

EDNA V. FRANK

IBLA 70-7

Decided January 13, 1971

Alaska: Homesteads -- Alaska: Possessory Rights

A protest submitted by an entryman, whose entry has been canceled as a result of a contest, against the final proof filed by the successful contestee will be dismissed when the protestant's court action against the contestee and the Secretary is dismissed.

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IBLA 70-7 : Fairbanks 032047
EDNA FRANK : Protest against homestead
entry dismissed
: Affirmed

DECISION

Edna V. Frank has appealed to the Secretary of the Interior from a decision dated May 14, 1968, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed the dismissal by the Fairbanks district and land office of her protest against the homestead entry, F-032047, of Frank G. Countryman.

The protest is a continuation of a controversy between Frank and Countryman. Frank had been allowed a homestead application for the same land. As a result of a contest against it by Countryman, her entry was canceled, Frank G. Countryman v. Edna V. Frank, 67 I.D. 295 (1960), and, after some further litigation, Carl R. Hawkins, A-29773 (March 24, 1964), Countryman's entry was allowed.

Countryman filed final proof on August 1, 1967. Frank filed her protest on January 31, 1968. After publication of the notice of final proof was completed on March 20, 1968, Frank filed a notice of adverse claim pursuant to sec. 10 of the act of May 14, 1898, 48 U.S.C. § 359 (1958); 43 CFR 2567.7(d), 35 F.R. 9606 (formerly 43 CFR 2211.9-7(d)). On June 17, 1968, she filed an action entitled Edna V. Frank v. Secretary of the Interior of the United States Government, Frank G. Countryman, et al., Civil No. F-9-68, in the United States District Court for the District of Alaska. In a memorandum and order, filed on October 9, 1970, the District Court granted the motion for summary judgment of the Secretary of the Interior. It held the cancellation of her entry for failure to establish residence, as the Department had determined, was substantially supported by the record.

On November 30, 1970, Frank submitted a letter to the Secretary in which she referred to the decision of the District Court and reviewed her allegation that she had been treated unjustly.

If Frank intended her suit to be the litigation required by section 10 of the act of May 14, 1898, supra, the court's decision disposes of her claim, establishes Countryman's right to possession, and leaves the Department with the obligation to adjudicate his claim on its merits without regard to her asserted rights. Crary v. Garrigan et al., 36 L.D. 225 (1908); Price et al. v. Shelton, 45 L.D. 555 (1916).

If her suit was merely a belated attempt for judicial review of the Department's decisions, the court's action has affirmed them.

In either posture her protest was properly dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo, Member

I concur: I concur:

Anne Poindexter Lewis, Member

Joan B. Thompson, Alternate Member

