

AGRONICS INC.

IBLA 96-88 Decided April 10, 1998

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMMC 162272-NMMC 162273; NMMC 162325.

Affirmed as modified.

1. Bankruptcy Code: Automatic Stay--Mining Claims: Rental or Claim Maintenance Fees: Generally

The automatic stay provision of the Bankruptcy Code, set forth at 11 U.S.C. § 362(a) (1994), applies to the commencement or continuation of an administrative "action or proceeding" against the debtor that was or could have been commenced before the commencement of the bankruptcy case. When a mining claimant failed to pay the maintenance fees required by the Act of Aug. 10, 1993, 30 U.S.C. § 28f(a) (1994), in a timely manner, its mining claims were conclusively deemed forfeited as a matter of law. This forfeiture occurred without an action or proceeding within the meaning of 11 U.S.C. § 362(a) (1994).

APPEARANCES: Leland T. Taylor, Albuquerque, New Mexico, President, Agronics, Inc.; Grant Vaughn, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Agronics Inc. has appealed from a Decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 17, 1995, declaring abandoned and void three mining claims, NMMC 162272-NMMC 162273 and NMMC 162325. The BLM took this action because it found that Appellant had failed to make timely payment of maintenance fees on or before August 31, 1995.

Under section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Act), 30 U.S.C. § 28f(a) (1994), the holder of an

unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). The BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-6(d)(2).

Appellant's fees were received on September 6, 1995, in an envelope bearing a postmark of September 5, 1995. Appellant did not seek a waiver of payment of the fees. No dispute about the facts is present. Appellant's fees were due on or before August 31, 1995, and they were not timely paid. See William Jenkins, 131 IBLA 166 (1994). Moreover, Appellant failed to qualify for the grace period set forth at 43 C.F.R. § 3833.0-5(m) because it did not mail its payment in an envelope bearing a postmark within the period proscribed by law, i.e., on or before August 31, 1995. See Paul W. Tobeler, 131 IBLA 245, 246-47 (1994).

On appeal, Appellant states that on October 25, 1994, it filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101-1174 (1994). It contends that the automatic stay provided by 11 U.S.C. § 362 (1994) stays any adverse action against the bankrupt. Liability for payment of the maintenance fees was initiated prior to October 25, 1994, Appellant states, and therefore any adverse action taken by BLM postpetition was barred and its declaration of abandonment was void. ^{1/}

The automatic stay provision of the Bankruptcy Code reads in part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title * * * operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial,

^{1/} The BLM has moved to dismiss the appeal in this case for failure to file a statement of reasons in support of the appeal. Although BLM acknowledges that Appellant contests the Decision based on its bankruptcy filing, BLM contends that bankruptcy has no bearing on this matter. We deny the motion to dismiss.

administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; * * *.

[1] Appellant's argument based on 11 U.S.C. § 362 (1994) fails for two reasons. The statute makes clear that the automatic stay applies, *inter alia*, to the commencement or continuation of an administrative "action or proceeding" against the debtor that was or could have been commenced before the commencement of the bankruptcy case. When Appellant failed to pay the maintenance fees in a timely manner, its claims were conclusively deemed forfeited as a matter of law. 43 C.F.R. § 3833.4(a)(2). This forfeiture occurred without any "action or proceeding" within the meaning of 11 U.S.C. § 362(a) (1994). The fact that Appellant had filed a petition in bankruptcy prior to its tardy payment did not preclude the forfeiture of its claims in accordance with the Act and regulations.

Such an interpretation is consistent with our holding in Great Western Petroleum & Refining Co., 124 IBLA 16, 26 (1992), where we concluded that the automatic termination of an oil and gas lease under 30 U.S.C. § 226(i) (1994) is not an "action or proceeding" within the meaning of 11 U.S.C. § 362(a)(1) (1994). *See also Ptarmigan Co.*, 91 IBLA 113, 118 (1986), *aff'd sub nom. Bolt v. United States*, 944 F.2d 603 (9th Cir. 1991) (BLM's decision deeming mining claims abandoned and void for claimant's failure to make annual filings was declaratory of existing facts and did not constitute the action which caused the voiding of the claims.)

The second reason why Appellant's argument must fail is also found in 11 U.S.C. § 362 (1994). Commencement of Appellant's bankruptcy case began with the filing of its petition in bankruptcy on October 25, 1994. For the automatic stay to apply in this case, the Department must have been able to commence a suit to recover the maintenance fees for the 1996 assessment year prior to October 25, 1994. Appellant has offered no explanation how such a suit could have been initiated.

Appellant also points to the small miner's waiver available under 43 C.F.R. § 3833.1-6, but nowhere does it claim that it sought this exemption in accordance with the regulation. Finally, Appellant argues that it is in the public interest to reverse BLM's Decision. The basis for this

argument is Appellant's allegation that it is the employer of 10-30 people whose livelihood will be jeopardized by loss of the claims. No provision in law or regulation authorizes the Board to afford any relief from the statutory consequences, and the Board may not consider special facts or provide relief in view of mitigating circumstances. Paul W. Tobeler, supra, at 249.

The BLM declared these claims abandoned and void. However, under 43 C.F.R. § 3833.4(a)(2), the failure to pay the maintenance fee or file the waiver certification within the time prescribed does not constitute an abandonment of the claims; instead, such a failure "shall be deemed conclusively to constitute a forfeiture" of the claims. Accordingly, under the Act and implementing regulation the claims in question are deemed forfeited, and BLM's Decision is modified accordingly.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the New Mexico State Office is affirmed as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

