

MILDRED M. MILLER

IBLA 71-278

Decided September 28, 1972

Appeal from Montana land office decision (M-13125) rejecting a preference right claim to purchase land at a public sale.

Affirmed.

Public Sales: Preference Rights

One who fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by the pertinent regulation loses his preference right to purchase the land.

APPEARANCES: Carl A. Hatch, Esq., of Small, Cummins & Hatch, attorneys-at-law, for appellant.

OPINION BY MR. RITVO

Mildred M. Miller appealed from a decision by the land office rejecting her preference right claim to purchase land at a public sale for failure to submit proof of ownership within the time specified by the authorized officer.

By decision of the Bureau of Land Management dated August 6, 1970, lots 1, 2, 6, and 7 of sec. 6, T. 5 N., R. 3 E., P.M., Broadwater County, Montana, were classified as suitable for public sale pursuant to the Public Sale Law. R.S. 2455, as amended, 43 U.S.C. § 1171 (1970). Following a land appraisal and adequate publication, lots 1, 2, 6, and 7 were offered for public sale on February 23, 1971. Lots 1 and 2 were delineated as Parcel 1, while 6 and 7 were designated as Parcel 2. Mildred Miller was the high bidder on Parcel 2, and Mamie Bercholz of California submitted the high bid on Parcel 1.

The notice of high bids, issued on February 25, 1971, stated that the sale was suspended for 30 days, allowing owners of contiguous lands to assert a preference right to purchase the lands. Fur!

ther, the notice stipulated that April 6, 1971, would be the deadline for submission by a preference right applicant of proof of ownership to the whole title of the contiguous lands. Mrs. Miller asserted her preference right to purchase Parcel 1 on March 5, 1971. This was the only preference right asserted by a claimant. However, not until April 7, 1971, did the land office receive Mrs. Miller's certificate of ownership. Since Mrs. Miller was one day late in filing her proof, the due date being April 6, 1971, the land office rejected Mrs. Miller's preference right claim and awarded Parcel 1 to Mamie Bercholz, the highest bidder.

Mrs. Miller filed her notice of appeal on May 10, 1971. In her appeal Mrs. Miller argues that proof of ownership was deposited in the mail on the morning of April 5, and that mailing the document prior to April 6 satisfied the requirements that proof be submitted on or before that day.

Mrs. Miller distinguishes between the instructions to submit as found in the notice declaring the high bid and the words to file as adopted by the land office decision. Appellant argues that while filing may require delivery, submission only indicates deposit in the mail. This argument is not persuasive. The regulations stipulate that a preference right applicant "submit proof of ownership" within the time specified by the authorized officer. 43 CFR 2711.4(b)(2). The regulations also refer to data being "filed pursuant to this section." 43 CFR 2711.4(b)(3). Whether the specific words employed were "submit" or "file" the time limit would be governed by 43 CFR 1821.2-2(f). That section states that:

\* \* \* filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

The requirement that the requisite proof of ownership be filed within the time specified by the authorized officer is mandatory. The regulation states it in terms that are clear and unambiguous. Further, the rights of the high bidder are involved. The Department has strictly construed the regulatory requirements imposed upon preference right applicants at public sales as a prerequisite to their establishing a preference right to purchase. Gene Van Matre, 6 IBLA 229 (1972); Ethel E. Tashoff, A-30262 (July 23, 1965); Fred and Mildred M. Bohlen, 63 I.D. 65 (1956); Floyd J. Whittaker, Idaho 016007 (March 6, 1968); James E. Zajic, New Mexico 02560301 (January 2, 1968); see Frank Allison, 3 IBLA 317 (1971).

Accordingly, Mrs. Miller's assertion of preference right was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (43 CFR 4.1), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo  
Member

We concur:

Newton Frishberg  
Chairman

Edward W. Stuebing  
Member

