UNITED STATES v. MAURICE L. WILSON

IBLA 78-506 Decided December 14, 1978

Appeal from decision of Administrative Law Judge Dean F. Ratzman, rejecting application to purchase headquarters site and cancelling entry. Contest No. AA-898.

Affirmed.

1. Administrative Procedure: Burden of Proof--Alaska: Headquarters Sites--Rules of Practice: Appeals: Burden of Proof

   Applicant has burden of establishing entitlement to headquarters site claim, and must demonstrate that he has complied with statute and regulations.

2. Alaska: Headquarters Sites

   In contest hearing on headquarters site claim, evidence must be submitted from which it can be concluded that applicant was engaged in actual business operation from which he reasonably hoped to derive a profit.

3. Alaska: Headquarters Sites

   Where evidence showed that in 5 years during which applicant was allowed to prove up headquarters site, applicant went out trapping only "four or five times" in 1970 and again in 1971, did not realize more than $20 from sale of pelts but did retain a lynx pelt and two beaver pelts for himself, Administrative Law Judge properly rejected application to purchase headquarters site under 43 U.S.C. § 687a (1970).

4. Administrative Authority: Laches--Estoppel--Laches-- United States

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescences of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Maurice L. Wilson, Anchorage, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Maurice L. Wilson has appealed from a May 25, 1978, decision of Administrative Law Judge Dean F. Ratzman rejecting his application to purchase a headquarters site and cancelling his entry. See 43 U.S.C. §§ 687a, 687a-1 (1970); 43 CFR Subpart 2563. 1/ The lands in issue are situated at mile 49 of the Richardson Highway, in unsurveyed sec. 19, T.6 S., R.1 E., Copper River meridian, Alaska.

In 1967 appellant filed a notice of location of settlement or occupancy claim on the subject land, 2/ and on July 20, 1972, he submitted his application to purchase. The Bureau of Land Management (BLM) filed its contest complaint against appellant on November 4, 1976.

The Act of March 3, 1927, provides that a qualified claimant: "[W]ho is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands * * * in Alaska as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior * * *". (Emphasis supplied.) 44 Stat. 1364; 43 U.S.C. § 687a (1970). The application to purchase was required to be filed within 5 years after the applicant's filing of his notice of claim. 43 U.S.C. § 687a-1 (1970). In its regulations on homesites and headquarters, the Department has rendered the following interpretation of the Act of March 3, 1927: "The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged

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1/ The statutory provisions cited were repealed effective October 21, 1986, in sec. 703 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2789-91.

2/ The record is not clear whether the filing was effective on April 22, or April 26, or August 16, 1967, but the parties did not dispute the fact that the filing did occur during 1967. See decision of Administrative Law Judge, page 2. The Administrative Law Judge dismissed the Government's motion to dismiss the applicant's case for failure to comply with the 5-year filing requirement in 43 CFR 2563.1-1(c). Id.

in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters." (Emphasis supplied.) 43 CFR 2563.0-2. 3/

Appellant has claimed that he used the headquarters site for the purpose of trapping.

The Administrative Law Judge found against appellant for the reason that "Mr. Wilson did not establish that he was engaged in an actual business operation from which he reasonably hoped to derive a profit. He has not shown that his use of the tract was primarily as a headquarters site in connection with trade, manufacture or other productive industry." Decision of Administrative Law Judge at 4-5.

Wilson bases his appeal upon his assertions that the BLM's Realty Specialist testifying at the hearing was unqualified, that the 4-year delay between the filing of his application to purchase and the initiation of the contest was unreasonable, that the BLM did not make a reasonable effort to locate two witnesses who would have testified in his favor, that the Alaska "land freeze" and pipeline corridor location hampered development, that the Administrative Law Judge did not give proper consideration to a certain letter from the BLM, and that the Government solicited entries via circular No. 2214 but had no intention of granting entries. Appellant further contends that "the Government errored in not counting the value of my beaver and lynx pelts, which are worth several hundred dollars on the market."

[1-3] We have reviewed the record in this case and have concluded that the Administrative Law Judge's findings of fact and analysis of the law are well-founded and legally correct. Accordingly, we adopt his decision and attach it hereto. We find it unnecessary to discuss appellant's contentions on appeal at length, because despite his objections to the conduct of the hearing, which are unfounded, appellant made it crystal clear by his own testimony that he had not met the statutory requirements for a headquarters site. Wilson conceded that prior to 1969 his trapping activities at the site were merely recreational (Tr. 24). The extent of the trapping effort to which Wilson testified was "four or five" instances of working his traplines each winter in 1970 and 1971 (Tr. 24-25). Wilson stated that his total trapping success was six pelts which he sold for $3 apiece (Tr. 27), plus a lynx and two beaver pelts (Tr. 26). Given the evidence presented, we conclude that the Administrative Law Judge properly rejected Wilson's application to purchase and properly cancelled his entry.

[4] As for appellant's contention that the 4-year time span between his filing his application to purchase and the Government's instituting a contest was unreasonable, we note that the regulation at 43 CFR 1810.3(a) states: "The authority of the United States to

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3/ Formerly 43 CFR 2239.9-1(b) (1967).

enforce a public right or protect a public interest is not vitiated or lost by acquiesence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties." The Courts have ruled that the United States is not subject to a defense of laches in an action to enforce a public right. United States v. Summerlin, 310 U.S. 414, 416 (1940); Roberts v. Morton, 549 F.2d 158, 163-164 (10th Cir. 1977), cert. denied, 434 U.S. 834 (1977) 4/; United States v. State of Florida, 482 F.2d 205, 210 (5th Cir. 1973). The policy upon which this principle of law is founded is that of protecting the citizens of this country from damage or loss of their public rights and property through possible negligence of public officers. Chromcraft Corporation v. E.E.O.C., 465 F.2d 745, 746-47 (5th Cir. 1972); In Re Estate of Hooper, 359 F.2d 569, 578 (3rd Cir. 1966), cert. denied, 385 U.S. 903 (1966). In view of the above, we conclude that laches is not applicable to the United States.

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 affirmed.

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Anne Poindexter Lewis
Administrative Judge

I concur:

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Joan B. Thompson
Administrative Judge

4/ We note our disagreement with Judge Goss' statement as to what the Roberts case, supra, seems to indicate as to laches.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result, but do not agree with the majority discussion of laches. In Roberts v. Morton, 549 F.2d 158 (1977), cert. denied,
434 U.S. 834 (1977), the Tenth Circuit clearly indicated that under very unusual circumstances the defense of laches might be held to apply against the United States. In Roberts, the Court stated at 163:

> We start with the general rule that ". . . the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." United States v. Summerlin, 310 U.S. 414, 416 * * *; Board of Commissioners v. United States, 308 U.S. 343, 351 * * *. But even assuming some relaxation of these strict rule's might be developing, there are no circumstances shown here to support the defense of laches. It is an affirmative defense requiring a showing of lack of diligence by a plaintiff and prejudice to the defendant. Costello v. United States, 365 U.S. 265, 282 * * *; Bradley v. Laird, 449 F.2d 898, 902 (10th Cir.). We cannot say the Government was precluded from asserting its rights here. See United States v. California, 332 U.S. 19, 39-40 * * *.

Appellant here has not shown that such unusual circumstances, akin to affirmative misconduct, are present in the case.

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Joseph W. Goss
Administrative Judge

May 25, 1978

DECISION

United States of America,	:	Contest No. AA-898
Contestant	:	
	:	Headquarters Site
v.	:	
	:	(Alaska)
Maurice L. Wilson, :		
Contestee :		

The Bureau of Land Management filed a Complaint in this proceeding on November 4, 1976. Mr. Maurice L. Wilson, the contestee, had filed an application to purchase a headquarters site on July 20, 1972. The Complaint contains the following charges:

> "(a) Section 10 of the act of May 14, 1898 (30 Stat. 413) as amended by the Act of March 3, 1927 (44 Stat. 1364; 48 U.S.C. 461), and the regulations promulgated by the Secretary of the Interior, specifically [43 CFR] 2563.0-3 and 2563.1(a) require that the land actually be used and occupied as a homestead or headquarters site in connection with the contestee's own business or that of his employer. The actual use by the contestee was not primarily as a headquarters site in connection with trade, manufacture, or other productive industry.
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> (b) Section 10 of the act of May 14, 1898, supra, and the regulations promulgated under Section 2563, Title 43, Code of Federal Regulations, prohibits the acquisition of a headquarters site for use as a prospective business. Contestee is attempting to acquire the land for a prospective headquarters site or for another use not consistent with the intent of the applicable law."

The original Notice of Location of Settlement or Occupancy Claim for the headquarters site was signed and submitted by Mr. Wilson on April 22, 1967. He testified at a hearing held on July 27, 1977, that there was a problem with his description and the document was returned to him for a change. Neither of the parties offered an amended Notice of Location of Settlement or Occupancy Claim. However, Mr. Wilson provided a Notice from the Bureau of Land Management, dated November 27, 1967, which indicates that his claim had been recorded, and specifies "August 16, 1967" as the "Date filed." At the hearing the Bureau counsel referred to a BLM stamp on the original Notice designating April 26, 1967, as the date of receipt. He moved to dismiss Mr. Wilson's Application for Purchase Headquarters Site on the ground that it had not been filed with the five year period specified in 43 CFR § 2563.1-1(c).

The Bureau apparently accepted two filings and treated the second filing as the one which started the the running of the five year period. Between July 20, 1972, when the purchase application was filed, and November 4, 1976, the date of issuance of the complaint, the contestant could have taken the relatively simple step of determining that the purchase application must be rejected because it was filed too late. It may be that all of the facts and documents relating to the filing in 1967 are not in the case record. As the record stands, I conclude that the filing date is the one listed on Exhibit A, the "Claim Recorded" notification. The motion to dismiss is denied.

Realty specialist Jon Dolak testified for the contestant. He had worked for the Bureau for ten years and had been a realty specialist for about five years. Tr. 7. The Wilson headquarters site is at Mile 49 on the Richardson Highway, approximately halfway between Glennallen and Valdez. When Mr. Dolak inspected the site on June 15, 1977, he found that it was occupied by one person living in a trailer, and three highway department employees who were living in the contestee's cabin. The cabin had been rented for $150 per month. Tr. 9.

During his investigation, conducted about five years after expiration of the proof period, Mr. Dolak was able to obtain very little information concerning Mr. Wilson's use of the site during the 1967-1972 period. One person who was interviewed stated that Mr. Wilson had sold five or six rabbit pelts for $3 each in November, 1971. Tr. 11. Mr. Dolak was unable to obtain additional evidence respecting fur sales.

Mr. Wilson testified that between 1963 and 1966 he made trips to the Boulder Creek area for camping and recreational activities. He found that the area had moderate temperatures, and "decided to construct the cabin and to do trapping and other outdoor activities there." Tr. 17. The cabin was completed in 1968.

Mr. Wilson is the Regional Planner for the Alaska Department of Transportation. In 1969 he was transferred from Valdez to Anchorage. This placed a severe restriction on the time that he could spend in developing the site. Tr. 20. Acquisition of land interests by the State of Alaska and the Alyeska Pipeline Company reduced the opportunity to make large sums of money by trapping. Tr. 22.

Mr. Wilson's cabin was not ready for winter occupancy until 1969. He did not attempt to carry on commercial trapping activities prior to that time. When he was asked about proof of commercial trapping since 1969, he responded:

> "Its really kind of hard to have proof. I wasn't very successful in my trapping. I know I went out about four or five times in snow machines and set trap lines." Tr. 24.

The estimate of four or five times annually was meant to apply to the years 1970 and 1971. Tr. 25. He has not realized more than twenty dollars from the sale of pelts, but has "a lynx and a couple of beaver pelts" that he did not offer for sale. Tr. 26.

Summary of Applicable Law

In U.S. v. Charles T. Beaird, 31 IBLA 203 (1977), the Act and regulation which must be considered in this contest are reviewed as follows:

> "The Act of March 3, 1927, as amended, 43 U.S.C. § 687a (1970) provides that:
>
> > [A]ny citizen of the United States twenty-one years of age who is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands, * * * in Alaska as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior, * * *.
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> > * * * *
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> Departmental regulation 43 CFR 2563.1-1(a) requires that the application to purchase show, inter alia,
>
> > (2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.
> >
> > * * * *

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose as a homestead or headquarters."

The applicant has the burden of establishing entitlement to a headquarters site claim, and must demonstrate that he has complied with the statute and regulations. U.S. v. Vernon L. Nash, 17 IBLA 332 (1974). Evidence must be submitted from which it can be concluded that the applicant was engaged in an actual business operation from which he reasonably hoped to derive a profit. U.S. v. Charles T. Beaird, supra. The latter decision held that the headquarters site statute cannot be "interpreted so broadly as to encompass a trapping operation with gross receipts during the life of the claim of such a meager nature." The proven receipts in Beaird were $100.00. Because of the infrequent use by customers and lack of monetary return the Interior Board of Land Appeals stated (31 IBLA 209) that the inference must be that Mr. Beaird was engaged in the operation only for his personal pleasure, and was not engaged in trade, manufacture, or other productive industry from which he hoped to realize a profit.

Analysis and Determination

Mr. Wilson asserts that at the present time the Bureau emphasizes planning and careful consideration of the environment, and has become much more severe in its consideration of headquarters site applications. However, the regulations that were referred to by the Interior Board of Land Appeals in the Beaird case were also in force during 1967 (when entry was made upon the site) and during 1972 (when the purchase application was filed). There are differences in the numbering system and arrangement, but the language relating to use for a headquarters, existence of a trade, business or productive industry, and adaptability of the tract for the purpose of a headquarters has not been revised. 43 CFR § 2233.9-1 (Rev. as of January 1, 1967); 43 CFR § 2563.1 and § 2563.2 (Rev. as of January 1, 1972).

Mr. Wilson's short-lived effort to run a trap line was preceded by a period of several years when he was constructing a cabin on the site, and was terminated when his employer transferred him to Anchorage. His success in trapping did not even measure up to that of the applicant in Beaird -- the latter trapped more than 30 animals and had collected a wolf bounty of $100. I conclude that Mr. Wilson did not establish that he was engaged in an actual business operation from which he reasonably hoped to derive

a profit. He has not shown that his use of the tract was primarily as a headquarters site in connection with trade, manufacture or other productive industry.

The application to purchase a headquarters site filed by the contestee is rejected. The entry which is the subject of this contest is hereby cancelled.

Dean F. Ratzman
Administrative Law Judge

Appeal Information

An appeal from this decision may be taken to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (revised as of October, 1976). Special rules applicable to public land hearings and appeals are contained in Subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) in order to facilitate transmittal of the case file to the Board. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal. The adverse party to be served with a copy of the notice of appeal and other documents is the attorney for the United States Department of the Interior whose address appears below.
Regional Solicitor U.S. Department of the Interior 510 L Street, Suite 408 Anchorage, Alaska 99501

Enclosure: Additional information concerning appeals.

Distribution:
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