

INTERIOR BOARD OF LAND APPEALS

Bellmetal Enterprises, Inc.

140 IBLA 76 (August 15, 1997)

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BELLMETAL ENTERPRISES, INC.

IBLA 95-310

Decided August 15, 1997

Appeal from a determination of the Alaska State Office, Bureau of Land Management, declaring 12 unpatented lode mining claims abandoned and void. AA-24646 through AA-24657.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally

Under 43 C.F.R. § 3833.0-5(m), a claim maintenance fee will be considered timely filed if it is mailed to the proper BLM office in an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and is received by the proper BLM State Office within 15 calendar days subsequent to such period. However, a claim is properly declared null and void for failure to comply, notwithstanding a claimant's showing that he delivered custody of the envelope to the United States Postal Service in advance of the deadline where the record clearly establishes that the filing was not received by BLM until after the 15-day grace period.

APPEARANCES: James H. Davis, Vice President, Bellmetal Enterprises, Inc., San Antonio, Texas.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Bellmetal Enterprises, Inc., (Bellmetal) has appealed from a determination of the Alaska State Office, Bureau of Land Management (BLM), issued on March 3, 1995, that 12 unpatented lode mining claims (AA-24646 through AA-24657) were abandoned and void for failure to submit either maintenance fees or a waiver of payment for the 1995 assessment year on or before August 31, 1994, as required by section 10101 of the Omnibus Budget Reconciliation Act of 1993 (the Act), 30 U.S.C. § 28f(1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7.

Section 10101(a) of the Act, 30 U.S.C. § 28f(a) (1994), provides that the "holder of each unpatented mining claim, mill or tunnel site * * * shall pay to the Secretary of the Interior, on or before August 31 of each year, for [the] years 1994 through 1998, a claim maintenance fee of

\$100 per claim." See also 43 C.F.R. § 3833.1-5. Section 10104 of the Act, 30 U.S.C. § 28i (1994), provides that 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." See 43 C.F.R. § 3833.4(a)(2).

In its determination, BLM recited that, on September 29, 1994, its mailroom received an Express Mail envelope containing the 1995 maintenance fees for the lode claims at issue herein. Though receipt of these fees was untimely, BLM noted that the envelope bore a postmark which was clearly dated August 27, 1994, *i.e.*, prior to the due date. Accordingly, BLM discussed the applicability of 43 C.F.R. § 3833.0-5(m) as it related to the instant filing.

Based on the regulatory definition of "filing" for the purposes of 43 C.F.R. Subpart 3833, a document may be considered "timely filed" either if it is actually received prior to the date on which it is due or, if not timely received, it is "contained in an envelope clearly postmarked by a bona fide mail delivery service within the period [for filing] prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period." 43 C.F.R. § 3833.0-5(m) (emphasis supplied). Notwithstanding the fact that the envelope had been postmarked prior to the due date, BLM held that the submission was untimely because the maintenance fees were not received by BLM within 15 days of the date due, *i.e.*, on or before August 31, 1994.

On appeal, Bellmetal relates that it presented the packet containing the filing fees in good faith to the Postal Service with the understanding that, under the Express Mail arrangement, the items would be delivered before 3 p.m. on August 29, 1994. Bellmetal states that it did not learn the package had not, in fact, been timely delivered until it called BLM on September 27, 1994, and was informed the filing had not been received. Upon inquiry to the Postal Service, the Express Mail envelope was located and then delivered to BLM on September 29, 1994, at 10:15 a.m. Pursuant to a subsequent complaint which it filed with the Postal Service, Bellmetal was informed that the envelope might have been lost or overlooked in the cargo hold of an aircraft or other similar equipment.

Bellmetal argues that it obviously made a timely and good-faith attempt to assure that the maintenance fees were properly filed with BLM. It points out that, upon relinquishing the envelope containing the fees to the United States Postal Service on August 27, 1994, it lacked control over handling and delivery thereafter. Based on the foregoing scenario, which is essentially undisputed, Bellmetal suggests that equitable considerations support its request that its late submission be treated as timely.

[1] As noted above, BLM held that the filing in question was not timely because, although it was clearly postmarked August 27, 1994, it was

not received within 15 calendar days subsequent to the deadline filing date. This was clearly in accord both with the language of the regulation and with prevailing Departmental precedents. See, e.g., Lewis John Epps, 135 IBLA 288 (1996); Benjamin Haines, 134 IBLA 196 (1995). Appellant, however, basically seeks to have the Board consider the totality of the circumstances surrounding the untimely delivery and direct BLM to treat Bellmetal's filing as timely. Unfortunately, we lack authority to do so.

As we have stated many times in the past, those who choose a means of delivery necessarily assume the risk that the chosen agent may not deliver on time the item which was sent. See, e.g., Morgan Richardson Operating Co., 126 IBLA 332, 333 (1993); Amanda Mining & Manufacturing Association, 42 IBLA 144, 146 (1979). Any loss caused by a failure to make timely delivery must be borne by the one who chose the means of delivery.

More critically, we have also noted that section 10104 of the Act, 30 U.S.C. § 28i (1994), is self-executing and requires no action or volition on the part of the Department to effectuate the result. See Paul W. Tobeler, 131 IBLA 245 (1994); William Jenkins, 131 IBLA 166 (1994). In other words, the failure of a mining claimant to either timely submit the required maintenance fees or an application for waiver thereof is statutorily deemed to "conclusively constitute a forfeiture" of the claims involved. 30 U.S.C. § 28i (1994). Since Congress provided no waiver for the self-operative requirement that a failure to file constitutes a forfeiture of the claim, this Board has consistently observed that the Department is without authority to excuse lack of compliance with the requirements, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lester W. Pullen, 131 IBLA 271, 273 (1994).

In this context, the regulatory definition of "file" is correctly seen as a Departmental effort to, in a small way, ameliorate the possibility that pure chance might inadvertently give rise to a statutory forfeiture. Despite the fact that the traditional rule for Departmental filings is that they are only effective when they are actually received by BLM, see generally, Louis Samuel, 8 IBLA 268, 272 (1972), in defining "file" the Department imported an approach which had first been used, starting in 1982, with respect to annual filings under section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1994). See United States v. Ballas, 87 IBLA 88, 90 (1985). Thus, rather than merely requiring that the payments or waiver be actually received on or before August 31, the regulatory definition treats maintenance fee filings which had not been actually received as of that date to be considered timely under the statute, so long as they had been mailed and postmarked prior to the due date and were received no more than 15 days after that date.

However, as the Supreme Court recognized in United States v. Locke, 471 U.S. 84, 101 (1985), "filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals

who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." In adopting a flexible definition of "file" to include documents timely postmarked but not received, the Department was doubtless aware of the fact that relying solely on the postmark to determine the acceptability of a filing would leave the status of presumably abandoned mining claims open to great uncertainty since it is not unknown for individual pieces of mail to be delayed months if not years. Accordingly, it coupled the postmark requirement with an additional condition that the document be actually received by BLM within 15 days of the required filing date. This is the law as it presently exists and, under it, the fact that Bellmetal can show that it met one prong of this test (timely postmark) is simply insufficient to permit us to ignore the fact that it failed to meet the second prong (receipt within 15 days of the due date). Its filing must be deemed untimely under the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's determination that the subject mining claims were properly deemed to be abandoned and void is affirmed.

James L. Burski
Administrative Judge

I concur.

R.W. Mullen
Administrative Judge