



INTERIOR BOARD OF INDIAN APPEALS

Uinta Oil & Gas, Inc. v. Acting Phoenix Area Director, Bureau of Indian Affairs

27 IBIA 3 (11/04/1994)



United States Department of the Interior

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

UINTA OIL & GAS, INC., : Order Dismissing Appeal
Appellant :
 :
v. :
 :
 : Docket No. IBIA 94-173-A
ACTING PHOENIX AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : November 4, 1994

This is an appeal from a July 18, 1994, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs, holding that Tribal Oil and Gas Lease 14-20-H62-4532 on the Uintah and Ouray Reservation had terminated because of failure to produce in paying quantities beyond the primary term.

The Area Director's decision was addressed to Transfuel Resources Company, Inc. Transfuel did not appeal the decision. Appellant filed a notice of appeal, stating that it had purchased all of Transfuel's interest in the lease. Because the Area Director's decision did not show appellant as an interested party, the Board requested the Area Director to furnish the Board with a copy of the lease and all approved assignments of the lease. The Area Director submitted a copy of the lease file. The file showed that the original lessee was TM Acquisition, L.P., and that an assignment to Transfuel was approved on May 4, 1992. The file did not include an assignment to appellant.

In light of this information, the Board ordered appellant to show why its appeal should not be dismissed for lack of standing. The Board furnished appellant with a copy of its decision in HCB Industries, Inc. v. Muskogee Area Director, 18 IBIA 222 (1990), and advised appellant that it should attempt to demonstrate that its standing here is not controlled by that case. 1/

1/ In HCB Industries, a would-be assignee of certain oil and gas leases challenged a BIA decision declining to approve the assignments. The BIA decision had been made following a determination that the leases had expired by their own terms for lack of production. On appeal to the Board, HCB Industries contended that it had been denied due process because it had not been given notice of BIA's determination that the leases had expired. The Board stated:

"Because an assignment of a lease of trust or restricted land is not effective until it has been approved, [HCB Industries] acquired no interest in the leases and was not a party to them. Accordingly, [HCB Industries] was not a person to whom BIA was required to give notice of actions affecting lease management and lacks standing to object to any such actions." 18 IBIA at 225.

Appellant's response was received on October 28, 1994. Appellant contends that this case differs from HCBI Industries in that, in this case, the lease was cancelled, whereas in HCBI Industries, the leases at issue were found to have expired. Further, appellant contends, the lease in this case is still in effect because, inter alia, the Area Director's decision is not effective while an appeal is pending.

As appellant contends, the Area Director's decision describes the action taken as a cancellation. It is clear from the context, however, that the determination the Area Director actually made was that the lease had expired by its own terms because of lack of production. 2/ In any event, with respect to the issue of appellant's standing, it does not matter whether the lease was cancelled or whether it was determined to have expired by its own terms. Appellant has no greater standing to challenge a cancellation of the lease than it has to challenge a determination that the lease has expired. Accordingly, appellant's contention that the lease was cancelled is irrelevant to the matter at issue here.

Appellant's contention that the lease is still in effect is equally irrelevant. Appellant's ultimate aim in making this argument is, evidently, to secure approval of an assignment of the lease at some time in the future. 3/ Unfortunately for appellant, however, the question of whether the lease is or is not still in effect has no bearing on appellant's standing to bring this appeal.

In order to show standing under HCBI Industries, appellant was required to show that it had an approved assignment and thus had a valid interest in the lease. Appellant has made no such showing.

2/ The Area Director's decision at issue in HCBI Industries also used the term "cancellation" incorrectly. The Board found in that case that the error was harmless. 18 IBIA at 224 n.2. The Board finds the error harmless here as well.

The Board has stated on a number of occasions that no cancellation occurs when a lease expires by its own terms. E.g., Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, 21 IBIA 88, 98 I.D. 419 (1991), aff'd Benson-Montin-Greer Drilling Corp. v. Lujan, No. CIV-92-210 SC-LFG (D.N.M. Jan. 13, 1993), and cases cited therein.

3/ In the course of making this argument, appellant concedes that it does not have an approved assignment. It also submits documents demonstrating this lack. In particular, appellant submits an Oct. 18, 1994, letter from the Superintendent, Uintah and Ouray Agency, which explicitly declines to approve an assignment to appellant.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed for lack of standing. 4/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

4/ Appellant requests the Board to make a number of determinations concerning the ownership of certain equipment. The Area Director's July 18, 1994, decision did not address this matter. Therefore, the Board could not have addressed it even if it had reached the merits of this appeal. Given the instant disposition, the Board clearly cannot address the matter.

The Superintendent's Oct. 18, 1994, letter addressed the ownership of equipment. In order to secure Board review of that letter, appellant must first appeal it to the Area Director. See 25 CFR 2.4(a); 43 CFR 4.331(a).