invalidity by demonstrating, by a preponderance of the evidence, that, at the time of application, he was actually using and occupying the land as a salvage yard or other "productive industry," thus establishing his entitlement under section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1982).

APPEARANCES: Urban E. Cachelin, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Urban E. Cachelin has appealed from a decision of Administrative Law Judge Harvey C. Sweitzer, dated January 26, 1996, rejecting his application to purchase a trade and manufacturing (T&M) site, AA-53534, and canceling his T&M site entry.

Cachelin filed a notice of location on April 25, 1984, and, subsequently, an application to purchase on April 25, 1989 (within the 5-year statutory period, 43 U.S.C. § 687a-1 (1982)), an 80-acre T&M site situated in secs. 25 and 26, T. 11 N., R. 8 E., Copper River Meridian, Alaska. 1/

1/ The land encompassed by Cachelin's T&M site, originally described by him by metes and bounds, was later described by BLM by legal subdivision. (Ex. 9 at 1; Tr. 20, 29) This description was revised by Cachelin just prior to the hearing in this case, shifting his T&M site slightly to the west to avoid conflict with two land claims to the east. (Ex. A; Ex. 6 at 11; Tr. 54-56.) For the purpose of this case, it does not matter whether the legal description relied upon by BLM during its Aug. 8, 1990, field examination and set forth in its Apr. 30, 1993, complaint or the

The application was filed under the authority of section 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1982). 2/ The site, which generally straddles Natat Creek, is located adjacent to and north of Cachelin's 5-acre headquarters site (AA-53541), which had been approved by BLM for conveyance to him, also pursuant to section 10 of the Act of May 14, 1898, as amended. It also encompasses Cachelin's homesite (AA-53540), which had earlier been finally rejected by the Department.

On April 30, 1993, BLM filed a contest complaint, charging that Cachelin had not actually used and occupied his T&M site for any trade, manufacture, or other productive industry at any time during the 5-year statutory life of his claim or when he filed his application on April 25, 1989. Cachelin answered the complaint, denying the charges, and a hearing was held before Judge Sweitzer in Tok, Alaska, on May 25, 1995.

Following the hearing, Judge Sweitzer ruled that Cachelin had failed to overcome by a preponderance of the evidence BLM's prima facie case that, when he filed his application on April 25, 1989, he was not actually using the T&M site for a bona fide commercial enterprise from which he reasonably hoped to derive a profit. Further, the Administrative Law Judge held that Cachelin failed to establish that the use of the T&M site had a direct and necessary economic purpose related to his business conducted on the headquarters site. Judge Sweitzer rejected Cachelin's T&M site application and canceled his T&M site claim. Cachelin appealed from that decision.

In his notice of appeal/statement of reasons for appeal (NA/SOR), appellant contends that he is "entitled" to the disputed land, since BLM was "definitely proven wrong in every way." Appellant accuses BLM's sole witness of giving "false testimony." (NA/SOR at 1.) He argues that he has made a "substantial investment" of work and money over the course of 12 years "in that land," and conducted a substantial business. Id. at 2.

[1] Section 10 of the Act of May 14, 1898, as amended, provided, in pertinent part, that:

Any citizen of the United States * * * in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may * * * purchase one claim only not exceeding eighty acres of such land * * * upon submission of proof that said area embraces

fn. 1 (continued)

revised description submitted by Cachelin is the accurate reflection of his original intent when locating his T&M site, since all of his relevant improvements and activities are covered by both descriptions. See Exs. 10 and B.

2/ Section 10 of the Act of May 14, 1898, as amended, was repealed by section 703(a) of the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2789, effective Oct. 21, 1986, subject to valid existing rights.

improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry * * *.

43 U.S.C. § 687a (1982). Relevant regulations provide that the T&M site applicant must show that, at the time of application, the land was "actually used and occupied for the purpose of trade, manufacture or other productive industry," which, under Departmental precedent, requires a bona fide commercial enterprise from which claimant could reasonably have expected to derive a profit. 43 C.F.R. § 2562.3(d); see John C. Phariss, 134 IBLA 37, 42 (1995); United States v. Hodge, 111 IBLA 77, 86 (1989). At a minimum, there must have been improvements, and the remainder of the land must have been actually used, in some manner, in connection with the commercial enterprise. Schade v. Andrus, 638 F.2d 122, 124, 124 n.2 (9th Cir. 1981); David A. Burns, 30 IBLA 359, 369! 70 (1977). The enterprise need not have been operated for any specific period of time or have done so at a profit. United States v. Hodge, 111 IBLA at 86, 88. However, there must, at least, have been an investment of such a nature and the circumstances generally such that a reasonable return could have been expected in the foreseeable future. Id. Generally speaking, a commercial enterprise will not be found if, regardless of the amount of the investment, there is no evidence of paying customers and gross receipts, or the use of the facilities offered has been infrequent and the revenue generated thereby meager. United States v. Tippetts, 29 IBLA 348, 353! 54 (1977).

Once the Government has presented a prima facie case that a T&M site applicant is not entitled to his claim under section 10 of the Act of May 14, 1898, as amended, the burden devolves upon the applicant to demonstrate, by a preponderance of the evidence, that he is so entitled. United States v. Ward, 43 IBLA 333, 336 (1979).

Evidence introduced at the hearing demonstrated that in his April 25, 1984, Notice of Location, appellant stated the he had initially intended to use and occupy his T&M site for the purpose of buying, selling, trading, and storing "most anything of value," as part of a business to be known as "Cash's Cache." ^{3/} (Ex. 1 at 2.) ^{4/} This was to include used cars, trucks, trailers, campers, and "most everything" with salvage value, including the stockpiling of spare parts which were to be stored in "several buildings" which would be constructed on the site. (Ex. 3.) In

^{3/} Appellant also stated, in a Jan. 14, 1986, letter (Ex. 3), that he had intended to build "several cabins" along the creek and rent them as lodgings and/or storage places. No cabins were ever built. (Tr. 21, 25; Ex. 9 at 3-5.) Further, there is no evidence that appellant ever leased the use of his site for camping purposes at any time during the statutory life of his T&M site claim. While there was an existing cabin, appellant acknowledged that it was not built by him or used by him for any purpose. (Tr. 23-24, 108-10; Ex. 9 at 3-4.)

^{4/} Exhibit 1, like a number of the other exhibits, consists of both sides of a single page and is not paginated. For the purpose of citing unpaginated exhibits with two-sided documents, each side is counted as a separate page.

addition, appellant contemplated building structures for storing his customer's property and for providing shop space for his customers. Id.

During the statutory life of his T&M site claim, appellant had a trailer on that part of the site previously claimed by appellant pursuant to his homesite application. (Tr. 21-22; Ex. 6 at 11; Ex. 8 at 7.) However, no building was erected on the T&M site. 5/ (Tr. 21, 25; Ex. 9 at 3-6.) The evidence demonstrated that appellant's primary activity on his T&M site, during the first 4 years, was to construct and maintain the road which provided access first to his headquarters site and then to his T&M site and homesite. Activity was precluded during the 5th year by a long, hard winter. (Tr. 26, 31-32, 102; Ex. 6 at 6-8; Ex. 8 at 1-2; Ex. 9 at 5.)

It also appears from the evidence that, during the statutory life of his T&M site claim, appellant actually conducted his licensed business operations, known as "Cash's Cache," on his adjacent headquarters site. (Tr. 23-24, 81-82, 129-30, 144-45; Ex. 8 at 5-6, 9-12; Ex. 9 at 5.) It was there that he constructed four buildings (including a store), stored hardware, building materials, used vehicles, and other salvaged items, and generated income by selling those items. (Tr. 23-24, 31, 71-75, 81-86, 129-30; Ex. 6 at 5; Ex. 8 at 10-11; Ex. 10.) Further, evidence of use of the T&M site for storage prior to the filing of the application in 1989 was limited to placing building materials and electrical wiring, switches, and fixtures in or around the trailer and storage of three used vehicles. (Tr. 25, 72, 84-85, 120, 128-29; Ex. 9 at 3-4.) Donovan Granger, a witness for appellant, acknowledged that a "disproportionate amount of business, cash, barter or otherwise, activity [was] on his headquarters site versus the trade and manufacturing site within the years, '84 to '89, that we've been talking about * * *." (Tr. 144.) The evidence established sales from the T&M site during the statutory life of the claim on only two occasions, the sale of some electrical switches and fixtures stored in the trailer on the claim for \$5 (Tr. 85) and the sale of some groceries for an undisclosed price. (Tr. 125.)

The fact that appellant's business headquarters is located on a different tract of land does not preclude qualifying use of a T&M site in connection with that enterprise. However, the T&M site applicant who has his business headquarters on a different tract of land must show that activities conducted on the T&M site bear a direct and necessary economic purpose in furthering his business enterprise. David A. Burns, 30 IBLA 359, 366 (1977); David A. Burns, 6 IBLA 171, 174 (1972).

5/ Appellant originally stated, in his application, that he had improved his T&M site by placing a 12- by 14-foot log building and four mobile homes on the land, cleared the land, and built a bridge and a road, all valued at over \$10,000 and covering 15 to 20 acres. (Ex. 6 at 2.) The record shows that appellant had placed only the one mobile home and no building or other structures on the site. (Tr. 21, 72, 82-83; Ex. 6 at 11; Ex. 8 at 7; Ex. 9 at 3-6.)

Judge Sweitzer held that appellant had not carried the burden of showing the T&M site qualified under the standard set out in Burns. He specifically found that Cachelin had not shown that use of the T&M site served a necessary economic purpose to the business conducted on the headquarters site. Noting the testimony that only 10 percent of the acreage in the adjacent headquarters site was occupied (Tr. 133), he found that no showing had been made that it was necessary to use the T&M site to store the three salvage cars and the trailer. (Decision at 5.) The Administrative Law Judge further found that no connection had been established between the road on appellant's T&M site and the productive industry conducted on his headquarters site. (Decision at 5.)

Nothing offered by appellant on appeal demonstrates that the use made of his T&M site for storage or any other purpose at the time of application was necessary in any way to the commercial enterprise conducted on his adjacent headquarters site, or otherwise establishes that the judge erred in any of his conclusions in this respect.

We also find no support for appellant's charge that BLM's sole witness, David Mushovic, the BLM realty specialist who had examined the T&M site on August 8, 1990, gave "false testimony" in support of his conclusion that, during the statutory life of the T&M site claim, appellant had engaged in little, if any, business activity on that site (as opposed to the adjacent headquarters site), and thus failed to establish his entitlement to the T&M site. (NA/SOR at 1.)

Mushovic testified that during his August 8, 1990, field examination, appellant confirmed his conclusion, based on what he had seen and heard since 1987, that little, if any, business activity had ever occurred on the T&M site: "At that time, [appellant] stated that he had not yet conducted any business on his trade and manufacturing site. He wanted to eventually use it as a storage and salvage-type operation." (Tr. 24; see Tr. 23, 27, 44-46; Ex. 9 at 4-5.) Indeed, Appellant stated, in his April 20, 1989, application, that his actual use and occupancy of the land for the purposes of trade, manufacture, or other productive industry was "[m]ostly preparatory and getting it out of an infancy stage into commercial buying [and] selling." (Ex. 6 at 1.) The evidence does not show that Cachelin conducted any significant business enterprise on the T&M site. After noting that he had focused on road-building and maintenance for 4 years and been hampered by weather problems during the 5th year, appellant acknowledged in his application that "the clock and calendar has run out on me." Id. at 9.

We, therefore, conclude that Judge Sweitzer properly rejected appellant's application to purchase a T&M site, AA-53534, in secs. 25 and 26, T. 11 N., R. 8 E., Copper River Meridian, Alaska, and canceled his T&M site claim, since he failed to overcome BLM's prima facie case of invalidity, under section 10 of the Act of May 14, 1898, as amended, by a preponderance of the evidence.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge

