



INTERIOR BOARD OF INDIAN APPEALS

W. Woodrow Metzger v. Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

17 IBIA 183 (07/12/1989)

Related Board cases:

13 IBIA 314

Reconsideration denied, 13 IBIA 366

Earlier judicial case:

Dismissed, *Metzger v. United States Department of the Interior*, CIV 82-5050
(D.S.D. May 28, 1982)



United States Department of the Interior

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

W. WOODROW METZGER

v.

ACTING DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS (OPERATIONS)

IBIA 84-37-A

Decided July 12, 1989

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) concerning the leasing of certain tracts of Indian trust land on the Pine Ridge Indian Reservation.

Recommended decision adopted.

1. Appeals: Generally--Indians: Generally

The Board of Indian Appeals will not consider issues which an appellant has not pursued on appeal.

2. Indians: Lands: Generally--Indians: Leases and Permits: Generally

Monies deposited with the Bureau of Indian Affairs for lease rentals for a specified period of time during which lease applications were being considered and the lease applicant was using the properties are properly paid to the Indian tribal and/or individual landowners as rental for that period of time even though the lease negotiations ultimately fail.

APPEARANCES: Ramon A. Roubideaux, Esq., Rapid City, South Dakota, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On June 25, 1984, the Board of Indian Appeals (Board) received a notice of appeal from W. Woodrow Metzger (appellant). Appellant sought review of an April 18, 1984, decision of the Acting Deputy Assistant Secretary-Indian Affairs (Operations) (appellee) affirming the denial of appellant's applications to renew leases of certain tracts of Indian trust land on the Pine Ridge Indian Reservation in South Dakota (Pine Ridge). By opinion dated November 7, 1985, the Board affirmed appellee's decision in part, vacated it in part, and referred the matter to the Hearings Division of the Office of Hearings and Appeals for an evidentiary hearing and recommended decision. 13 IBIA 314 (1985). The case was assigned to Administrative Law Judge John R. Rampton, Jr. The Board received Judge Rampton's recommended decision on May 16, 1989. For the reasons discussed below, the Board adopts the recommended decision.

Background

The background of this dispute is extensively set forth in the Board's earlier decision and will be repeated here only to the extent necessary for an understanding of the present decision.

Appellant has, since the 1950's, leased numerous tracts on Pine Ridge from both the Oglala Sioux Tribe (tribe) and individual tribal members. Originally at issue in this appeal were leases for 56 tracts of trust land, covering approximately 34,524 acres. Appellant's grazing leases on these tracts expired on or about October 31, 1980.

In its earlier decision, the Board held that appellant and the Bureau of Indian Affairs (BIA) had not entered into a legally binding oral contract to renew the leases; BIA was not estopped from refusing to renew the leases; and BIA erred in advertising certain of the tracts and issuing new leases during the time appellant's appeal was pending. The Board further found that it did not have a sufficient factual record to determine on which leases appellant had filed timely applications for renewal, and whether BIA had properly accounted for the disposition of \$28,056.78 which appellant had deposited with BIA. ^{1/} Accordingly, these factual questions were referred for an evidentiary hearing and recommended decision.

The matter was assigned to Judge Rampton, who held a hearing on November 3, 1988, after attempts to settle the case and a motion for summary disposition failed. After the filing of briefs by the parties, Judge Rampton issued a recommended decision on May 12, 1989.

As provided in 43 CFR 4.339, ^{2/} the parties had 30 days from their receipt of Judge Rampton's recommended decision in which to file exceptions or other comments with the Board. Pursuant to an extension of time granted on June 16, 1989, the Board received appellant's exceptions on June 26, 1989. No other party filed exceptions or other comments with the Board.

Findings of the Recommended Decision

[1] Judge Rampton first found that appellant was no longer seeking reinstatement of leases on tracts which had been leased to other persons. Accordingly, he made no recommended finding on this issue. The Board agrees that under these circumstances, this question need not be addressed.

^{1/} This deposit has been called an "escrow account." The question was raised at the hearing whether the term "escrow" was properly used in this matter. The Acting Pine Ridge Agency Realty Officer testified that he believed an escrow account was an account established for a specific purpose. He stated that various parties began calling the account an "escrow account," and the term stuck (Tr. 99).

^{2/} The Board's regulations were amended, effective Mar. 13, 1989, by notice published in 54 FR 6483 (Feb. 19, 1989). Section 4.339 was not changed in that rulemaking proceeding.

The Judge further found that the intent of the deposit appellant made with BIA was to provide payment for appellant's continued use of the tracts at issue through the 1981 grazing season. He determined that of the \$28,056.78 which appellant deposited, \$11,765.71 should be paid to the tribe, \$13,126.02 should be paid to the individual interest holders, and \$3,165.05 should be returned to appellant. The Judge specifically noted that the figures stated represented principal only and did not include interest that would be calculated and added before disbursement. These funds were to be distributed in accordance with appellee's exhibit E, which was presented at the November 3, 1988, hearing.

Appellant's Exceptions to the Recommended Decision

In his exceptions to the recommended decision, appellant argues that the entire \$28,056.78 in the BIA account should be returned to him. This argument is based upon appellant's assertions that payment into the account was made under duress, *i.e.*, threats of prosecution by the Justice Department for trespass, and that he understood the account was an escrow account that would be applied only toward the rent payable for the first year of renewed 5-year leases once the amount of the lease rental was finally determined. ^{3/} Thus he argues that when the tracts were leased to other parties, the prime condition of the escrow was violated, and alleges that use of the BIA account to pay for a "one-year lease" for the 1981 grazing season "amounts to criminal embezzlement" (Exceptions at page 4). Appellant contends that the question of lease rental or damages due to the landowners for the 1981 grazing season is a separate question from the use of the BIA escrow account, and must be determined independently from a decision concerning the disposition of that account.

Discussion and Conclusions

The only issue remaining in this appeal is the proper disposition of the \$28,056.78 which appellant paid to BIA. The contending arguments are that the payment was made as an advance on the rental to be due under new 5-year leases, and that the payment was made to compensate landowners for the use of their property during the 1981 growing season.

^{3/} Appellant had previously leased the tracts at issue for \$2 per acre. Before the old leases expired, the tribe set a minimum of \$3 per acre for rental of tribal grazing land. Although the tracts leased by appellant were not all tribal land, the Superintendent of the Pine Ridge Agency, BIA, decided that the tribal determination established the present fair annual rental for grazing lands on Pine Ridge, and therefore declined to approve appellant's renewal applications at the rate of \$2 per acre. Under 25 CFR 162.5(b), BIA may not approve or grant a lease "at less than the present fair annual rental." BIA ultimately decided that it would approve a \$2 per acre rental rate if that rate was accepted in writing by a competent adult owner. If, however, the tribe or a minor or other person who was not competent to sign such an agreement owned an interest in the tract, the rental rate for the entire tract would be \$3 per acre.

[2] The Board finds that the Bill for Collection paid by appellant on September 21, 1981, clearly and unequivocally states that it was for "Payment of Lease fees or rentals on various Allots. from 11/1/80 to 10/31/81." Appellant does not dispute receiving a copy of this bill, nor does he argue that he objected to the description. 4/ As did Judge Rampton, the Board finds no basis for a determination that the payment was made merely as an advance on new 5-year leases, should such leases ever be approved, or was to be returned to appellant, without compensation to the landowners, if new leases were not approved.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the May 12, 1989, recommended decision of Administrative Law Judge John R. Rampton Jr., is adopted. In accordance with that decision, the Bureau of Indian Affairs is instructed to make disbursements from the amount paid by appellant on September 21, 1981, in accordance with appellee's exhibit E as presented at the November 3, 1988, hearing.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge

4/ As the Board found in its earlier decision in this case, BIA determined in early 1982 that, because of the passage of time during lease negotiations with appellant, any new leases awarded to him would not be retroactive to 1980, but would begin on Nov. 1, 1981. Appellant was informed of this decision by letter dated Apr. 21, 1982.