

Jan A. Wawrytko

IBLA 70-67 Decided March 23, 1971

Homesteads (Ordinary): Second Entry

The fact that a home on the entry collapsed under the weight of snow during the life of the entry does not of itself establish that the entryman abandoned his entry for matters beyond his control so as to make him eligible for a second entry.

2 IBLA 78

IBLA 70-67 : Anchorage AA 2752

Jan A. Wawrytko :

:
: Application for homestead
: second entry rejected
:
: Affirmed

DECISION

Jan A. Wawrytko has appealed to the Secretary of the Interior from a decision dated June 10, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed the rejection by the Anchorage land office of his application for a second homestead entry filed pursuant to the act of September 5, 1914, 43 U.S.C. § 182 (1964). The rejection was based on the conclusion that he had not abandoned his first entry because of matters beyond his control.

According to the records Wawrytko made a homestead entry on August 17, 1959, covering land in Sec. 7, T. 20 N., R. 4 W., S.M. Alaska. In 1964 the land office mailed the appellant several notices concerning the statutory life of his entry and his obligation to file final proof. When no response was forthcoming, the case was closed of record on January 12, 1965.

On March 21, 1968, Wawrytko filed an application for a second entry for the same land. He said that he had abandoned the first entry because he found on his return to the entry in the spring of 1961 that the plastic structure, a geodetic dome, 18 feet in diameter, which he had built on the entry, had been "collapsed by snow and completely ruined."

The Act of September 5, 1914 supra permits a second homestead entry by a person who has lost, forfeited, or abandoned his prior entry "through no fault of his own" provided he shows to the satisfaction of the Secretary of the Interior that the prior entry was lost, forfeited, or abandoned "because of matters beyond his control."

The Bureau of Land Management's decision held that the appellant was not qualified for relief under the terms of the act. In this appeal Wawrytko, while conceding that there were other

difficulties in addition to the weather, states, "However, these were not the cause of the abandonment. The abandonment resulted from the destruction of the house caused by weather."

While the current appeal offers no explanation of why the destruction of the plastic structure caused him to abandon his entry, his statement in support of the appeal to the Director said:

Since I returned in the winter months, it was completely impossible to rebuild my home. I found difficulties at that time to rebuild my home beyond my present abilities.

Beyond these general assertions, he offers only vague and inadequate explanations for his failure. ^{1/}

We agree that the destruction of the geodetic dome of itself does not bring appellant within the terms of the second entry act. There was time left in the life of the entry to rebuild a house and to comply with the other requirements of the homestead law.

On this record we cannot find that the appellant abandoned his entry for reasons beyond his control.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 211 DM 135, 35 F.R. 12081, the decision of the Bureau of Land Management is, for the reasons stated herein, affirmed.

Martin Ritvo, Member

We concur:

Francis E. Mayhue, Member

Anne Poindexter Lewis, Member.

^{1/} There is also some confusion as to when the structure was destroyed. In his application Wawrytko said in the spring of 1961 he found it collapsed. In his appeal to the Director he dates the event as the end of his fourth year, which would be August 1963, or the spring of 1964, if appellant meant at the end of the following winter.

