

NORDIC VENEERS, INC.

IBLA 71-266

Decided August 2, 1971

Timber Sales and Contracts: Extension of Contract

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control.

Oregon Alder-Maple Company, 1 IBLA 241 (January 26, 1971), distinguished.

3 IBLA 86

IBLA 71-266 : 14-11-0008 (13) 337
NORDIC VENEERS, INC. : Timber sale contract
: extension denied
: Affirmed

DECISION

Nordic Veneers, Inc., has appealed from a decision dated April 2, 1971, by which the district manager, Roseburg District, Bureau of Land Management, denied its application for a one-year extension on Timber Sale Contract 14-11-0008 (13) 337. The district manager held that no sufficient reason for delay in operating under the contract had been shown and that inability to perform because of financial hardships and market conditions cannot be regarded as sufficient cause to merit an extension under Section 9 of the Contract.

The contract in issue authorizes the appellant to remove from lands in Douglas County, Oregon, an estimated 9,031 M. board feet, for a price of \$776,389.90. The contract was executed on behalf of the United States on February 26, 1969, and is to expire 30 months later, on August 25, 1971.

In its statement of reasons, the appellant contends that the generally depressed national economy, the unavailability of money for financing, and the continued inflation combined with the depressed price of plywood have contributed to its inability to perform timely under the contract. It contends also that denial of its request for the extension will cause the disappearance of some 223 jobs in the presently depressed area of Sutherlin, in Douglas County, Oregon, and buttresses its statement with data from the State of Oregon Employment Division. Finally, Nordic argues that the issues in its case are similar to those treated in Oregon Alder-Maple Company, 1 IBLA 241 (January 26, 1971).

Although there is some similarity between this case and that presented in Oregon Alder-Maple, we find certain material differences. In Oregon Alder-Maple, the district manager, familiar with the situation at the "grass roots" level, had recommended that the extension be granted, although he was overruled by the State Director, who followed

the general policy of the Bureau of Land Management in denying extensions where the purchaser has not made an acceptable showing under Section 9 of the Contract. Also, it was shown that the on-going operations of Oregon Alder-Maple were such that it was reasonable to assume the contracts could and would be completed with the extended period. In this case, however, there was no favorable recommendation from the district manager, 1/ nor has there been any showing made to indicate that Nordic could or would be able to complete the contract within an additional year. 2/ Nordic has not yet commenced any operations under the contract.

The appellant has merely implied that the nation-wide deterioration of the total economy has driven the price of finished lumber down to a point where it would be highly unprofitable for the company to operate under this contract. It is well established that a business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract. See Marionneaux v. Smith, 163 S. 206 (La. App. 1935); Western Alfalfa Milling Co. v. Worthington, 31 Wyo. 82, 223 P. 218 (1924). See also Williston, Contracts § 1968 (rev. ed.). Thus it has not been shown that the delay in cutting and removing the timber was due to acceptable causes beyond control of Nordic, within the ambit of the contract terms, expressed in Section 9 thereof:

Extension of Time and Reappraisal. If the Purchaser shows that his delay in cutting and removal was due to causes beyond his control and without his fault or negligence, the Authorized Officer may grant an extension of time, not to exceed one year upon written request of the Purchaser. Market fluctuations are not cause for consideration of contract extensions 43 CFR 5463.2 (1971).

1/ As indicated above, the district manager rejected the request for extension. While the Board has de novo jurisdiction in deciding appeals, we generally are reluctant to set aside discretionary decisions of field officials, absent abuse of discretion, mistake of law or policy, or other compelling considerations, recognizing their greater familiarity with all of the factors implicit in the making of such decisions.

2/ The Department's policy on timber sales extensions, as manifested in 43 CFR 5463.2, infra, is rigid. There is in the instant case no countervailing consideration as appeared in Oregon Alder-Maple, i.e., that extension of the contract would in all probability permit the company to operate on an economic basis and, therefore, to maintain its level of employment.

Oregon Alder-Maple rests upon its individual circumstances. Its precedential impact, if any, is therefore limited. Although we do not expressly or impliedly overrule that decision, our posture is to maintain and support the general Departmental policy against timber sale extensions, absent very compelling considerations. The instant case is comparable to many situations where timber contracts were executed at a time of high timber prices. Although we are sympathetic to the dilemma of those who purchased timber during that period, we do not find here a sufficient predicate for departure from the strong Departmental policy.

The appellant has not shown any cogent reason for exercise of the Secretary's discretionary authority contrary to the Department's policy of adhering rigidly to the terms of the timber sale contracts, nor have we found any such reason.

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 appealed from is affirmed.

Newton Frishberg, Chairman

I concur:

Frederick Fishman, Member

Edward W. Stuebing, concurring in the result.

Although I concur with the majority in concluding that no extension is available to appellant under the terms of the contract and the governing regulations, I am unable to perceive any significant factual differences which would distinguish this case from Oregon Alder-Maple Co., *supra*. As one who participated in deciding Oregon Alder-Maple, I am now of the opinion that the decision in that case was not well founded and should be overruled.

Edward W. Stuebing, Member

