

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting small tract applications and offering direct sale of tracts for the current fair market value. Nev-025881, et al.

Decision in Nev-025881 affirmed; appeals in Nev-026139, Nev-026140, and Nev-026242 dismissed.

1. Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Generally

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

2. Federal Land Policy and Management Act of 1976: Repealers -- Small Tract Act: Generally

The Small Tract Act, 43 U.S.C. § 682a (1976), was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

3. Applications and Entries: Vested Rights -- Small Tract Act: Applications

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

4. Appraisals

Appraisals of fair market value made in accordance with accepted procedures will not be disturbed in the absence of positive, substantial evidence that the appraisal is in error.

APPEARANCES: Anthony Chiarenza, pro se, and for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Anthony Chiarenza, Anthony Donofrio, Vito D'Ambrusco, and Ferdinand A. Maine filed applications 1/ in 1954 or 1955 pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1976).

By decisions dated November 23, 1982, and January 31, 1983, the Bureau of Land Management (BLM), rejected the applications stating that because the Small Tract Act was repealed with the passage of section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2739, on October 21, 1976, the provisions of the Small Tract Act no longer applied.

Appeals were filed from the rejection of the applications. The appeals were filed by Anthony Chiarenza who stated that he was acting under power of attorney for each of the applicants, as well as on his own behalf. Because of the similarities in the situations and issues involved, we consolidated these cases for consideration on appeal.

[1] The appeals filed by Chiarenza as attorney-in-fact are not accompanied by any showing that Chiarenza is qualified to practice before the Department of the Interior under the recognized criteria in 43 CFR 1.3. 2/ An attorney-in-fact is not authorized to practice before the Department by his power of attorney alone; he must show himself qualified in his own right under 43 CFR 1.3. Haruyuki Yamane, 19 IBLA 320 (1975), aff'd sub nom. Burglin v. Secretary, Civ. No. 77-1655 (9th Cir. 1978), cert. denied, 100 Sup. Ct. 133 (1979); see also J. C. Trahan, 74 IBLA 15 (1983), and cases cited therein.

Accordingly, the appeals filed by Chiarenza as attorney-in-fact, in which no appeal was filed by anyone qualified to practice before the Department, are hereby dismissed. 3/ However, in filing the appeal on his own

1/ See Appendix for list of appellants and applications consolidated for treatment in this discussion.

2/ These are appeals from rejection of applications Nev-026139, Nev-026140, and Nev-026242.

3/ By decision dated May 10, 1962, BLM rejected the applications involved in these appeals and offered the applicants alternate sites nearby. BLM later modified its decision to allow the original applications to remain pending. On May 1, 1964, BLM again allowed appellants the chance to obtain an alternate tract.

Accompanying the decisions sent on Nov. 23, 1982, except that sent to Maine on Jan. 31, 1983, were letters offering appellants an opportunity to

behalf, Chiarenza has standing to appeal the decision in Nev-025881. 43 CFR 1.3(b)(3); 43 CFR 4.410. We will therefore proceed to consider the merits of that appeal.

In his statements of reasons for appeal, Chiarenza states that FLPMA does not apply to his case because he filed his claim in 1954. He complains that BLM has been dilatory in acting on his application. He also argues that the price being asked for the land is "well above the current market value."

[2] Section 702 of FLPMA, styled "Repeal of laws relating to homesteading and small tracts," reads as follows: "Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed * * *." Included among the laws repealed by this section are the Act of June 1, 1938, 43 U.S.C. § 682a-e (1976) (the original Small Tract Act); the Act of July 14, 1945, 59 Stat. 467; and the Act of June 8, 1954, 68 Stat. 239 (both amendatory Acts to the original Small Tract Act). Contrary to appellant's belief, the Small Tract Act was effectively repealed October 21, 1976, by FLPMA. John N. Dillingham, 73 IBLA 156, 158 (1983). The Small Tract Act is not applicable to his case even though he filed his application in 1954.

The delay in acting on Chiarenza's application was due to protracted litigation involved in the attempt by BLM to clear the area of conflicting mining claims. The time consumed in the various appeals cannot be attributed to lack of expedition by BLM. The final chapter in the litigation was not

fn. 3 (continued)

purchase the lands sought by them in their applications without competitive bidding. The fair market value of each tract was quoted.

With the Jan. 31 1983, Maine decision, BLM included a letter which offered him a chance to purchase, without competitive bid, an alternate tract to be selected from an enclosed list of available lands, because the parcel for which Maine had applied was "encumbered with a conflict."

On Nov. 23, 1982, BLM had sent a letter to Maine which stated that there were approximately 135 pending small tract applications for lands in the vicinity of Las Vegas; that action on the applications was suspended because of extensive litigation over sand and gravel claims; and that the land described in Maine's applications was encumbered, either by floodplains or existing and proposed easements, and could not be offered for sale.

On June 14, 1982, however, BLM had issued a Notice of Realty Action; Sale of Public Land which included numerous described lands which were "determined to be suitable for disposition by noncompetitive or competitive sale at not less than fair market value under P.L. 96-586 and in accordance with section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1976)." The parcel applied for by Maine, parcel 82-28, described by serial numbers Nev-026139 and Nev-026863 the lands SE 1/4 SE 1/4 SW 1/4 SW 1/4, sec. 27, T. 20 S., R. 60 E., Mount Diablo meridian, was on the list. There is therefore a question whether the parcel applied for by Maine is actually encumbered so as to preclude disposal.

There is no indication in the case files that any of the appellants responded to any BLM notice which listed tracts available for purchase.

closed until March 23, 1981, when the U.S. Supreme Court denied certiorari in McCall v. Watt, 450 U.S. 997 (1981). 4/

[3] The Department has long held that an applicant for land under the Small Tract Act cannot acquire any right or interest in the land by the filing of an application, nor may any such right or interest be acquired because of a delay in the processing of the application. The filing of an application entitles the applicant only to have the application considered. When the current fair market of a small tract value has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive substantial evidence that it is in error. Leon H. Rockwell, 72 IBLA 373 (1983), and cases cited.

[4] The small tract at issue was appraised by qualified appraisers, who used the market data approach, and whose results are fully supported by recent sales of similar parcels of land in close proximity to the subject tract in sec. 27, T. 20 S., R. 60 E., Mount Diablo meridian. Chiarenza has not submitted any positive substantial evidence that the appraisal is in error. Accordingly, the appraisal will not be disturbed. John Dillingham, *supra* at 158-59.

Sales of public land are now governed by section 203 of FLPMA, 43 U.S.C. § 1713 (1976), and for land in Clark County, Nevada, by P.L. 96-586, Act of December 23, 1980, 94 Stat. 3381. These statutes require sale of public lands for not less than current fair market value. See 43 U.S.C. § 1713(d) (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in Nev-025881 is affirmed, and the appeals in Nev-026139, Nev-026140, and Nev-026242 are dismissed. 5/

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

4/ On Mar. 23, 1981, the U.S. Supreme Court denied certiorari of two Ninth Circuit Court decisions, McCall v. Boyles, 624 F.2d 192 (9th Cir. 1980) (affirming the U.S. District Court for Nevada without decision), and McCall v. Andrus, 628 F.2d 1185 (9th Cir. 1980). McCall v. Boyles is apparently the decision which concerned the lands involved herein.

5/ The appeals which are dismissed raised no issues that were not addressed herein or in John N. Dillingham, *supra*. Therefore, had those appeals been dealt with on the merits, the BLM decisions would have been affirmed.

APPENDIX

<u>IBLA No.</u>	<u>Applicant</u>	<u>Application No.</u>
83-232	Anthony Chiarenza	Nev-025881
	Anthony Donofrio	Nev-026140
	Vito D'Ambrusco	Nev-026242
83-366	Ferdinand Maine	Nev-026139
		74 IBLA 354

