

**Editor's note: Reconsideration denied by order dated Dec. 19, 1973**

DANIEL MARTINIS

IBLA 73-404

Decided September 13, 1973

Appeal from a Fairbanks District Office, Bureau of Land Management, decision canceling appellant's homestead entry F-11731.

Appeal dismissed.

Regulations: Waiver! ! Rules of Practice: Appeals:  
Dismissal! ! Rules of Practice: Appeals: Service on Adverse Party

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

APPEARANCES: Daniel Martinis, pro se, Fairbanks, Alaska; John A. Henshaw, pro se, Fairbanks, Alaska.

OPINION BY MR. GOSS

Daniel Martinis has appealed from a decision issued by the Fairbanks, Alaska, District Office, Bureau of Land Management, on April 18, 1973, which canceled his homestead entry F-11731 because he failed to answer the allegations in a contest complaint filed by John A. Henshaw against appellant's homestead entry. Having failed to file an answer within the time prescribed by 43 CFR 4.450-6, 1/ the charges in the complaint were taken as admitted and appellant's entry was canceled pursuant to 43 CFR 4.450-7(a). 2/

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1/ The regulation reads in part:

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450-5(b)(3).

2/ The regulation states:

(a) 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.

By letter dated June 4, 1973, contestant requested the District Office to summarily dismiss the present appeal because contestant had not been served with a copy of the notice of appeal within the time prescribed by 43 CFR 4.413. By letter received June 11, 1973, contestant informed the Board of Land Appeals of his request for summary dismissal. Therein, he mentioned that he had not been served with a copy of appellant's statement of reasons for appeal. Appellant's statement of reasons was not received by this Board until June 18, 1973.

Departmental regulation 43 CFR 4.402 provides for summary dismissal of an appeal when the notice of appeal or statement of reasons is not served on adverse parties within the time prescribed by 43 CFR 4.413. Appellant was aware of the procedure required to be followed during contests, since he had obtained cancellation of a previous entry made on the land herein concerned. In addition, the decision canceling his entry specifically stated that if an appeal was taken, the adverse party to be served was John A. Henshaw. Appellant's statement of reasons contained no explanation for his failure to serve contestant. For this reason, the appeal should be dismissed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Joseph W. Goss  
Member

We concur:

Martin Ritvo  
Member

Joan B. Thompson  
Member

