



INTERIOR BOARD OF INDIAN APPEALS

Douglas Stout v. Commissioner of Indian Affairs

5 IBIA 260 (12/03/1976)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF DOUGLAS STOUT

v.

COMMISSIONER, BUREAU OF INDIAN AFFAIRS

IBIA 76-28-A

Decided December 3, 1976

Appeal from a decision of the Commissioner, Bureau of Indian Affairs, affirming Area Director's action in denying withdrawal of certain bids because of mistake.

Reversed.

1. Indian Lands: Contracts: Formation and Validity: Bid and Award: Mistakes

Where the Bureau of Indian Affairs knew or should have known of the bidder's mistake, a bidder on Indian lands is entitled to recover deposits where he is guilty of mistake in misreading of specification.

APPEARANCES: Paul E. Northcutt, Esq., for appellant; Rex E. Herren, Esq., Office of the Field Solicitor, Anadarko, Oklahoma, for appellee, Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The pertinent facts regarding this matter are set forth in Administrative Law Judge Jack M. Short's Recommended Decision dated October 12, 1976. Accordingly, they are not repeated here.

Consideration has been given to the complete record, including contentions and arguments made by both appellant and appellee.

We find no merit to the contentions and arguments of the appellee.

The Board is in agreement with the findings and conclusions of Judge Short and adopts his findings and recommended decision attached hereto and dated October 12, 1976, as its own.

We agree that the Bureau owed a certain responsibility to its Indian ward or wards. However, where an obvious mistake is existent, the Bureau owes a corresponding responsibility to the appellant not to knowingly enrich its ward or wards to the detriment of said appellant. We find that the Bureau was fully aware

of the appellant's mistake in bids through its own appraisals, disparity in the bids of the appellant and other bidders, and finally by being alerted to the mistakes by appellant's wife while the Bureau was in the process of opening said bids and again prior to consideration of items 22 and 33.

We conclude that the appellant is entitled to recover his forfeited deposits applicable to items 22 and 33, totalling \$3,500.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the decision of the Commissioner of Indian Affairs affirming the Area Director is REVERSED, and it is ORDERED, that the forfeited deposits regarding items 22 and 33 totalling \$3,500 be returned to the appellant, Douglas Stout.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

We concur:

//original signed
Alexander H. Wilson
Administrative Judge

//original signed
Wm. Philip Horton
Board Member



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
ADMINISTRATIVE LAW JUDGE
POST OFFICE BOX 3064
TULSA, OKLAHOMA 74101

ADMINISTRATIVE APPEAL OF)
DOUGLAS STOUT)
v.) No. IBIA 76-28-A
BUREAU OF INDIAN AFFAIRS)

FINDINGS OF FACT AND RECOMMENDED DECISION

On June 24, 1976, the Interior Board of Indian Appeals issued an Order referring this administrative appeal by Douglas Stout to the Hearings Division, Office of Hearings and Appeals, for an expeditious fact-finding hearing before an Administrative Law Judge, who would then submit findings of fact and a recommended decision to the Board.

By letter dated June 24, 1976, the Chief Administrative Law Judge, Hearings Division, Office of Hearings and Appeals, assigned the case to this office for such hearing, findings of fact, and recommended decision and transmitted therewith the case record.

Pursuant to notice issued July 8, 1976, such a hearing was held on Thursday, August 5, 1976, at the Page Belcher Federal Building, Tulsa, Oklahoma. Douglas Stout, the appellant, appeared in person and by his lawyer, Paul E. Northcutt, Esq. The Bureau of Indian Affairs was represented by Rex E. Herren, Esq., Assistant Field Solicitor.

The evidence adduced at the hearing consists of testimony, which has been transcribed, from: Douglas Stout and his wife, Joyce; Floyd L. Stelzer, Area Oil and Gas Supervisor, U. S. Geological Survey; and, Herman J. Lewis, Chief, Division of Trust Responsibilities, Bureau of Indian Affairs, Anadarko Area Office, plus the documentary evidence admitted into evidence, to-wit: ALJ Exhibit #1, which is a copy of Invitation No. 36, in blank, entitled, Invitation For Bids - Sale of Indian Land to which is attached a four page itemized advertisement of the real property offered for sale with the legal descriptions and "other data thereon; and, ALJ Exhibit #2, which is a copy of the bids submitted by Douglas Stout on the Invitation For Bids form with the Notice Of Award To Successful Bidder completed thereon.

From the record and this evidence, I find the following facts and recommend a decision.

Douglas Stout is a thirty-six year old truck driver who resides with his wife, Joyce, on his 35 acre farm near Ponca City, Oklahoma which he farms, along with other land he has leased, on a part-time basis. He completed the 11th grade in school then entered the Marine Corps where he earned a high school diploma. He has never been engaged in the oil and gas business and the only mineral rights he owns are under his 35 acre farm. In 1974, he made an unsuccessful bid on Indian land offered for sale by the Pawnee Indian Agency and by having made that bid, he received a copy of Invitation No. 36 from the Pawnee Agency by mail sometime in June, 1975. Because he still wanted to buy more land, he selected two tracts of interest to him thinking that the surface and one-half of the minerals were being offered for sale on each tract. From the legal description of the two tracts, he located and made a physical inspection of them; decided he wanted to bid on them and visited two banks in making arrangements to borrow the money for both the bid deposit and the full purchase price. Both bankers were furnished the invitation for bids for examination but neither noticed that minerals only were being sold under the two tracts. He then prepared his bid accordingly.

He didn't appear at the sale in 1974 and learned later that he narrowly missed being the successful bidder. To avoid that possibility this time, even though he couldn't attend because of his job, he had his wife take the bid to the Agency on the date of the sale with instructions to increase the bid if necessary, up to a maximum sum.

On the morning of July 8, 1975, the day of the sale, Mrs. Stout appeared at the Pawnee Agency and submitted the sealed bid at 8:10 a.m. (See Area Director's Decision) and awaited the opening of the bids at 10:00 a.m. The Stout bids for the two tracts are on one bid form. See ALJ Exhibit #2.

There is no dispute as to what happened next. A minute or two after 10 a.m., the Agency Realty Officer closed the bidding then announced that item #33 on the advertisement contained an error in that it was advertised as not having an oil and gas lease thereon when in fact there was an oil and gas lease on the minerals described therein.

When Mrs. Stout heard him say something about "minerals only", she suddenly realized that Item #33 was for "minerals only". She quickly looked at Item #22 and saw that it read the same. She then asked the Realty Officer if Item #33 was for mineral rights only and he said, "Yes." Mrs. Stout then said, "I wish to withdraw my bid." At that time, the bids had not been opened. But, the Realty Officer told her she could not withdraw her bid and in response to her question, "What do I do?"; he said, "You just have to forfeit your bid." (Tr. 7-8)

Then, the opening of the bids commenced and were read aloud in the order listed on the advertisement. When the items on which Mr. Stout had bid were reached, Mrs. Stout renewed her request to withdraw his bid(s). The request was again rejected on each item. When the Stout bid was read, along with the other bids on the same tracts, laughter broke out. (Tr. 8) The record shows that three bids were received on each of the two tracts. They were:

<u>Item 22</u>		<u>Item 33</u>	
Thomas G. Lamb	\$604.00	Thomas G. Lamb	\$755.00
Douglas Stout	\$25,000.00	Douglas Stout	\$10,000.00
Wilbur Ingmire	\$800.00	Harry Anderson	\$506.00

Mr. Floyd L. Stelzer testified that as of July 7, 1975, the U.S. Geological Survey appraised the minerals under Item #33 at \$30.00 an acre. That would be one-half of \$30 times 94.94 acres for a total of \$1,469.10 for the minerals being offered for sale. And, he testified that as of January 10, 1975, the minerals under Item #22 were appraised by the U.S.G.S. at \$20.00 an acre. That would be one-half of \$20 times 80 acres for a total of \$800 for the minerals being offered for sale.

Mr. Herman J. Lewis testified: that he attended the sale at the Pawnee Agency on July 8, 1975, in his capacity as Chief, Division of Trust Responsibilities, Bureau of Indian Affairs, Anadarko Area Office, to assist Henry Sheridan, the Agency Realty Officer, in conducting the sale, in whatever way he could and to conduct the oral auction portion of the sale; that he had no supervisory authority over the Pawnee Agency but did have a technical responsibility to it; and, that Mr. Sheridan had since retired from the Bureau. Mr. Lewis did not dispute Mrs. Stout's testimony regarding her requests to withdraw her bids but he concurred with Mr. Sheridan's refusal to permit the withdrawal. It is his recollection that Mrs. Stout stated they thought they were bidding on surface and for that reason wanted to withdraw their bid now that it was clear the minerals only were being sold. He further testified that if she had said she wanted to withdraw the bid on Item #33 because of the oil and gas lease error, her request would have been granted but not otherwise.

I find that Douglas Stout made a mistake in reading the advertisement. It plainly states MINERALS ONLY on the two items he bid on. Clearly, he was negligent and the Invitation For Bids states unequivocally that negligence on the part of the bidder confers no right to withdraw the bid after the time for submitting the bids has expired.

By signing the invitation for bids form, Mr. Stout expressly agreed to be bound by the terms and conditions stated therein. His wife's request to withdraw the bids came after the time for submitting

the bids had expired. It is immaterial whether the bids had been opened or not. Actually, the bids were being physically opened and arranged, in the proper order for reading but none had been read when she made her initial request. Because it subsequently notified him he was the high bidder, requested the balance of the purchase price be remitted within the required thirty days which he has not to this date done and doesn't intend to, it appears that the Bureau had every right to forfeit the 10% or \$3,560 deposited by Mr. Stout.

So, the decision of the Commissioner of Indian Affairs dated December 15, 1975, which affirms the decision of the Area Director dated September 15, 1975, to award the sale to Mr. Stout on his successful bid, is apparently unassailable.

But, there is a principle of law called the law of mistaken bids. It is explained in some detail in the case of Ruggiero v. United States, 420 F.2d 709 (1970), by the United States Court of Claims. The facts therein are analogous to the case at hand and are as follows. Five members of the Ruggiero family residing near Los Angeles and engaged in various occupations were also doing business as partners in a land development company which entered a sealed bid on several of 43 tracts of government land offered for sale by the General Services Administration in the vicinity of San Diego. That invitation for bids permitted bids on individual tracts, groups of tracts, or the entire lot. It provided sealed bids would be received until a certain date and hour, then opened, and required a bid deposit of 10% of the amount of each bid. And, among other provisions, it stated that: "modifications or withdrawals received . . . after the exact time set for opening of bids will not be considered unless: (1) they are received before award is made; and either (2) . . . late receipt was due solely to delay in the mails or . . . due solely to mishandling by the Government after receipt" (Emphasis added).

The bids were opened on the date specified and a few days later, the Ruggieros were notified their bid on one parcel was rejected and their deposit returned. A few days later, the Ruggieros protested the rejection in writing and stated their bids on it and two other parcels which were all contiguous were to be considered as a group and unless they were so considered and awarded to them, they wanted their deposit back on all three of the bids. The Government refused, forfeited the bid deposit and the Ruggieros brought suit in the United States Court of Claims to recover their bid deposit. That Court entered judgment in favor of the Ruggieros for the full amount of their bid deposit upon finding that they, in fact, had made a mistake in their bid and by applying the law of mistaken bids. At page 713 of 420 F.2d, that Court states:

(See page 5)

Finally, we come to the issue of mistake. It is not necessary to establish the following at any length: if a bidder discovers that he has made a mistake in his bid and so advises the contracting officer, even after bid opening, but before award, he is not bound by his bid. (citations of numerous cases omitted.) In all cases cited above the bidders were, in fact, guilty of egregious blunders. As we pointed out in Chernick v. U.S., 372 F.2d 492, 178 Ct. Cl. 498 (1967), what we are really concerned with is the overreaching of a contractor by a contracting officer when the latter has the knowledge, actual or imputed as something he ought to know, that the bid is based on or embodies a disastrous mistake and accepts the bid in face of that knowledge. The correction of the mistake, perhaps in the teeth of general conditions or specifications, by rescission or reformation, represents an application of equitable principles in a legal action. The mistake, to invoke such principles, must be, as in the cases cited, a clear cut clerical or arithmetical error, or misreading of specifications, and the authorities cited do not extend to mistakes of judgment.

Then, at page 715 of 420 F.2d, that Court adds: “. . . (T)hat the good faith of a mistaken bid claim obviously is strongly supported if the claim is first made before the bids are opened and the awards are known or capable of surmise.”

The facts in the case at hand closely parallel those in Ruggiero, supra. Both bidders were clearly negligent in the preparation of their bids. The Ruggieros telephoned before the close of bidding and made an oral request that their bids be considered a group bid but such an oral request was not permitted by the invitation for bids; however, they did reveal their mistake after the opening of the bids but before the award. Here, Mrs. Stout requested the withdrawal of her husband's bid before the opening and reading of the bids (granted, the envelopes were being slit by Mr. Lewis when she made her request but the bids had not been removed from the envelopes and read) when she realized only the minerals were being offered for sale whereas the bid was for the surface and one-half of the minerals. She renewed her request when items 22 and 33 were reached in the reading of the bids. The testimony is uncontroverted that the reading of each Stout bid drew laughter from the Agency Realty Officer and the other bidders--obviously because of the wide disparity between each Stout bid and the other two bids.

In both cases, the bidders were bound by the terms and conditions of the invitations for bids and both failed to correct or withdraw their bid within the permissible time. But, both made a mistake in their bid. In Ruggiero, supra, the Court found that the contracting officer knew, or should have known that the bid was a mistake or at least he

was alerted to that possibility and by not making further inquiry the knowledge of a mistaken bid was imputed to him. In our case, the Agency staff was informed that a mistake had been made prior to the opening of the bid, again when each bid was read and the wide disparity between the Stout bids and the other bids on the same tracts buttress Mrs. Stout's statement that a mistake had been made. I find that the Agency staff had actual knowledge prior to the opening of the bids that Mr. Stout had made a mistake on his bid and that knowledge was reinforced when the Stout bid was opened and read.

While some improvement might be made in the invitation for bid forms used by the Agency and thus lessen bidder confusion and minimize mistakes, the advertisement here plainly stated that items 22 and 33 were minerals only. It is not necessary to determine why or how the Stout bid mistake occurred. Again, the Court, at page 716 of 420 F.2d, speaks to the point: "The law of mistaken bids is made for those mistakes, among others, which are perfectly inexplicable." But, it is necessary to determine whether it falls within any of the three types of errors which the law of mistaken bids will correct, i.e., a clear cut clerical or arithmetical error or misreading of specifications. I find that the Stout bid mistake resulted from a misreading of the specifications.

The Ruggiero case, supra, has been cited with approval by the United States Court of Claims in the following cases: Chris Berg, Inc. v. U.S., 426 F.2d 314 (1970); Space Corporation v. U.S., 470 F.2d 536 (1972); Dale Ingram, Inc. v. U.S., 475 F.2d 1177 (1973); Highway Products, Inc. v. U.S., 530 F.2d 911 (1976); and, Tony Downs Foods Company v. U.S., 530 F.2d 367 (1976).

Thus, I conclude as a matter of law that the law of mistaken bids should apply to the facts in this case and that the Bureau of Indian Affairs should return the bid deposit in the amount of \$3,500.00 to Douglas Stout.

Recommended Decision

It is my recommendation to the Interior Board of Indian Appeals that it enter an Order requiring the Bureau of Indian Affairs to return the bid deposit in the amount of \$3,500.00 to Douglas Stout.

Exceptions Permitted

43 CFR §4.368 provides that within 30 days after service of the foregoing recommended decision, any party may file with the Board exceptions thereto or any part thereof, or to the failure of the judge to make any recommendation, finding or conclusion, or to the admission

or exclusion of evidence, or other ruling of the judge, supported by such legal brief as may appear advisable. Such exceptions should be filed with the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203.

Done at the City of Tulsa, Oklahoma, on this 12th day of October, 1976.

//original signed
Jack M. Short
Administrative Law Judge