

INTERIOR BOARD OF LAND APPEALS

Sandra E. Garrand

152 IBLA 139 (April 3, 2000)

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SANDRA E. GARRAND

IBLA 94-790

Decided April 3, 2000

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. UMC 302630 to UMC 302639.

Appeal dismissed in part; affirmed in part.

1. Administrative Practice--Rules of Practice: Appeals: Standing to Appeal

A former spouse has no standing to appeal from a decision rejecting a certification of exemption from the payment of rental fees filed on behalf of her husband, where her husband has not, himself, sought review of that determination.

2. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Notice: Generally--Regulations: Generally--Statutes

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Sandra E. Garrand, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated July 14, 1994, the Utah State Office, Bureau of Land Management (BLM), informed Leonard J. Garrand that the certifications of exemption for assessment years 1993 and 1994 which he had filed with reference to the SIP 1 through 10 placer mining claims (UMC 302630-UMC 302639) had been rejected and the claims had been declared abandoned and void. The basis for this action was the fact that BLM records disclosed that on August 16, 1993, Monida Resources, Inc., through its president, Leonard J. Garrand, had submitted rental fees on a total of 19 mining claims to the Montana State Office, BLM. Citing the provisions of 43 C.F.R. § 3833.1-6(a)(1) and (3), the Utah State Office concluded that Garrand did not qualify for the small miner exemption because Garrand had an interest in more than the maximum of 10 claims permitted by the applicable statute and regulations.

The record indicates that Leonard J. Garrand received this decision on July 18, 1994. No appeal was ever filed by Leonard J. Garrand. However, on August 19, 1994, Sandra E. Garrand submitted a letter to the Utah State Office which she requested it treat as her "intent to appeal this decision." In this letter, she asserted that she had been granted a one-half ownership interest in the subject claims as part of a divorce decree which had been entered on August 31, 1988, and further claimed that, under the divorce decree, her husband was required to provide her with 60 days advance notice of any change in claim status and afford her the opportunity of acquiring the claims should he no longer desire to maintain them.

With her notice of appeal, Sandra Garrand included portions of the referenced divorce decree. This decree, in relevant part, provided:

[T]he Defendant [Sandra E. Garrand] and the Plaintiff [Leonard J. Garrand] shall each be awarded an undivided one-half interest in the Super Silica property located in Tooele County, with Plaintiff to seek a Quit Claim of the interest currently held by Etta Eldridge and her group, the Monida property and the Silver Bow property. Plaintiff shall exercise control in terms of marketing, completion of assessment work and paying the maintenance costs of these holdings. Should these properties be sold or leased, each party shall receive one-half of the proceeds, less the amount Plaintiff has paid in assessment work, maintenance work and marketing costs. Should Plaintiff determine in his interest to let the properties go, or not complete assessment work the

Plaintiff will be required, 60 days before the assessment work is due, to notify Defendant and upon her request Quit Claim his interest therein to her. Such notice will allow Defendant 60 days to complete the assessment work if the Defendant elects to keep and maintain the property as her own.

In a supplemental pleading received on August 31, 1994, Sandra E. Garrand requested that the claims be "returned to her" and that she be granted an exemption from the rental fee requirement pursuant to 43 C.F.R. § 3833.1-6 (1993), since "[t]o my knowledge, these are the only claims that I own."

[1] Notwithstanding the foregoing assertions, it is clear that, to the extent that Sandra E. Garrand seeks to challenge the rejection of her former husband's certifications for exemption, the instant appeal must be dismissed. The decision under review did not purport to adjudicate any claim to an exemption from rental payments with respect to the SIP 1 through 10 placer mining claims filed by or on behalf of Sandra E. Garrand. Rather, it rejected an attempt by Leonard J. Garrand, who presented himself as sole owner of those claims, 1/ to qualify for an exemption from the annual rental payment of \$100 per claim required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (1992 Act), Pub. L. No. 102-381, 106 Stat. 1378-79 and 43 C.F.R. § 3833.1-5 for both fiscal years 1993 and 1994. By doing so, BLM adjudicated Leonard J. Garrand's claim to an exemption. Nothing in this decision, however, adjudicated any claim to an exemption on behalf of Sandra E. Garrand with respect to these or any other claims.

As noted above, Leonard J. Garrand never filed an appeal from the State Office decision. Sandra E. Garrand, as the former spouse of Leonard J. Garrand, simply has no authority to prosecute an appeal on his behalf. See generally 43 C.F.R. Part 1. Nor does she purport to do so. Rather, she is attempting to appeal in her own behalf from the rejection of his exemption certification. This she cannot do, since she has no cognizable interest in whether or not Leonard J. Garrand was qualified to obtain an

1/ Indeed, the submission of an exemption certification with only a single named owner was necessarily an assertion that that individual was the sole owner since the form, itself, required the identification of the owners of any claims for which an exemption was sought and the statute expressly required that, for "each unpatented mining claim" for which an exemption was sought "each claimant" was required to certify qualifications for the rental fee exemption. This was made crystal clear in the regulation which provided that "[a]ll of the owners of the mining claim(s) for which an exemption is claimed shall sign the certified statement." 43 C.F.R. § 3833.1-7(d)(7) (1993).

exemption from the annual rental requirements of the 1992 Act and cannot be heard to argue that the rejection of his exemption certification was, for some reason, in error.

We recognize, of course, that, in addition to rejecting Leonard J. Garrand's exemption certifications, the State Office also declared the claims abandoned and void. This, of course, is understandable, given the fact that, on the record before BLM, Leonard J. Garrand was shown as the sole owner of the subject claims and, inasmuch as he had failed to either tender the necessary rentals or file and qualify for exemption from the payment of those rentals, the fact that the claims were properly deemed abandoned and void was self-evident. The information submitted with Sandra E. Garrand's appeal, however, would tend to establish that she had a one-half interest in these claims, albeit undisclosed to BLM until after issuance of the decision to her former husband. We believe that this showing is sufficient to establish an allegation of injury in fact upon which to predicate standing to appeal from this part of BLM's determination.

[2] But, while Sandra E. Garrand has established a sufficient interest to maintain the appeal to the extent it challenges the declaration that the SIP 1 through 10 placer mining claims are conclusively deemed abandoned and void, she has provided no basis for reversing the decision below. Appellant does not allege that she either tendered the requisite rental payments or filed her own certifications of exemption. Rather, she requested that BLM allow her to submit an exemption certification beyond the deadline established by the 1992 Act. This, as the Board has noted on countless occasions, the Department has no authority to permit. *See, e.g., Hubert A. Riebold*, 137 IBLA 255, 257 (1996); *William B. Wray*, 129 IBLA 173, 175 (1994); *Lee H. & Goldie E. Rice*, 128 IBLA 137, 141 (1994). Where a mining claimant did not timely request and qualify for a small miner exemption from the rental fee requirement in conformity with the statute and regulations, the failure to submit the fee gave rise to a conclusive presumption of abandonment. *See, e.g., Robert C. LeFaivre*, 141 IBLA 310, 316 (1997); *Lester W. Pullen*, 131 IBLA 271, 273 (1994). The Department simply has no authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences, regardless of any mitigating circumstances. *See, e.g., Maurine M. Carpenter*, 136 IBLA 266 (1996); *Chester Wittwer*, 136 IBLA 96 (1996). Inasmuch as it is undisputed that Sandra E. Garrand neither timely submitted the certifications of exemption on her own behalf nor tendered the required rentals, the decision declaring the SIP 1 through 10 placer mining claims abandoned and void must be affirmed.

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 appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Deputy Chief Administrative Judge

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

David L. Hughes
Administrative Judge

John H. Kelly
Administrative Judge

T. Britt Price
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN DISSENTING:

It is this kind of decision by the Board that prompted the Congress recently to enact the provision requiring BLM to allow a mining claimant to cure a defect in a small miner waiver application or to pay the maintenance fee. ^{1/} That provision suggests we should not exploit every opportunity to deprive well-intentioned people of their mining claims.

The SIP 1-10 claims involved in this case were located on September 11, 1987, by Leonard Garrand, Edda Eldredge, and others, and recorded with BLM on September 14, 1987.

In accordance with the August 1988 State of Utah court decision that awarded Sandra and Leonard Garrand each an undivided one-half interest in the claims and ordered Leonard Garrand to "exercise control in terms of marketing, completion of assessment work and paying the maintenance costs of these holdings," ^{2/} Leonard Garrand filed an affidavit of assessment work with BLM for the claims in September 1988. The affidavit stated that he was "the owner or lessee of all, or a fractional undivided interest in all of the * * * claims and as such * * * [was] authorized to act as the agent in making this Affidavit." In December 1988, also in accordance with the August 1988 state court decision, Garrand filed notice of the transfer of the interest of Edda Eldredge and others in the claims to himself. From 1989-92, he filed affidavits of assessment work for the claims; each repeated the statement in the September 1988 affidavit set forth above.

On March 23, 1993, Leonard Garrand wrote Sandra Garrand telling her that he was dropping some of the SIP claims but "[t]he SIP 1-10 claims will continue to be held."

On August 26, 1993, Leonard Garrand filed an affidavit of assessment work for the claims (with the same statement) along with Certification of Exemption from Payment of Rental Fee forms for both the 1992-93 and the 1993-94 assessment year.

On October 8, 1993, the BLM Utah State Office issued a notice to Leonard Garrand stating that it had received the certifications of exemption for the claims and that its records showed he owned a total of 51 claims. In order to meet the requirement of 43 C.F.R. § 3833.1-6 that an applicant for exemption hold 10 or fewer claims, BLM's notice stated,

^{1/} See 30 U.S.C. § 28f(d)(3), added by section 101(e), Title I, Omnibus Consolidated Appropriations Act, Pub. L. 105-277, Oct. 21, 1998.

^{2/} Findings of Fact and Conclusions of Law, Leonard J. Garrand v. Sandra E. Garrand, Civil No. D 87-3495, Third Judicial District in and for Salt Lake County, State of Utah, at 10.

"you must have relinquished your claims to 10 or fewer on or prior to August 31, 1993 or submitted a quit claim deed. * * * In order for you to qualify for the exemption, you must file a relinquishment or quit claim deed with this office within 30 days from receipt of this Notice."

Garrand responded on October 15, 1993, that "long before August 31, 1993 I will have no further interest in the SI claims nor 13 of the SIP claims. Therefore, the following claims have been dropped and I have no intention of further filings on SIP 11-23 (UMC 302640-302652), and all of the SI 1-28 (UMC 280402-280429) claims." This response corresponds to his March 23, 1993, letter to Sandra Garrand.

On June 24, 1994, the Montana State Office, BLM, wrote to the Utah State Office, BLM, stating that Montana State Office records showed on August 31, 1993, that Monida Resources, Inc., held 342 mining claims and Leonard J. Garrand held 100 mining claims. "On August 16, 1993, Monida Resources, Inc. paid the 1993 and 1994 rental fees for 19 mining claims; nothing was received for the remainder of the claims they hold. Nothing was received in this office for the 100 mining claims held by Leonard J. Garrand," the BLM Montana State Office memorandum states. The case file includes an "Affidavit of Payment of Rent in Lieu of Work on Mining Claims" dated August 12, 1993, and signed by Leonard J. Garrand as president of Monida Resources, Inc., stating that Monida Resources, Inc., is the owner of the 19 claims described on the attached Exhibit A listing 19 claims. The file also includes "Mining Claim Recordation Receipts" which show that 1993 and 1994 rental fees were paid for the claims described on Exhibit A of the Affidavit.

The Utah State Office, BLM, decision of July 14, 1994, followed. It quoted 43 C.F.R. § 3833.1-6(a)(3) (1993), which provides: "Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted toward the 10-claim limit for claimants that have an interest in these entities." BLM noted that 43 C.F.R. § 3833.0-5(e) defines "owner" as "the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site." BLM stated that its "records reflect that on August 16, 1993, Monida Resources, Inc., with Leonard J. Garrand as President, paid the 1993 and 1994 rental fees for a total of 19 mining claims to the Montana State Office, Bureau of Land Management," and concluded that Garrand did not meet the qualifications for the rental fee exemption for the 10 SIP claims. Because he did not qualify for an exemption and the rental fees had not been paid, BLM declared the claims abandoned and void.

On August 1, 1994, a person who was helping Leonard Garrand with his business affairs in Utah sent a copy of the July 14, 1994, decision to Sandra Garrand, who lives in Wisconsin. Appellant Sandra Garrand's notice of appeal to BLM stated: "Unknown to you, by a divorce decree August 31,

1988, I was granted one-half ownership of this property." In support, she provided a copy of a portion of the decree, which states: "That the Defendant [Sandra Garrand] and the Plaintiff [Leonard Garrand] shall each be awarded an undivided one-half interest in the Super Silica property located in Tooele County * * *." In her statement of reasons for appeal, Sandra Garrand states she received the copy of BLM's July 14, 1994, decision on August 8, 1994: "Prior to this I had no knowledge that the Silica deposits were in jeopardy. In fact, in May of 1994 I received a request from Mr. Garrand's attorney to Quit-Claim this very Silica Property to my son * * *." (SOR at 1 and Exhibit B.) "Mr. Garrand's error on this property occurred on August 26, 1993, 1994 [sic]. He filed for the small mining exemption, but indeed paid the 1993-1994 mining claims to the Montana State Office BLM for 19 mining claims." *Id.* at 3.

We have held that being an officer of a corporation presumptively suffices to control it, i.e., to have an interest in the corporation under 43 C.F.R. § 3833.1-6(a)(3) (1993). *3MRC-Co.*, 146 IBLA 6 (1998); see also *Silver Crystal Mines, Inc.*, 147 IBLA 146 (1999). In this case, Monida Resources, Inc.'s, 19 Montana claims were properly counted toward the 10-claim limit for Leonard Garrand, who has an interest in the corporation. Therefore, Leonard Garrand cannot qualify for an exemption for his interest in the 10 SIP claims in Utah listed on the exemption certificate he filed with BLM on August 26, 1993. His disqualification does not, however, disqualify Sandra Garrand from an exemption for her interest in these 10 claims. *3MRC-Co.*, *supra* at 11. Having established she was holder of an undivided one-half interest in the claims, she was entitled to appeal BLM's decision. 43 C.F.R. § 1.3(b)(3).

Each of the certificate of exemption forms filed by Leonard Garrand on August 23, 1993, specified the assessment year filed for; provided the number of the notice, plan of operations, or special use permit described in 43 C.F.R. § 3833.1-6; checked the box stating that an affidavit of assessment work would be provided; and provided the claim names, BLM recordation serial numbers, county, recordation book, and page numbers. Leonard Garrand listed himself as owner, provided his address, and signed the forms. Each form was notarized. He did not list Sandra Garrand as an owner of an undivided interest or sign separately as agent for her. As noted above, however, the accompanying affidavit of assessment work stated that he was "the owner or lessee of all, or a fractional undivided interest in all of the * * * claims and as such * * * [was] authorized to act as the agent in making this Affidavit."

43 C.F.R. § 3833.1-7(d)(7) (1993) provides that "[a]ll the owners of the mining claim(s) for which an exemption is claimed shall sign the certified statement." Under the circumstances set forth above, i.e., where for many years Leonard Garrand acted as agent or trustee for Sandra Garrand, as

required by the State of Utah court decision, and stated in the accompanying affidavit of assessment work that he was authorized to act as agent, I believe his failure to list her separately and sign separately for her on the certificate of exemption forms was an unintentional failure to file the complete information required in § 3833.1-7(d) and is curable under 43 C.F.R. § 3833.4(b) (1993). ^{3/}

We have held in a number of contexts that the failure to provide information that is required by regulation but not by statute is a curable, not a fatal, defect and, absent an opportunity to cure the defect, does not result in a conclusive presumption of abandonment of a mining claim. See, e.g., Kathryn Firestone, 148 IBLA 126, 130 (1999); Tom M. Lee, 145 IBLA 272, 276 (1998); Production Industries Corp., 138 IBLA 183, 188 (1997); Thelma C. Satrom, 138 IBLA 180, 181-82 (1997); Leber Mining Co., 131 IBLA 275, 277 (1994). See Topaz Beryllium Co. v. United States, 649 F.2d 775, 778 (10th Cir. 1981).

In Firestone, the appellant failed to include a claim on the certificate of exemption. We held that identifying the claims for which an exemption was sought was "at the heart of the certification process" and that failure to list a claim on the form was a failure to timely file an exemption for that claim under 43 C.F.R. § 3833.1-7(a), as distinct from an unintentional failure to file complete information under § 3833.1-7(d), and could not be cured. 148 IBLA at 130-31. By contrast, in Satrom we held the omission of a date or dates from the form could be cured and in Leber we held the failure to specify the number of the notice or plan of operations was curable. In this case, in addition to providing all the other information required, Leonard Garrand listed himself as an owner and signed the certification form. I do not regard the absence of a co-owner's name and a second separate signature by Leonard Garrand as agent for Sandra Garrand as an omission that is "at the heart of the certification process."

The majority's disposition of this case ignores the State of Utah court decision declaring Sandra Garrand's property interest in these claims and displays a quaint lack of sympathy with her circumstances. I would set

^{3/} That regulation provides:

"Unintentional failure to file the complete information required in * * * 3833.1-7(d) and (e) * * * when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed conclusively to be abandoned and it shall be void."

aside BLM's decision and direct BLM to provide Sandra Garrand an opportunity to cure the defects on the certification forms filed on her behalf by Leonard Garrand.

Will A. Irwin
Administrative Judge

We concur:

James L. Bymes
Chief Administrative Judge

R. W. Mullen
Administrative Judge

James P. Terry
Administrative Judge