



INTERIOR BOARD OF INDIAN APPEALS

Cecil Cheeka, et al. v. Portland Area Director, Bureau of Indian Affairs

31 IBIA 285 (11/25/1997)

Judicial review of these cases:

Oral ruling for government, *Miller v. Bureau of Indian Affairs*, Case No. C98-330Z
(W.D. Wash. Mar. 24, 1999)

Related Board cases:

23 IBIA 114

28 IBIA 72

Reconsideration denied, 34 IBIA 16

31 IBIA 7

31 IBIA 273

31 IBIA 276

31 IBIA 279

31 IBIA 282

31 IBIA 287

31 IBIA 295

31 IBIA 296

34 IBIA 79



United States Department of the Interior

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

CECIL CHEEKA ET AL.,
Appellants

v.

PORTLAND AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
: in Part
:
:
: Docket No. IBIA 97-39-A
:
:
: November 25, 1997

Appellants Cecil Cheeka, Lucetta Cheeka Lister, Freda A. Abrego, Vernon Ambrose Joe, Donald W. Damien, Pauline Dan, Delores J.D. Harry, WaWalton/ Robert Joe, Sr., Marie L. Ballew, Darlene Sam, Ethel M. Barber, Herb Bill, Jr., Milton W. Bill, Leonard Boome, and Norma Joe Johnston sought review of an August 26, 1996, decision issued by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), adjusting rental rates for residential/recreational leases in the Pull and Be Damned area of the Swinomish Indian Reservation. Appellants are the owners of the leased lands.

Appellants' Notice of Appeal states in its entirety:

We, the landowners of certain properties subject to leases along Pull and Be Damned Road on the Swinomish Reservation, file this Notice of Appeal of that August 26, 1996, decision of the Portland Area Director which reduced the rentals on 19 of our leases. A copy of that decision is attached.

We intend on filing our Statement of Reasons within 30 days.

Despite their assertion that they intended to file a statement of reasons, Appellants did not do so.

Appellants' Notice of Appeal shows that they are appealing that part of the Area Director's August 26, 1996, decision which reduced the adjusted rental rates for these leases. The reduction resulted from the Area Director's determination that the rental rates should be based on 6 percent of the fair market value of the leased properties, rather than the percentages (8 and 8.5) which the Superintendent, Puget Sound Agency, BIA, had used.

Appellants have not made any argument in support of their appeal. The Board has consistently held that an appellant bears the burden of proving the error in the decision being appealed. An appellant who fails to make any allegation about how an Area Director's decision is in error has not carried this burden of proof. See, e.g., L.W. Yarberry Estate v. Acting Muskogee Area Director, 29 IBIA 81 (1996), and cases cited therein. Appellants here have failed to carry their burden of proving error in that part of the Area Director's decision which reduced the percentage used in determining fair annual rental.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, that part of the Portland Area Director's August 26, 1996, decision to base the rental rate on 6 percent of the fair market value of the leased properties, rather than on 8 and 8.5 percent, is affirmed. 1/

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge

1/ See Elliott v. Portland Area Director, 31 IBIA 287 (1997), for a discussion of the remainder of the Area Director's Aug. 26, 1996, decision.