

UNITED STATES
v.
ALFRED W. STORER AND CECILE C. STORER

IBLA 70-122

Decided August 30, 1971

Mining Claims: Contests--Rules of Practice: Government Contests

Where a Government contest complaint against a mill site claim contains charges which, if proven, would render the claim invalid, and the contestees fail to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestees and the claim is properly declared null and void by the land office manager under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of illness and misplacement of contest complaint.

IBLA 70-122	:	Contest A-1549 (Arizona)
UNITED STATES,	:	Mill site claim declared
Contestant	:	null and void and mineral
v.	:	entry canceled
ALFRED W. STORER AND	:	
CECILE C.STORER,	:	Affirmed as modified
Contestees	:	

DECISION

Alfred W. Storer and Cecile C. Storer have appealed to the Secretary of the Interior from a decision dated January 16, 1970, in which the Office of Appeals and Hearings, Bureau of Land Management, affirmed an Arizona land office decision of September 16, 1969, declaring their Arizona Amethyst mill site claim null and void for failure to file an answer to the Government's contest complaint against the claim.

The appellants filed mineral patent application A-1549 for the claim, which is located in section 21, T. 4 N., R. 10 E., G. & S.R.M. (M.S. No. 4654), Arizona. On July 9, 1968, the land office issued Mineral Entry Final Certificate A-1549, subject to demonstration and verification of the validity of the claim before patent may issue. On July 25, 1969, the land office issued the contest complaint against the claim based upon recommendation by the Forest Service, U.S. Department of Agriculture, made after an examination of the claim by a mineral examiner. The complaint contained three charges which, if proven, would render the claim invalid.

In their appeal to the Director, the Storer's requested that the case be remanded for a hearing and stated that their failure to respond timely to the complaint was due to extenuating circumstances. They alleged that they were in Minnesota on an extended business trip at the time they were served the complaint; that Mrs. Storer became quite ill while there and, as a result, the complaint was inadvertently placed with other mail to be taken care of upon their return to their home in Phoenix; and that upon their return to Phoenix the 30-day period had already lapsed.

The Bureau's decision pointed out that the land office action declaring the mill site null and void was consonant with the Department's regulations pertaining to contest proceedings, which provide that "Within 30 days after service of the complaint . . . the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint" (43 CFR 1852.1-6), 1/ and that "If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing." (43 CFR 1852.1-7(a)). 2/ (Emphasis supplied.) The decision then stated that the requirements of these regulations are mandatory, citing numerous departmental decisions in support thereof, including United States v. J. Hubert Smith, 67 I.D. 311 (1960).

We note that the appellants were properly served with the complaint as evidenced by return receipts signed by them, and that they therefore had notice of the charges and failed to respond timely.

Although it is to be regretted that they failed to file an answer allegedly because of illness and misplacing the notification, the applicable regulations requiring an answer in a Government contest make no allowance for an exception for such reasons. 3/ Therefore, we find no error in the decision below. This Board has held to the same effect. United States v. Ray L. Pruett and Freida C. Pruett, 3 IBLA 23 (1971); United States v. George Ernsbarger, 1 IBLA 83 (1970); United States v. Willie Walker, 1 IBLA 29 (1970). See United States v. Henry Gilligan et al., A-28857 (February 19, 1962), wherein the Department rejected reasons for delay similar to those advanced by the Storers. For rejection of late answers for other alleged reasons, see also United States v. J. Hubert Smith, *supra* at 312, and United States v. Ray L. Pruett and Freida C. Pruett, *supra*. In view of our disposition herein, we do not reach other allegations of appellants.

1/ Now recodified without substantive change in 43 CFR 4.450-6, 36 F.R. 7203 (April 15, 1971).

2/ Now recodified without substantive change in 43 CFR 4.450-7(a), 36 F.R. 7203 (April 15, 1971).

3/ The regulations cited above concerning the filing of an answer are applicable in Government contests. 43 CFR 4.451-2, 36 F.R. 7203 (April 15, 1971), formerly 43 CFR 1852.2-2.

Accordingly, the land office correctly declared the mill site claim null and void. For this reason, appellants' mineral patent application is rejected and mineral entry A-1549 is canceled.

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

Anne Poindexter Lewis, Member

We concur:

Francis Mayhue, Member

Joan B. Thompson, Member

