

UNITED STATES
v.
ALBERT S. HUNTER, ET AL.

IBLA 75-361

Decided September 10, 1975

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring eight lode mining claims null and void.

Affirmed in part; reversed in part.

1. Administrative Procedure: Administrative Procedure Act -- Contests and Protests: Generally -- Mining Claims: Contests

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

APPEARANCES: Albert S. Hunter, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Albert S. Hunter appeals from the January 21, 1975, decision of the New Mexico State Office, Bureau of Land Management (BLM), which declared the Gem Nos. 1 through 8 lode mining claims null and void. The eight claims are located in sections 5, 8 and 9, T. 13 S., R. 4 E., New Mexico P.M., Sierra (formerly Socorro) County, New Mexico. The contest proceedings in this case were commenced by issuance of

a complaint charging that the claims in question are invalid for lack of discovery of a valuable mineral deposit. Most of the contestees were notified by personal service; those that could not be found were notified by publication. Albert S. Hunter was the only contestee to reply to the complaint. However, his reply was received on June 12, 1974, more than 30 days after he received personal service on April 22, 1974. Since the pertinent regulations, 43 CFR 4.450-6, 4.450-7, and 4.451-2, provide that if the answer is not received within 30 days, the charges will be deemed admitted, the New Mexico State Office, BLM, declared the claims null and void without a hearing.

Appellant states that he filed his answer of June 12, 1974, on behalf of all contestees, not just for himself. An examination of that answer is consistent with appellant's statement. This Board then required appellant to state specifically what capacity appellant was acting in and on whose behalf, when he filed his answer of June 12, 1974. A series of correspondence with appellant reveals that he is not an attorney at law but purports to represent members of his family who have so designated him to act. This is permitted by 43 CFR 1.3(b)(3). Of all those whom appellant named, only one was served late enough for appellant's answer to be considered timely filed ^{1/}; Beatrice Ann Johnson was served on May 22, 1974.

[1] The Department's regulations requiring that answers to mining claim contest complaints be filed within 30 days is mandatory and if no answer is filed within that time, the charges will be deemed admitted and the claims declared null and void. United States v. Sainberg, 5 IBLA 270 (1972), aff'd, Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973). United States v. Weiss, 15 IBLA 198 (1974) and cases cited therein at 206, 207; United States v. Hunter, A-30872 (February 21, 1968) and cases collected therein. See also United States v. Weiss, 431 F.2d 1402, 1406 (10th Cir. 1970). Therefore, as to all contestees, including Albert S. Hunter, who did not file a timely answer, the charges are taken as admitted and their interests in the claim are declared null and void. United States v. Zweifel, 11 IBLA 53, 91-92, 80 I.D. 323, 340-41 (1973); United States v. Holcomb, A-31019 (August 21, 1969). However, the interest of

^{1/} The other contestees appellant purports to represent and the dates they were served are: 1) Mrs. J. F. (Lorena Hunter) Dunlap, April 19, 1974; 2) Lillian Hunter Wohlenberg, April 16, 1974; and 3) Beulah Hunter Cox, April 19, 1974.

Beatrice Ann Johnson was preserved by the answer filed on her behalf by Albert S. Hunter. As that answer sufficiently denies the charges of the contest complaint, a hearing is necessary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part, reversed in part, and remanded to the New Mexico State Office for action consistent with the views expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge

