

Ministry of
Northern Development
and Mines

Ministère du
Développement du Nord
et des Mines

IN THE MATTER OF THE MINING ACT BEFORE
THE PROVINCIAL MINING RECORDER

IN THE MATTER OF: Mining claim SSM 3015600, Chabanel Twp., Sault Ste. Marie Mining Division.

AND IN THE MATTER OF: Filed only application to record mining claim 4201562 staked for more or less the same area of land as contained in the mining claim of record.

ALSO IN THE MATTER OF: A dispute filed by

**GLEN COYNE
Disputant**

-against the mining claim of record held by-

**DIAMOND LAKE MINING LTD.
Respondent**

WHEREAS: A hearing was held July 27, 2005

I FIND: There is insufficient evidence provided by the Disputant

I ALSO FIND: That, according to Subsection 72 (2) Mining Act R.S.O 1990 (MA) the Disputant does not have a right to dispute and the Provincial Mining Recorder has no authority to decide the matter as a dispute issue.

I ORDER: That the dispute is dismissed and the filed only application to record for mining claim 4201562 remains refused.

PLEASE BE AWARE THAT SECTION 112 OF THE MINING ACT PROVIDES THE PARTIES A RIGHT OF APPEAL TO THE MINING AND LANDS COMMISSIONER. AN APPEAL IS BEGUN BY FILING APPROPRIATE DOCUMENTS IN THE OFFICE OF THE MINING AND LANDS

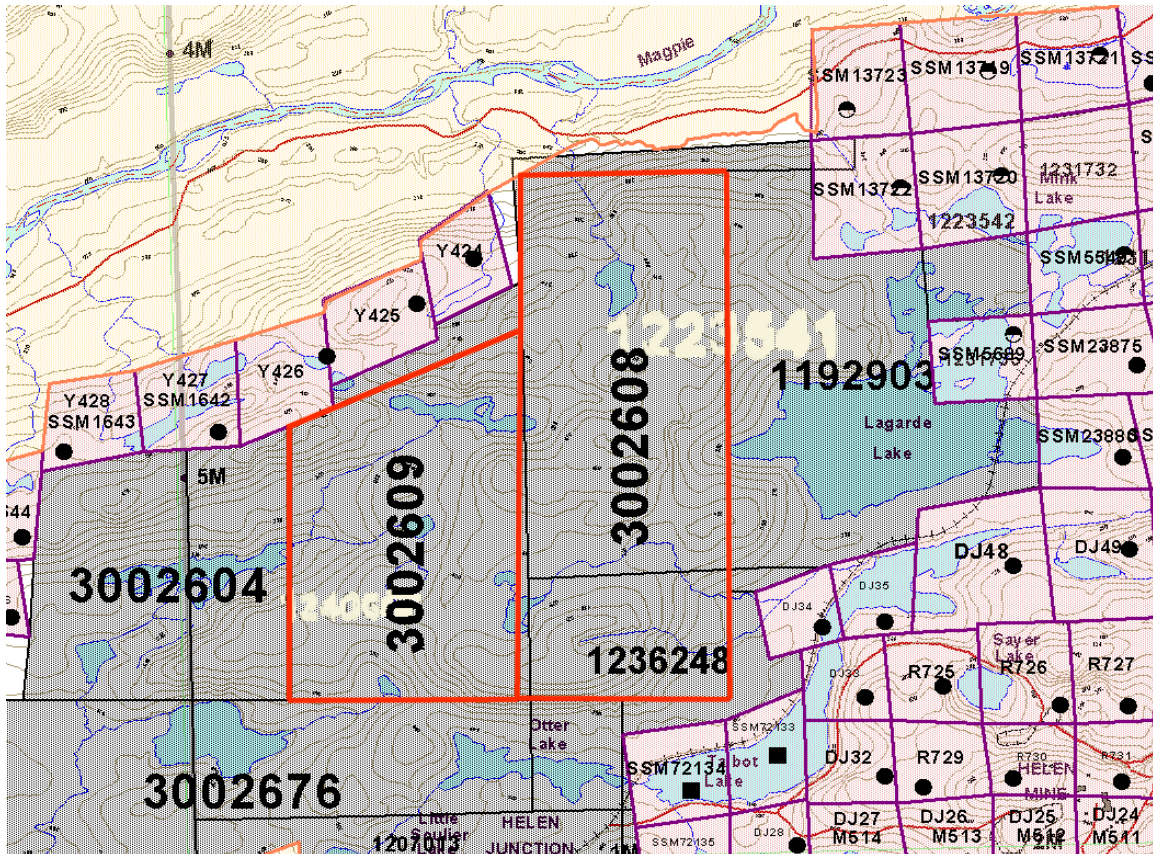
**COMMISSIONER AND SERVING THE PROVINCIAL RECORDING OFFICE
WITHIN 30 DAYS OF THE DATE OF THIS DECISION.**

**Original signed by Roy Spooner
Roy Spooner
Provincial Mining Recorder**

Dated this 3rd day of August, 2005

BACKGROUND

On February 8, 2005 two mining claims, SSM 3002608 and SSM 3002609, Chabanel Township, were posted as re-opened for staking therefore open for staking at 8 a.m. Standard time February 9 (Subsection 72.1{2} Mining Act R.S.O. 1990 [MA]). See sketch below.



On February 10, 2005 Richard Daigle and Glen Coyne made preparations on the site by gathering material for corner posts. Their objective was to obtain any

Richard Daigle submitted four exhibits: a written statement by Richard Daigle, a written statement by the Disputant Glen Coyne, a sketch indicating Global Positioning System data and photographs taken by Gary Coyne.

The claim holder was not present to answer to the allegations. The Disputant, Glen Coyne, was the key witness in the allegations but Mr. Coyne did not appear at the hearing. There were no witnesses called for the Disputant. Although photographs were submitted, there was little documentation of who took the photos, when they were taken and where they were developed. It is difficult to make out details in the photos.

MY REASONS

Subsection 72 (1) (a) Mining Act:

Forfeiture of mining claim

72. (1) Except as provided by section 73, all the interest of the holder of a mining claim before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

(a) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;

If it was proven that corner post #four was moved without an order of the Recorder or Commissioner, SSM 3015600 would automatically be forfeit. The forfeiture would not be subject to a discretionary decision of the recorder. The interest of the claim holder “ceases” without any declaration, entry or act on the part of the Crown according to 72 (1) MA.

While there was evidence submitted to support the allegation that a corner post was moved, the evidence was not substantive given the outcome expected by the Disputant. The burden of proof is carried by the Disputant. Certainly, when the Disputant is the key witness in these very serious allegations I expect the Disputant to appear at the hearing to personally deliver evidence. I cannot accept weak evidence where the outcome may not only be loss of a mining claim but may also suggest that disciplinary action is necessary and/or that 164 (1) (c) MA applies:

PART XI

OFFENCES, PENALTIES AND PROSECUTIONS

Offences

164. (1) Every person who,

c) defaces, alters, removes or disturbs any post, stake, picket, boundary line, figure, writing or other mark lawfully placed, standing or made under this Act;

is guilty of an offence against this Act and on conviction is liable to a fine of not more than \$10,000.

R.S.O. 1990, c. M.14, s. 164 (1); 1996, c. 1, Sched. O, s. 29; 1997, c. 38, s. 1 (2); 1997, c. 40, s. 4.

When Mr. Coyne filed his dispute his allegations went beyond the moving of a corner post. On the dispute form there is mention of missing boundary lines and

missing line posts. Mr. Coyne also includes some mention of staking defects in his written statement submitted at the hearing by his agent Richard Daigle. Mr. Daigle was the only one who chose to attend the hearing. According to Mr. Daigle the only issue that was being pursued was the alleged illegal moving of corner post #four-3015600.

According to Subsection 72 (1) (a) MA, the removal of a corner post is fatal to the mining claim unless authorized by an order of the recorder or Commissioner. The forfeiture would be automatic however the land would not be open for staking until “posted”. Subsection 72.1 (2) MA:

Re-staking

(2) Unless they have been withdrawn from prospecting or staking, lands, mining rights or mining claims affected by a forfeiture or a loss of rights are open for staking from 8 a.m. standard time on the day after the posting of the notice of re-opening. 2000, c. 26, Sched. M, s. 9.

Should there be a finding of fact that the corner post was moved illegally, “filed only” claim 4201562, staked by Glen Coyne over SSM 3015600, could not be recorded. The land would not be open for staking until after forfeited claim SSM 3015600 was posted.

Also, according to Subsection 72 (2) Mining Act, the Provincial Mining Recorder does not have authority to decide this issue through Section 48 MA (right to dispute) and 110 MA. Subsection 72 (2) MA:

Proceedings as to forfeiture

(2) No person, other than the Minister or an officer of the Ministry or a person interested in the property affected, is entitled to raise any question of forfeiture except by leave of the Commissioner, and proceedings raising questions of forfeiture shall not be deemed to be or be entered as disputes under section 48. R.S.O. 1990, c. M.14, s. 72 (2).

It would appear that a third party has no standing in an issue such as this unless they have “leave” of the Commissioner. If the Commissioner were to grant leave in the matter, the issue would require a determination of fact by the Minister’s delegate (delegated to the Provincial Mining Recorder).

It is clear that the Mining Act does not provide Glen Coyne with a right to dispute SSM 3015600 on the grounds that a corner post was illegally moved. It is also clear, therefore, that the Provincial Mining Recorder has no authority to decide the matter through the usual dispute process. The dispute is dismissed

**Roy Spooner
Provincial Mining Recorder**