

INTERIOR BOARD OF LAND APPEALS

Cristian Miclea d.b.a. Albedo

163 IBLA 72 (September 7, 2004)

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CRISTIAN MICLEA D/B/A ALBEDO

IBLA 2001-37

Decided September 7, 2004

Appeal from a decision of the Field Manager, Folsom Field Office, California, Bureau of Land Management, terminating commercial special recreation permit. CA-180-RU0-021.

Affirmed.

1. Public Lands: Special Use Permits--Special Use Permits

The holder of a special recreation permit issued for commercial use (mine tours) on the public lands is required to maintain a policy of liability insurance sufficient to protect the public and the United States.

2. Public Lands: Special Use Permits--Special Use Permits

A decision cancelling a special recreation permit issued for commercial use is properly affirmed where maintenance of liability insurance is a condition of permit issuance and the permit holder allows its liability insurance to lapse for nonpayment of the premium without notifying BLM.

APPEARANCES: Cristian Miclea, pro se; T.J. Carroll, Acting Field Manager, Folsom, California, Field Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Cristian Miclea d/b/a Albedo has appealed from an October 18, 2000, decision of the Field Manager, Folsom, California, Field Office, Bureau of Land Management (BLM), cancelling his commercial special recreation permit (SRP) No. CA-180-RU0-021 effective immediately. In support of its decision, BLM indicated it had received a

letter from appellant's liability insurer informing it that appellant's liability insurance policy had been cancelled. Liability insurance coverage, BLM indicated, was a condition of permit issuance.

Appellant applied for a SRP to conduct tours of accessible underground workings on the historic Our Chance gold mine located on public lands encompassed by a mining claim (CAMC 274280) held by appellant. The Special Recreation Application and Permit (Form 8370-1 (May 1996)) executed by Miclea on October 15, 1998, contains a section titled "application requirements." Item "c" thereunder is marked to indicate that a certificate from an insurer is required indicating that liability insurance has been obtained and that the insurer will give reasonable notice to BLM prior to cancellation or modification of such insurance. Although the amount of coverage required was left blank on the application form itself, further information regarding the required coverage was provided in letters from BLM to the applicant dated June 10, 1999, and January 19, 2000. A certificate of liability insurance in the name of the applicant dated April 11, 2000, naming BLM as an additional insured, was provided to BLM. Thereafter, BLM approved the SRP application on April 24, 2000.

Subsequently, BLM received a cancellation notice regarding appellant's liability insurance policy from the insurer. The notice transmitted October 2, 2000, indicated that appellant's insurance policy had been cancelled effective April 1, 2000. In its October 2000 decision, BLM stated that the failure to have the required insurance is a serious breach of the terms and conditions of the SRP. The BLM decision indicated that an inquiry to the insurer disclosed appellant made a partial payment for coverage, cancelled the request for insurance, and obtained a refund of the partial payment. Noting that the SRP requires that the permittee have liability insurance coverage, that this was a condition of permit issuance, and that lack of insurance is a threat to the health and safety of appellant's customers, BLM cancelled the permit, citing stipulations 1, 21, and 35 to the SRP.

In his statement of reasons for appeal (SOR),^{1/} appellant principally contends that BLM erred, in its October 2000 decision, in terminating, rather than temporarily suspending, his SRP, arguing that he did not misrepresent the fact that he had liability insurance at the time of issuance of the permit on April 24, 2000: "I obtained insurance * * * and my insurance was valid until the moment I received a

^{1/} Appellant's SOR is contained in several filings with BLM and the Board, including an Oct. 25, 2000, letter to BLM ("Notice of Appeal"), an Oct. 31, 2000, "Notice of Appeal/Addendum," a Nov. 8, 2000, letter to the Board, and a Jan. 3, 2001, "Statement of Reasons."

letter from WOGA^{2/} in October 2000 stating that my policy was canceled flat beginning April 1, 2000.” (Letter to BLM, dated Oct. 25, 2000, at 2.) He also asserts that WOGA’s retroactive cancellation of his liability insurance policy on October 2, 2000, was due to either an honest mistake or an illegal action on the part of WOGA, which he hoped to shortly rectify, through the intervention of the California State Insurance Commissioner. Appellant further argues that he has always abided by requests from BLM concerning the permitted gold mine tours, and would have done so here, with respect to providing appropriate proof of insurance, but for the fact that BLM did not provide that opportunity. He also asserts that he has made a substantial investment in preparing and promoting his sightseeing business, and may become insolvent if the SRP is not restored.

[1] Statutory authority for issuance of SRP’s by BLM is generally provided by the Land and Water Conservation Fund Act, 16 U.S.C. § 4601-6a(c) (2000). The relevant implementing regulations are found at 43 CFR Part 8370 (2002).^{3/} The SRP at issue here specifically provides that it is “subject to all applicable provisions of the regulations (43 CFR Group 8300) which are made a part hereof.” Included in the cited regulations are those which appear at 43 CFR Part 8370, which state, in relevant part, that a permit “will contain such stipulations as the authorized [BLM] officer considers necessary to protect the lands and resources involved and the public interest in general.” 43 CFR 8372.5(b). Further, 43 CFR 8372.5 expressly provides that a commercial permit^{4/} holder is required to obtain liability insurance and to otherwise indemnify the United States from loss or damage occasioned by permit activities:

(d) Insurance. The authorized [BLM] officer shall require all commercial * * * applicants * * * to obtain and submit a property damage, personal injury, and public liability insurance policy which he judges sufficient to protect the public and the United States. The policy shall name the U.S. Government as a co-insured and stipulate that the

^{2/} The insurance policy at issue in this case was obtained through Worldwide Outfitter & Guides Association, Inc. (WOGA).

^{3/} These regulations have now been superseded and, hence, removed from the CFR. 67 FR 61745 (Oct. 1, 2002). The current regulations governing SRP’s are found at 43 CFR Subpart 2932. Citations herein are to the 2002 regulations unless otherwise noted.

^{4/} Commercial use is defined as recreational use of the public lands for financial gain and includes recreational activities for which customers or participants in the permitted activity are charged a fee by the permittee. 43 CFR 8372.0-5(a).

authorized officer of the Bureau of Land Management shall be notified 30 days in advance of the termination * * * of the policy.

(e) Liability. The permittee shall indemnify the United States against any responsibility or liability for damage, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.

Therefore, issuance of the SRP at issue here was properly conditioned upon submission of proof that the applicant had obtained a liability insurance policy which would remain in force unless BLM was provided reasonable notice of cancellation of the policy.

It appears from the record that appellant obtained liability insurance coverage by making a down payment of \$368.10 on the cost of the policy, subject to the obligation to pay the balance of the policy premium plus financing charges in a series of periodic payments.^{5/} (Letter of Oct. 15, 2000, to BLM with attachments.) A disagreement with the finance company over the amount of the periodic payments apparently ensued. Id. There is no evidence that the balance of the policy premium was paid. Rather, BLM reports that an October 4, 2000, telephone conversation with a representative of the insurer revealed “that they cancelled the policy after Mr. Miclea did not pay the remainder of the policy fee.” (BLM Memorandum, dated Oct. 4, 2000.) Subsequent to the October 2, 2000, notice of cancellation, appellant’s down payment for the insurance policy was refunded to him.

[2] The holder of an SRP is prohibited from violating the conditions and stipulations of the permit. 43 CFR 8272.0-7(a); Judy K. Stewart, 153 IBLA 245, 250-51 (2000). We have held that if BLM notifies the permittee of the range of potential sanctions, a sanction may be imposed for violations of the permit conditions and stipulations. Judy K. Stewart, 153 IBLA at 251. Decisions imposing a sanction on the holder of an SRP will be affirmed when a reasonable basis is shown in the record. Obsidian Services, Inc., 155 IBLA 239, 248 (2001); Judy K. Stewart, 153 IBLA at 251. In the present case, the terms of the permit itself, as well as written communications from BLM in advance of permit issuance, make it clear that liability insurance coverage is a condition of issuance of the SRP. Insurance coverage for commercial permits is required by regulation. 43 CFR 8372.5(d). Further, the

^{5/} To the extent that the BLM decision suggests appellant acted in bad faith by causing BLM to believe a policy of liability insurance had been obtained as required by the conditions of the SRP, our reading of the record does not clearly support such a characterization. Rather, it appears appellant neglected to do what was necessary to maintain his insurance in effect.

permit conditions and stipulations provide for revocation of the permit in the event of noncompliance. The SRP provided, in section 1: “This permit * * * is revocable for any breach of conditions hereof or at the discretion of authorized officer of the Bureau of Land Management, at any time upon notice.” In addition, section 35 reiterated: “This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Folsom Field Manager.” (Continuation of Conditions of Use at 3.) Since maintenance of insurance is a major condition of the permit, BLM found appellant’s performance to be unacceptable and a threat to the health and safety of guests and employees. (Decision at 2.) Accordingly, BLM cancelled the SRP. Breach of the obligation to maintain liability insurance is a proper ground for cancellation of an SRP. See Obsidian Services, Inc., 155 IBLA at 251. We find that in the circumstances of this case in which appellant failed to maintain his insurance policy in effect by failing to pay for the policy, the BLM decision is properly affirmed.

Therefore, 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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge