

SHARON K. MILAZZO ET AL.

IBLA 77-129 to 136

Decided December 5, 1977

Appeal from decision of Arizona State Office, Bureau of Land Management, dismissing answer to mining claim contest complaints A-9688 to 9695 and declaring mining claims null and void.

Vacated and remanded.

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

A Bureau of Land Management decision, dismissing an answer to contest complaints filed in behalf of individual contestees and a company, and holding mining claims null and void because it appeared the company did not own the claims and because the answer was filed in behalf of the individual contestees by someone not authorized to practice in their behalf, will be vacated where on appeal it is shown that within the time for filing the answer the claims had been transferred to the company. There is no need to dismiss the contest and initiate a new contest against the company since a timely answer has been filed in its behalf; instead, the complaints should be amended to substitute the company as the contestee and party in interest and the contest proceeding should go forward against it.

APPEARANCES: Appellants, pro se; Susan H. Brambley, pro se, and as Secretary for Lost Pollack Mining and Exploration, Ltd.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal arises from a December 29, 1976, decision of the Arizona State Office, Bureau of Land Management (BLM), summarily dismissing an answer to eight mining claim contest complaints and declaring the claims null and void. 1/ The State Office issued the contest complaints dated September 8, 1976, listing three charges, including one that valuable minerals had not been found within the limits of the claims in sufficient quantity and quality to constitute a discovery. Each complaint requested that the claim be declared null and void. Each also indicated that a protective withdrawal covering all or part of the claims had been posted on the records of the BLM Arizona State Office on August 9, 1976. The complaints were served upon the owners of record of the mining claims. Within the time for filing an answer for each contest complaint, a single answer was filed on September 29, 1976, in behalf of the individual contestees and was signed by "Susan H. Brambley, Attorney in Fact for above-named Contestees; and Secretary, Lost Pollack Mining and Exploration, Ltd." 2/ The answer denied the charges of the complaint and affirmatively asserted that the claims are mineral in character and that valid discoveries had been made on the claims.

The BLM decision of December 29, 1976, indicated that although Susan H. Brambley was presumably qualified to file an answer on behalf of Lost Pollack Mining and Exploration, Ltd., in her capacity as secretary of the company, the records did not show that the company had any interest in the claims. The decision also referred to the requirements for qualifications to practice before the Department of the Interior in 43 CFR 1.3(b), and stated that Susan H. Brambley did not appear to fall within any of the categories of persons authorized to practice before this Department except as to filing an answer on her own behalf. The decision further stated that an answer filed by one not authorized to practice before the Department as prescribed by the regulations may not be considered and is subject to

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<u>Docket No.</u>	<u>Appellant</u>	<u>Placer Mining Claim</u>	<u>Contest No.</u>
IBLA 77-129	Sharon K. Milazzo	Lost Polack #2	A-9688
IBLA 77-130	Ralph Tubbs Claudia Tubbs	Lost Polack #3	A-9689
IBLA 77-131	Janet S. Eyler	Lost Polack #4	A-9690
IBLA 77-132	John Hoover	Lost Polack #5	A-9691
IBLA 77-133	George Smedes	Lost Polack #6	A-9692
IBLA 77-134	Janice Rae Miller	Lost Polack #7	A-9693
IBLA 77-135	Valerie Helen Milazzo	Lost Polack #8	A-9694
IBLA 77-136	Joseph A. Milazzo	Lucky Eight #1	A-9695

2/ The record shows the names of the claims and the company to be variously spelled "Polack" and "Pollack."

summary dismissal as to Contest Nos. A-9688 through A-9695. It then concluded that since a proper answer was not filed within the time period for filing an answer, the charges are taken as admitted and the mining claims declared null and void.

In an appeal signed by Ms. Brambley, as attorney in fact for the contestees, and secretary, Lost Pollack Mining and Exploration, Ltd., and by each contestee, it is asserted that the contestees have a vested interest in the Lost Pollack Mining and Exploration Company, dating from February 15, 1976, that quit-claim deeds, "agreed upon prior to the Contest dated September 8, 1976, were executed and notarized on October 2, 1976, transferring ownership of said claims to Lost Pollack Mining & Exploration Company and Susan H. Brambley, Secretary/Agent as Trustee for Limited Partners." Copies of the quit-claim deeds were attached. We note that these deeds were executed during the 30-day period within which to answer the contest complaints, and that the contestees, in effect, are contending that there was some agreement to transfer the claims prior to the institution of the contest proceedings.

[1] The rules of practice governing appeals to this Board and hearings in contests, 43 CFR 4.401(b) and 4.422(b), respectively, provide that transferees and encumbrancers of land, the title to which is claimed, shall upon filing notice of the transfer or encumbrance in the proper land office, be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest. They also provide that such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry. The appeal suspended the effect of the decision appealed from. 43 CFR 4.21(a). The contestees have timely asserted that a transfer of the claims has been made and that there was an agreement for the transfer prior to the initiation of the contests. It is clear that the Lost Pollack Mining and Exploration, Ltd., is now a party in these contest proceedings. An answer was timely filed by an officer of the company. There is no need to dismiss this contest and initiate a new one against the company as an answer was filed and the complaints should be amended to substitute the company as the contestee and party in interest. United States v. Gibson, 16 IBLA 246, 249 (1974). Because individuals named in the contest complaints have transferred their interests in the claims to the company, they no longer can assert a direct title to the claims in their individual capacities. This moots their appeal and the BLM decision against them as individuals. Therefore, the BLM decision is vacated and the contest proceedings should go forward against the company as the contestee.

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 vacated and the cases remanded for further proceedings.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Newton Frishberg
Chief Administrative Judge

