UNITED STATES
v.
CLIFF LIBBY

IBLA 76-181 Decided February 19, 1976

Appeal from a decision (OR 2937) by the Oregon State Office, Bureau of Land Management, declaring a mining claim null and void.

Set aside and remanded.

1. Contests and Protests: Generally -- Mining Claims: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

Where a contestee makes a timely response to a government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

APPEARANCES: David J. Whitmore, Esq., Whitmore & Warren, Wenatchee, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Cliff Libby (a/k/a Clifford Libby) appeals from the August 12, 1975, decision of the Oregon State Office, Bureau of Land Management (BLM), which declared Sulphide lode claim, recorded in Vol. 480, p. 432, Chelan County Records, Washington, and located in unsurveyed sec. 3, T. 34 N., R. 17 E., W.M., null and void, because his answer

was considered unacceptable in that "it did not pertain to the Sulphide lode claim involved in the contest proceeding." 1/

The Government's contest complaint was served on Libby October 24, 1974, as evidenced by the signed post office return receipt. Part 5 of the complaint charged that no valuable mineral deposit had been discovered within the limits of the claim. The complaint pointed out that the charges in the complaint would be taken as admitted unless an answer was timely filed in accordance with 43 CFR 4.450-6. That regulation states 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). * * *

By their attorney, David J. Whitmore, Cliff Libby and Bertha L. Willmorth, as contestees, filed an answer November 18, 1974, within the 30-day period. The answer was captioned in the same manner as the complaint, setting forth the subject matter of the contest as Sulphide lode claim, relocated June 30, 1952, and recorded in Vol. 480, p. 432, Chelan County records. Among other matters, the contestees alleged:

> * * * that the ownership of the claims subject to or described in the Complaint are sulphide claims No. 1, 2, and 3 also known as the Bridge Creek Mining Company Claims which are owned by Bertha L. Willmorth and Clifford Libby * * *.

In response to part 5 of the Government's complaint, contestees denied there had been no valuable mineral deposits discovered within the limits of the "claims," alleging such deposits had been discovered and the necessary assessment work had been done. 2/

1/ The decision also noted that it was not "to be construed as having any effect on the validity of the Bridge Creek Mining Company Claims recorded in Volume 651, Pages 42, 43, and 44, or any claims, other than the Sulphide lode claim which was recorded in Volume 480, page 432, records of Chelan County, Washington."

2/ The BLM notified contestees' attorney by letter, dated January 2, 1975, that Bertha L. Willmorth appeared to be a stranger to the contest, as a search of the records had failed to reveal an

[1] It is recognized by this Board that:

> A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. Administrative Procedure Act, 5 U.S.C. § 554 (1970); United States v. O'Leary, 63 I.D. 341 (1956). Due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. United States v. McCall, 1 IBLA 115 (1970). But there is no requirement that a hearing be held where the contestee has been given due notice in the form of an adequate contest complaint, properly served, and fails thereafter to avail himself of the opportunity for a hearing within the time provided. United States v. Garnett, A-28545 (January 31, 1961). The requirement for the timely filing of an answer to a contest complaint is mandatory in nature and jurisdictional in character. (Emphasis in original.)

United States v. Ragsdale, 20 IBLA 348, 349-50 (1975), quoting from United States v. Weiss, 15 IBLA 198, 207 (1974).

A contestee is required to file within 30 days "an answer specifically meeting and responding to the allegations of the complaint * * *." 43 CFR 4.450-6. Where the answer is not filed as required, the allegations of the complaint are taken as admitted,

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interest other than Mr. Libby's. Accordingly, the Bureau requested information as to the nature of Bertha Willmorth's interest, including the book and page of the mining records where such information is recorded.

Mr. Whitmore responded for contestee with, among other documents, an executed copy of a Special Power of Attorney from Cliff Libby appointing Bertha Willmorth attorney in fact in regard to "Sulfide Loan [sic] and Bridgecreek [sic] Mining 1, 2, and 3 located in Bridgecreek [sic] Mining District, Chelan County, Washington." By another letter, received by the Bureau February 27, 1975, contestees' attorney explained:

"The Sulphide Lode mining claims and the Bridgecreek [sic] Mining claims #1, 2 and 3 are the same mining claims. They were originally claimed as Sulphide Lode. They were restaked by Bridgecreek [sic] Mining Company under Bridgecreek [sic] Mining claims #1, 2 and 3. These are recorded in Volume 651, pages 42, 43, 44, records of Chelan County, Washington. Clifford Libby and Bertha Willmorth are the principals in the staking of the Bridgecreek [sic] Mining Company." (Emphasis added.)

and the Manager is to decide the case without a hearing. 43 CFR 4.450-7. Therefore, this Board has affirmed the authorized officer's decision declaring mining claims null and void, where even though the answer was filed on time, such document did not constitute a denial of the allegations in the complaint. United States v. Nielsen, 3 IBLA 53 (1971); United States v. Walker, 1 IBLA 29 (1970).

The present case is different from Nielsen and Walker. Appellant not only filed on time, he also denied the charge of lack of discovery and affirmatively alleged discovery on the claims. The only confusion arises because the answer refers to three claims, the Sulphide 1, 2 and 3, also known as the Bridge Creek Mining Company claims, instead of just one claim, the Sulphide lode claim. The answer expressly states that the claims "subject to or described in the Complaint" are those three claims. The answer is captioned the same as the complaint; namely, it refers to the Sulphide lode claim, with the recording and location data, and further responds point by point to contestant's allegations.

The only reasonable interpretation that can be drawn from the answer read in its entirety, is that it constitutes a denial of the charges with a clarification that the claim is really three claims. In these circumstances, we see no basis for concluding appellant has admitted the charges of the complaint.

Accordingly, appellant's timely response to the Government's complaint is construed as a general denial of the allegations contained therein and is a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing. Michael J. Verble, 17 IBLA 139 (1974). 3/

3/ Appellant's attorney's letter, quoted in footnote 2, clarifies that the three claims were originally claimed as the Sulphide lode. Our decision simply concludes there is no basis for declaring that claim null and void because of appellant's answer. However, before a hearing is held, the parties may wish to clarify further by amendments to the complaint and answer, stipulations, or other appropriate means, the location and extent of the claim or claims to be considered at the hearing in order to resolve all issues under the mining laws pertaining to the land in question and to avoid any unnecessary additional adjudicative proceedings.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for appropriate action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge