



CANADIAN MINING OF ARIZONA INC.

177 IBLA 368

Decided June 24, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CANADIAN MINING OF ARIZONA INC.

IBLA 2009-147

Decided June 24, 2009

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring the DB 1 through 171 (AMC 385403 - AMC 385573) and DB 172 through 176 (AMC 389634 - AMC 389638) unpatented mining claims forfeited by operation of law for failure to pay a \$125 per claim maintenance fee on or before September 1, 2008, for the 2009 assessment year.

Reversed; petition for stay denied as moot.

1. Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Rental or Claim Maintenance Fees: Generally

A BLM finding that maintenance fees were not timely paid resulting from the absence of evidence of payment in the files coupled with the presumption that BLM officials have not misplaced legally significant documents filed with them may be rebutted by evidence on appeal that the payment was timely delivered to and received by BLM.

APPEARANCES: Kathleen T. McCoy, Esq., Wickenburg, Arizona, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Canadian Mining of Arizona Inc. (CMAZ) has appealed from and petitioned for a stay of a March 6, 2009, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the DB 1 through 171 (AMC 385403 - AMC 385573) and DB 172 through 176 (AMC 389634 - AMC 389638) mining claims forfeited for failure to pay the \$125 per claim maintenance fee on or before September 1, 2008, for the 2009 assessment year. Because we find that it is more likely than not that CMAZ actually made timely payment, we reverse BLM's decision.

Under 30 U.S.C. § 28f(a) (2006), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a maintenance fee for each claim or site on

or before September 1 of each year.¹ See 43 C.F.R. § 3834.11(a)(2). Payment of the claim maintenance fee is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2006), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2006), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. See 30 U.S.C. § 28f(a) and (b) (2006); 43 C.F.R. § 3834.11(a).

The failure to pay the claim maintenance fee “shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.” 30 U.S.C. § 28i (2006); see 43 C.F.R. §§ 3830.91(a), 3835.92(a).

FACTS

In this case, BLM’s decision states that its records do not show receipt of a maintenance fee payment for the 2009 assessment year. CMAZ asserts that its Chief Financial Officer (CFO) June Ballant had a courier service deliver a bank draft to BLM in the amount of \$22,000, and that “the check has not yet cleared the corporation’s account and thus appears to be lost due to mistake within the Bureau of Land Management’s office.” Notice of Appeal and Statement of Reasons (SOR) at 1. To support its assertion, CMAZ submits the following:

1. A copy of a March 13, 2009, letter from Globex Foreign Exchange Corporation (Globex) to BLM stating that it received from CMAZ funds in the amount of \$23,452 (Canadian dollars) and requested that HSBC Bank issue a bank draft made out to the “Bureau of Land Management” in the equivalent amount of \$22,000 (U.S. dollars (USD)), sufficient to pay the maintenance fees for 176 mining claims, which bank draft Globex delivered to June Ballant, CFO of CMAZ on August 15, 2008.
2. A copy of a check in the amount of \$23,452 (Canadian dollars), dated August 15, 2008, from CMAZ to Globex with the request for issuance of a bank draft in the amount of \$22,000 USD.
3. A copy of a trading sheet dated August 15, 2008, showing the receipt by Globex of the CMAZ check and settlement of the transaction by bank draft to BLM.

¹ The Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2101 (2007), has made the Sept. 1 maintenance fee requirement permanent by removing the date range previously imposed by Pub. L. No. 108-108, 117 Stat. 1241, 1245 (2003) (years 2004 through 2008).

4. A copy of a payment detail sheet showing the request by CMAZ that a bank draft be issued in the amount of \$22,000 USD to BLM, referencing the subject mining claims AMC 385403 - AMC 385573 and AMC 389634 - AMC 389638.
5. A copy of an HSBC bank draft in the amount of \$22,000 USD showing BLM as payee.
6. A copy of BLM form MCF112 Maintenance Fee Payment showing CMAZ as claimant and identifying the subject mining claims AMC 385403 - AMC 385573 and AMC 389634 - AMC 389638, with the handwritten notation "Courier[e]d to BLM."
7. A copy of a DHL courier tracking details sheet showing delivery of a package on August 20, 2008, at 10:00 a.m., to "United States Department" in Phoenix, Arizona, showing a delivery receipt signature of "B Kay."

BLM has provided no response to CMAZ's SOR and the attached documents.

ANALYSIS

[1] The absence of a document in the record generally indicates that the document was not filed, based on the legal presumption that Government officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them. *Ed Sorrells*, 164 IBLA 379, 382 (2005). This presumption may be overcome by probative evidence that a document was not just transmitted but was actually received by BLM. *See Bernard S. Storper*, 60 IBLA 67, 71 (1981). The burden of proof shifts to the appellant to provide evidence that a filing was timely made and received by BLM and thereby rebut the presumption of administrative regularity. *Darrell Palmer*, 156 IBLA 360, 362 (2002).

The Board has considered these issues many times, and undertakes a particularized inquiry into the facts of each case. *See George M. Reedy*, 120 IBLA 274, 278 (1991) ("[T]his case presents an unusual set of factual evidence and any similar case must be examined in light of the particular facts of that case."). The Board has concluded, however, that mere assertions or uncorroborated statements that a document was mailed or included in an envelope or even filed with BLM are insufficient to overcome the presumption of regularity with respect to the actions of Government officials. *See, e.g., John and Linda Nelson*, 156 IBLA 195, 199 (2002); *Richard W. Kulis*, 72 IBLA 251, 253 (1983); *Bernard S. Storper*, 60 IBLA at 71; *John Walter Starks*, 55 IBLA 266, 270 (1981).

Appellants have overcome this presumption by submitting evidence sufficient such that although some doubt may remain, it was more likely than not that documents were timely filed with BLM. For example, in *L.E. Garrison*, 52 IBLA 131

(1981), BLM declared appellant's mining claim abandoned for failure to timely file evidence of annual assessment work. Appellant asserted that the required document had been filed with the county and a copy placed in an envelope together with a copy of the location notice, map, and filing fee, which was mailed to BLM. Appellant provided his wife's affidavit that she called BLM and spoke to an employee who opened the envelope while on the phone with her and confirmed that all of the required documents were present. A telephone bill also was submitted that confirmed the call to BLM. The Board held that appellant overcame the presumption of regularity, stating:

While we admit that there may still be room for doubt as to whether the proof of annual labor was filed, we hold that a preponderance of the evidence before us supports a finding that all required documents were, indeed, timely filed.

52 IBLA at 132.

The Board also has held that appellants overcame the presumption of regularity when they were required to file a particular document, no other document was required to be filed at that time, and probative evidence confirmed that a document was received by BLM from them. *See, e.g., Richard A. Willers*, 101 IBLA 106, 108 (1988); *Elizabeth D. Anne*, 66 IBLA 126, 128 (1982); *see also George M. Reedy*, 120 IBLA at 277-78.

In this case, CMAZ, the holder of 176 unpatented mining claims, has submitted un rebutted evidence that it initiated a financial transaction by which Canadian dollars were converted into U.S. dollars, in an amount sufficient to pay the annual maintenance fees for exactly 176 unpatented mining claims, resulting in issuance of an HSBC bank draft in the amount of \$22,000 with BLM as payee with reference to the CMAZ claims. The bank draft was delivered to June Ballant, CFO of CMAZ, who then arranged for a courier to deliver the bank draft to BLM in Phoenix. A couriered package from CMAZ then was delivered to and received by BLM in Phoenix on August 20, 2008.

No documents or payments other than the subject maintenance fees were due to be filed with BLM by CMAZ on or before September 1, 2008. CMAZ has provided probative evidence that it arranged for timely payment of the maintenance fees, and that BLM actually received a couriered package from CMAZ. Considering these facts, we find that CMAZ has overcome the presumption of administrative regularity by showing that it is more likely than not that BLM received CMAZ's timely payment of maintenance fees for CMAZ's 176 mining claims for the 2009 assessment year and that the payment was subsequently lost or misplaced by BLM. Accordingly, we reverse BLM's decision.

Therefore, 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 reversed and the requested stay is denied as moot. CMAZ is directed to resubmit to BLM appropriate maintenance fees for its claims for the 2009 assessment year on or before 30 days from the date of this decision.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge