

INTERIOR BOARD OF LAND APPEALS

USA Mining, Inc.

156 IBLA 54 (November 29, 2001)

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USA MINING, INC.

IBLA 2000-91

Decided November 29, 2001

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the AT&E #55 mining claim forfeited by operation of law for failure to timely remit maintenance fee. CAMC 249195.

Affirmed as modified.

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

Under 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 years 1994 through 1998, and failure to pay the fee renders the claim forfeited and void by operation of law. Where claimant held 522 claims but submitted maintenance fee payments for 521 claims for the 1995 assessment year and the claims list submitted with payment omitted both name and serial number for a particular claim, the omitted claim is properly declared void by operation of law.

APPEARANCES: Sheldon H. Lytton, Esq., Los Angeles, California, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

USA Mining, Inc., (USA Mining, appellant) as receiver for AT&E Enterprises, Inc. (AT&E), has appealed from a December 8, 1999, decision of the California State Office, Bureau of Land Management (BLM), declaring one of AT&E's lode mining claims, the AT&E #55, BLM Serial No. CAMC 249195, forfeited by operation of law because the \$100 per claim maintenance fee was not paid for assessment years 1995 through 1999. In a January 7, 2000, letter to AT&E, BLM amended its December 1999 decision, stating that 1997 was the only assessment year for which the maintenance fee was not paid on the AT&E #55.

Pursuant to section 10101(d) of the Omnibus Budget Reconciliation Act of 1993 (the Maintenance Fee Act), 30 U.S.C. § 28f(d) (1994), the holder of an unpatented mining claim, mill site, or tunnel site was 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. Failure to timely 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." 30 U.S.C. § 28i (1994). The Secretary is granted discretion to waive the fee for a claimant 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)). Appellant herein, however, held 522 claims, and therefore did not qualify for a fee waiver.

In its statement of reasons on appeal (SOR), appellant alleges that the BLM decision, together with the January 2000 letter to appellant, do not adequately give notice of the basis for the action taken. Appellant further alleges that "all Maintenance Fees for 1995, 1996, 1997, 1998 and 1999 were timely paid each and every year." Appellant maintains that

[t]he pattern (and payments) are the same for each year in question * * * [.] [E]ach year AT&E (or the Receiver on behalf of AT&E) paid for the same claims according to the same documentation. Claim #55 was always included in that documentation. It falls in the middle of a long, long list of claims, which list was used each year. * * * It defies common sense to suggest, as does the Decision, that somehow, in one particular year out of the five years involved, one particular claim out of the hundreds on the list, was somehow * * * deleted.

Appellant then claims that BLM must have improperly failed to enter payment confirmation with regard to Claim #55. (SOR at 2-4.)

With its SOR, appellant has provided, *inter alia*, copies of the following documents in support of its contentions: (1) BLM Receipt and Accounting Advice No. 2482564 dated "9/1/99" showing receipt of payment from USA Mining in the amount of \$52,500 for maintenance fees for the 2000 assessment year, a check from USA Mining to BLM dated August 31, 1999, for the same amount, and a partial list of claims submitted by AT&E on August 31, 1999, showing that the AT&E #55 claim was listed (SOR at Exhibit (Ex.) C); (2) BLM Receipt and Accounting Advice No. 2415231 dated "8/31/98" showing that BLM received payment from USA Mining in the amount of \$53,600 for the 1999 assessment year, a check dated "8/28/98" from USA Mining to BLM for \$53,600, and a list of claims received by BLM on August 31, 1998, which listed the AT&E #55 claim (SOR at Ex. D); (3) BLM Receipt and Accounting Advice No. 2352151 dated "8/28/97" showing receipt of payment of \$54,000 from AT&E for maintenance fees for the 1998 assessment year, and a list of claims received by BLM on August 28, 1997, which does not include reference to CAMC 249195 either by serial number or claim name (SOR at Ex. E); (4) BLM Receipt and Accounting Advice No. 2231559 showing that BLM received payment from AT&E in the amount of \$52,200 on "8/30/96" for maintenance fees for the 1997 assessment year (SOR at Ex. F); and (5) BLM Receipt and Accounting Advice No. 2151316 dated "8/24/95" indicating that BLM received payment in the amount of \$52,200 for maintenance fees due for the 1996 assessment year (SOR at Ex. G).

A review of the BLM record reveals the following pertinent information. On December 31, 1991, AT&E located 522 lode mining claims in the

Hite's Cove mining district, Mariposa County, California, within the Mariposa/Minarets U.S. Forest Service Ranger District, near El Portal, California. Each of the 522 claims was recorded by location notice with the California State Office, BLM, on January 2, 1992. They were assigned consecutive BLM serial numbers CAMC 249141 through CAMC 249662.

On December 28, 1992, in compliance with 43 U.S.C. § 1744(a) (1988), AT&E filed with BLM a notice of assessment work performed on AT&E mining claims, identifying the claims on which assessment work was performed as serial numbers "249141 to 249662." Attached to the notice was a list identifying individual claims by name and serial number. The list had apparently been copied from a master list. The bottom line of page 1, which would have listed serial number "CAMC 249195" along with its assigned claim name, "A.T.&E. 55," was apparently dropped from the copy as the result of a copying error. Therefore, the list did not contain either a BLM serial number or name for CAMC 249195, although it set forth basically accurate information regarding other claim names and their corresponding BLM serial numbers. ^{1/}

On October 5, 1992, the Rental Fee Act ^{2/} was passed by Congress. That Act required claimants to pay rental fees of \$100 per claim on mining claims staked on federal lands for each assessment year ending September 1, 1993, and September 1, 1994, and to remit rental fees to BLM on or before August 31, 1993. On August 30, 1993, AT&E remitted \$105,400 to BLM in payment of rental fees for the 1993 and 1994 assessment years. BLM calculated that AT&E owed \$52,200 in rental fees for each year, yielding a total of \$104,400 for both years. BLM therefore determined that total fees for the two assessment years were overpaid, and refunded \$1000 to AT&E.

A copy of the same claims list that was filed with the 1992 affidavit of assessment work was submitted with the 1993 and 1994 rental fee payments; thus, AT&E #55 and its serial number were omitted from the claims list. A notation in red ink was made (possibly by BLM officials) on the list submitted in August 1993 indicating that AT&E #55 and its serial number had been omitted, but that maintenance fees had been paid on the claim; therefore, the claim was not forfeited.

^{1/} Despite the defect in the claims list attached to the affidavit of assessment work, the affidavit itself was nonetheless inclusive of CAMC 249195 because it contained reference to "CAMC 249141 to 249662."

^{2/} The Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (the Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), required that each claimant "pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993," for each unpatented mining claim, mill or tunnel site to hold such claim for the assessment year ending at noon on September 1, 1993. The Rental Fee Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

On September 6, 1994, under mandate of the Maintenance Fee Act, AT&E tendered payment of maintenance fees for the 1995 assessment year. In a letter dated August 31, 1994, Mike Garoogian, President of AT&E stated:

Enclosed herewith is a check payable to B.L.M. in the amount of \$52,100 in full payment of the Maintenance Fees for the 1994-95 assessment year on the 521 unpatented mining claims in Mariposa County, California, owned by AT&E Enterprises, Inc. A numerical list of the subject mining claims bearing the CAMC numbers * * * is attached hereto.

The claims list enclosed with the 1995 assessment year maintenance fee payment was not a duplicate of the earlier claims lists AT&E had submitted. The list filed in September 1994 contained a far left-hand column showing consecutive numbers from 1 through 521. The middle column listed BLM serial numbers from 249141 through 249622; however, serial number 249195 was again omitted. ^{3/} The third column listed some claim names; however, numbered claim names were not listed by full name; therefore, the "AT&E #55" claim was not identified in the list either by name or serial number. The amount remitted, \$52,100, was also short of the total payment due for 522 claims, \$52,200, by \$100, or the maintenance fee due for one claim.

The documents submitted by appellant with its SOR chronicle the subsequent history of maintenance fee payment through the 2000 assessment year. In years subsequent to the 1995 assessment year, appellant paid at least \$52,200 in maintenance fees, and, on several occasions, overpaid fees and collected refunds. Defective claims lists continued to be filed through the 1998 assessment year. With payment for the 1999 and 2000 assessment years, however, USA Mining provided a comprehensive claims list which corrected the various defects contained in prior lists, and was inclusive of the AT&E #55 and its BLM serial number.

[1] While we are in agreement with appellant that the basis for BLM's decisions is not clearly articulated, we must uphold BLM's original decision to the extent that it held the AT&E #55 claim forfeited and void by operation of law for failure to pay the proper claim maintenance fee for the 1995 assessment year.

The maintenance fee statute explicitly provides that failure to pay a 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 total maintenance fee payment tendered by AT&E for the 1995 assessment year was \$52,100, which was \$100 short of the amount necessary to insure that fees on all claims were timely paid. While we appreciate appellant's efforts to comply with the statute, later timely payments could not revive a claim that had been void by operation of law since September 1, 1994. Michael E. Haggerty, 142 IBLA 104, 105 (1997).

^{3/} Apparently, the original list was used to create the second list; thus, the omission of serial number CAMC 249195 was perpetuated.

In its January 2000 letter, BLM retracted its earlier decision and stated that the AT&E #55 was forfeited because it was omitted from the claims list submitted with payment for the 1997 assessment year, received by BLM on August 30, 1996. However, by that time, the claim was already void, having been forfeited by operation of law on September 1, 1994, for failure to timely pay the fee.

The authority for BLM to collect a claims list with the maintenance fee derives from 43 CFR 3833.1-5(2)(b), which provides that, "[a]t the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the maintenance fee is being paid." The Maintenance Fee Act, however, provides that it is the failure to timely pay the claim maintenance fee that constitutes the forfeiture. 30 U.S.C. § 28i (1994). In a case where a claimant pays the maintenance fees for a certain number of mining claims identified on an enclosed list, a decision declaring a claim which was omitted from the list for which a maintenance fee was not paid to be forfeited and void will be affirmed on appeal. 30 U.S.C. § 28i; 43 CFR 3833.4(a)(2). Therefore, in the absence of timely payment of the maintenance fee, the AT&E #55 is properly declared forfeited by operation of law. Harlow Corp., 135 IBLA 382, 385 (1996); Alamo Ranch Co., 135 IBLA 61 (1996).

We note that Departmental regulation 43 CFR § 3833.1-3(c)(2) provides, in pertinent part:

If a claimant fails to submit the proper maintenance fees on or before each September 1, the authorized officer will apply the fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant.

(Emphasis supplied.) In this case, although AT&E may have unwittingly done so, by omitting both the claim name and serial number for the AT&E #55 from the claims list filed with the August 1994 fee payment, claimant directed BLM to apply fees to all claims but the AT&E #55.

Accordingly, 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.

James F. Roberts
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge