

INVESTIGATIVE REPORT

Final Finding and Closure

*****PUBLIC REPORT*****

(Edited to remove confidential information per AS 24.55.160)

Ombudsman Complaint J099-0291

September 3, 1999

SUMMARY OF THE COMPLAINT

Clete Walden (not the complainant's real name) contacted the Office of the Ombudsman on August 18, 1999, complaining that the Division of Lands took back without proper notification a parcel of land he was purchasing from the state. He said the purchase, in which he had already invested nearly \$2,500, was terminated because \$75 remained unpaid. He said he was unaware he owed the money, and that when he discovered it, he was told the purchase had been terminated and it was too late to reinstate it.

The allegation under investigation was:

Unreasonable: The Division of Lands took back a parcel of land it was selling to the complainant without proper notification regarding a small amount of money that remained unpaid.

Assistant Ombudsman Mark Kissel investigated the complaint.

INVESTIGATION

In May, 1984, Mr. Walden applied for land under the State of Alaska's remote parcel program. On May 9, Mr. Walden staked approximately three acres in the West Fork II area within the Northcentral District of the Department of Natural Resources. By May 21, his lease application had been approved by the Alaska Division of Land (ADL). The remote parcel program allows prospective purchasers of state land to lease the land for five years with an additional five year extension possible. During the lease period, the applicant is required to have the land surveyed in preparation for appraisal and purchase. Applicants are

charged a lease fee of \$10 per acre yearly.

In May, 1989, Mr. Walden was granted a five year lease extension. In October, 1993, Mr. Walden hired a Fairbanks surveyor to survey his parcel. Mr. Walden paid the surveyor \$1,900 for his services. The survey was approved and recorded in December, 1993. ADL had the land appraised, deducted a standard amount for appraisal, and set the price of the land at the program minimum, \$800.

Partial payments

At the end of his lease period in May, 1995, ADL sent a certified letter to Mr. Walden with purchase information. With adjustments for prorated lease credits and recording fees, ADL wrote, Mr. Walden could purchase the land for \$789.84, or if he qualified for a veteran's discount, for \$589.84.

On June 6, 1995, Mr. Walden paid ADL \$589.84 and submitted application for a veteran's discount. Mr. Walden submitted evidence that he had served nearly three years in the Marine Corps, that he had been honorably discharged in March, 1967, as a corporal in the Third Recon Battalion, Third Marine Division. His discharge papers showed that he had served nearly one year overseas and received a Vietnam Campaign Medal and a Purple Heart. However, Mr. Walden failed to provide evidence that he met the program's residency requirements, and ADL denied his application for a veteran's discount.

On September 25, 1995, Mr. Walden paid an additional \$75 toward the purchase of the parcel. On October 11, Greek Taylor, a Natural Resource Manager with ADL, sent a letter to Mr. Walden confirming that his application for a veteran's discount was denied and noting that the balance due on the parcel was now \$125. Five days later, Mr. Walden made another payment of \$50.

Unclaimed letters

On December 5, 1995, Mr. Taylor sent a certified letter to Mr. Walden noting a balance due of \$75. He asked Mr. Walden to pay before January 8, 1996, or risk losing the parcel and the money he had already paid on it. This letter was returned to ADL unclaimed on December 26.

On December 28, Art Goldberg of the ADL staff resent the certified letter and mailed a first class letter to Mr. Walden that ADL was attempting to send him a certified letter and to please pick it up. The second certified letter was also returned to ADL unclaimed. Mr. Walden's file at ADL also contains two other returned envelopes

addressed to him and postmarked April 5 and April 9, 1996.

On January 31, 1997, Mr. Taylor sent another certified letter. This one notified Mr. Walden that ADL was terminating his application to purchase the parcel on February 24, and all money he had paid will be forfeit. This letter was returned to ADL unclaimed on February 10.

Purchase terminated

On February 24, 1997, ADL terminated Mr. Walden's payment application and two days later forfeited his payments to the state.

Mr. Walden, apparently unaware that he was no longer the purchaser of record, continued to pay taxes on the property to the Fairbanks North Star Borough. As evidence, Mr. Walden submitted a receipt showing that he paid \$17.74 in taxes on the parcel for 1998. Mr. Walden said he discovered he lost his rights to the property when he attempted to pay his 1999 taxes and was informed by the Fairbanks tax office that he no longer owned the property.

Mr. Walden said he phoned ADL and spoke with Mr. Taylor, who told him the purchase agreement was terminated nearly two-and-a-half years ago and nothing could be done about it now.

Regulation concerning notification

Agencies are required by law to notify persons about decisions affecting them. Regulations regarding notification by the Department of Natural Resources are located at 11 AAC 02.040(c):

The department will, in its discretion, deliver a decision by personal service or by registered or certified mail, return receipt requested. Delivery by registered or certified mail occurs when the decision is signed for by the addressee or the addressee's agent. If the addressee neglects or refuses to sign for the registered or certified mail, or if the address that the addressee provided to the department is not correct, delivery by registered or certified mail occurs when the decision is deposited in a U.S. general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department.

The department regulations also state at 11 AAC 02.070: The commissioner will, in his or her discretion, and to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require.

ANALYSIS AND FINDING

The allegation is that the Division of Lands acted unreasonably. The Office of the Ombudsman Policies and Procedures manual at 4040(2) defines unreasonable as:

(A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,

(B) a procedure that defeats the complainant's valid application for a right or program benefit, or

(C) an act that is inconsistent with agency policy and thereby places the complainant at an disadvantage to all others.

Department regulations required ADL to deliver notice of its decision to terminate. ADL sent Mr. Walden certified notices on three occasions between December 5, 1995 and January 31, 1997. All of these letters were returned unclaimed. ADL also mailed several first class letters to Mr. Walden. ADL waited a full year for word from Mr. Walden, who, having received Mr. Taylor's letter of October 11, 1995, should have been aware that he still owed money on the parcel.

ADL did more than its regulations required in attempting to reach Mr. Walden. Its actions were not inconsistent with agency policy or the purposes of the land distribution program, and did not defeat Mr. Walden's right to a program benefit. Consequently, the Ombudsman finds the allegation *not supported* by the evidence.

The Ombudsman also believes that Mr. Walden's situation was unfortunate. He had already spent approximately \$2,500 toward the purchase of the state parcel, and the Ombudsman believes he fully intended to complete the purchase. Mr. Walden said he would have paid the remaining \$75 if he had been reminded of the debt. For whatever reason, ADL's notices to Mr. Walden failed to reach him and resulted in an action that neither Mr. Walden nor the Division of Lands wanted -- the termination of his application to purchase the property.

Solution proposed by ADL

With this in mind, the Ombudsman investigator asked Mr. Taylor to consider ways Mr. Walden could redeem the transaction. Mr. Taylor reviewed the complainant's file and proposed that, since Mr. Walden did

not have a payment contract with ADL, it would be practical for ADL to reinstate the agreement by administrative action. Mr. Taylor said he had been under the impression that Mr. Walden had a contract because nearly all persons who face termination do. If a contract had been involved, Mr. Taylor said, reinstatement would have required expensive court action that would not have been in the state's best interest.

Mr. Taylor said he would reinstate the purchase agreement if Mr. Walden would pay the remaining \$75 and any lease fees that may apply, and submit a written and signed statement with certain personal information needed to prepare the title. Mr. Walden not only agreed to this, but was at the agency's Fairbanks office within an hour of hearing Mr. Taylor's offer.

Disposition of complaint

With the foregoing offer and its acceptance by Mr. Walden, the Ombudsman closed this complaint as *not supported* and *resolved*.