



INTERIOR BOARD OF INDIAN APPEALS

Donovan Archambault v. Billings Area Director, Bureau of Indian Affairs

26 IBIA 112 (07/08/1994)



United States Department of the Interior

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

DONOVAN ARCHAMBAULT, : Order Affirming Decision
Appellant :
 :
v. :
 :
BILLINGS AREA DIRECTOR, : Docket No. IBIA 94-14-A
BUREAU OF INDIAN AFFAIRS, :
Appellee : July 8, 1994

This is an appeal from a September 10, 1993, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the advertisement of leases for Allotments 1083, 1084, 1164, and 1166 on the Fort Belknap Reservation.

The four allotments were included in an April 1, 1993, advertisement issued by the Superintendent, Fort Belknap Agency, BIA. Bids were opened on April 21, 1993, at which time it became apparent that appellant was the high bidder for all four. Agency staff concluded, however, that (1) leases could not be awarded to appellant because he was delinquent in his Operation and Maintenance charges, and (2) the four allotments should not have been included in the lease sale because an individual who formerly held a grazing permit for them had requested in February 1993 that his permit be renewed, and Agency staff had agreed to negotiate a renewal. ^{1/}

Appellant was given an opportunity to pay off his delinquency and apparently did so. In order to resolve the conflict concerning the grazing permit, the Superintendent met with appellant and others on June 8, 1993. At that time, it was proposed that three of the four allotments be re-advertised. Appellant agreed to the proposal, under which only three individuals--appellant; the second highest bidder at the April 21, 1993, lease sale; and the former grazing permittee--would be allowed to bid.

By letter of June 22, 1993, the Superintendent informed appellant that all four allotments would be re-advertised. Appellant filed a protest, contending, inter alia, that he had agreed to the re-advertisement only as it concerned three of the allotments. The Superintendent rejected appellant's protest on July 8, 1993. Appellant appealed to the Area Director.

^{1/} Although not entirely clear, it appears that the contemplated negotiation was to be between the permittee and BIA, rather than between the permittee and the landowners.

On September 10, 1993, the Area Director issued the decision on appeal here. Citing 25 CFR 162.2 (a),^{2/} he held that the Agency had erred in failing to obtain the consent of the landowners prior to advertising the allotments for lease. He continued:

We instruct the agency to notify the landowners immediately, giving them the opportunity to agree to a short term haying permit on [the allotments], with an option to choose a permittee of their choice. Due to the fact that the hay needs to be cut, the landowners would be assured income from their property.

The agency is instructed to issue 90-day notices to all landowners with undivided interests, obtain [a] power of attorney from the single owner of Allotment No. 1166, and concurrence from the Fort Belknap Tribes to proceed with advertising those allotments [in which] they own an undivided interest, in the fall advertisement.

(Area Director's Sept. 10, 1993, Decision at 3).

On appeal to the Board, appellant contends that the Agency made several errors in its handling of this matter. The Board agrees, as did the Area Director. Even the Superintendent, in transmitting the administrative record to the Area Director, conceded: "It is obvious that personnel at this agency have made numerous errors in the way in which these actions have been handled" (Superintendent's Aug. 16, 1993, Memorandum at 2). The Superintendent acknowledged, *inter alia*, that no attempt to obtain the consent of the landowners had been made prior to advertising the allotments for lease.

Appellant apparently believes that, because of, or in spite of, BIA's errors, he should be awarded leases of the four allotments based on his bids in the April 1993 lease sale. The Board must reject any such contention. Appellant had no right to be awarded leases of these allotments. Cf., e.g., Blackhawk v. Billings Area Director, 24 IBIA 275 (1993) (BIA's decision to approve a lease is discretionary). In this case, BIA would only have compounded its original error had it proceeded to award leases to appellant based on the April 1993 lease sale.

The Board finds that the Area Director was correct in remanding the matter to the Superintendent for correction of the original error.

^{2/} 25 CFR 162.2(a) provides:

"The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the undetermined heirs of a decedent's estate; (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to execute leases on their behalf."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's September 10, 1993, decision is affirmed. 3/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

3/ Appellant's request for oral argument is denied.