

RICHARD LEE FARRENS

IBLA 71-199

Decided August 25, 1972

Appeal from decision (Anchorage 064196) by Alaska state office, Bureau of Land Management, rejecting application to purchase a homesite.

Reversed and remanded.

Alaska: Homesites -- Equitable Adjudication: Substantial Compliance

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required where substantial compliance with the law is asserted and the delay is satisfactorily explained.

Withdrawals and Reservations: Effect of

The withdrawal imposed by Public Land Order 4582, as modified, terminated with the enactment of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688.

APPEARANCES: Richard Lee Farrens, pro se.

OPINION BY MR. FISHMAN

Richard Lee Farrens has appealed from a decision of the Alaska state office, Bureau of Land Management, dated January 22, 1971. The decision rejected his application to purchase a homesite under the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) et seq. (1970). The application was rejected for two reasons: 1) The land embraced within the homesite was withdrawn from all forms of appropriation and disposition pursuant to Public Land Order No. 4582 of January 17, 1969, 34 F.R. 1025 (January 23, 1969), as amended by Public Land Order 4962 of December 8, 1970, 35 F.R. 18874 (December 11, 1970), and 2) the appellant failed

to file his application to purchase within five years after the date of filing his notice of claim as required by 43 U.S.C. § 687a-1 (1970). 1/

The appellant filed his notice of location on January 10, 1966. His application to purchase was filed in the land office on January 12, 1971, three days late. Appellant asserts that he has been living on the land in a four room house since the first part of January, 1966. He further asserts that he was under the impression he owned the homesite, but was informed by a relative on or about January 4, 1971, that his claim would expire on January 9, 1971. Appellant states that because of the "weather and Reeve Aleution [sic] Airways it was impossible for this paper (his application to purchase) to reach there (the land office) at the required date."

The withdrawal of public lands imposed by the public land orders referred to above no longer presents an obstacle to consideration of appellant's claim. Subsequent to the time of the decision below, Congress enacted the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). The enactment of this legislation terminated the withdrawal. 2/

The Alaska Native Claims Settlement Act, supra, directs the Secretary to promptly proceed in cases of this kind. Section 22(b) provides:

The Secretary is directed to promptly issue patents to all persons who have made a lawful entry on the public lands in compliance with the public land laws for the purpose of gaining title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites (43 U.S.C. 682), and who have fulfilled all requirements of the law prerequisite to obtaining a patent. Any person who has made a lawful entry prior to August 31, 1971, for any of the foregoing purposes shall be protected in his right of use and occupancy until all the requirements of law for a patent have been met even though the lands involved have been reserved or withdrawn in accordance with Public Land

1/ The decision below states the authority relied upon as 43 C.F.R. § 2563.1-1(c) (1972), however that regulation applies to headquarters sites rather than homesites. However, as noted supra, 43 U.S.C. § 687a-1 (1970) requires that proof for a homesite claim be filed "within five years after the filing of the notice of claim * * *"

2/ See Public Land Order 5081 of June 17, 1971, 36 F.R. 1207 (June 24, 1971).

Order 4582, as amended, or the withdrawal provisions of Public Land Order 4582, as amended, or the withdrawal provisions of this Act: Provided, That occupancy must have been maintained in accordance with the appropriate public land law: Provided further, That any person who entered on public lands in violation of Public Land Order 4582, as amended, shall gain no rights.

The failure of the appellant to file a timely application to purchase does not bar consideration of his application on its merits. Where, as in the present case, it appears that a claimant has substantially complied with the requirements of the homesite law, but failed through an error arising out of ignorance, accident, or mistake, to file an application for purchase within the five year statutory period, equitable relief may be afforded to consider the claim on its merits. 43 U.S.C. § 1161-1164 (1970); 43 C.F.R. § 1871.1. For cases reaching a similar result, see Elizabeth Hickethier, 6 IBLA 306 (1972), and C. Rick Houston, 5 IBLA 71 (1972) (trade and manufacturing sites); Juanita J. Anderson, 4 IBLA 170 (1971), and Ruth Gary, A-30329 (August 9, 1965) (homestead entries); Warrine F. Harden, 5 IBLA 194 (1972) (desert land entry).

The appellant has satisfactorily explained his failure to submit a timely application to purchase. The Bureau should, therefore, consider his application under the equitable adjudication provision of 43 CFR § 1871.1 (1972).

Accordingly, 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 set aside and the case is remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

Frederick Fishman
Member

We concur:

Edward W. Stuebing
Member

Anne Poindexter Lewis
Member

