



INTERIOR BOARD OF INDIAN APPEALS

W.H. McCullough v. Acting Portland Area Director, Bureau of Indian Affairs

32 IBIA 262 (06/29/1998)



# United States Department of the Interior

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

W.H. McCULLOUGH,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	Docket No. IBIA 98-85-A
	:	
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 29, 1998

Appellant W.H. McCullough sought review of a March 12, 1998, decision issued by the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), affirming a December 24, 1997, decision of the Acting Superintendent, Puget Sound Agency, BIA (Superintendent). The Superintendent's decision cancelled Appellant's Lease No. 7781, Ray Paul Lot 14, on the Swinomish Indian Reservation, for non-payment of rent and for not obtaining an Assignment of Savings in the amount of \$5,040.

The Area Director found that the Superintendent notified Appellant of a rental rate adjustment for his lease by decision dated July 7, 1997, and that Appellant was notified in that decision of his right to appeal the rental rate adjustment to the Area Director. The Area Director stated at page 2 of his March 12, 1998, decision letter:

Your attorney \* \* \* allegedly filed a Notice of Appeal on July 28, 1997, with both the Puget Sound Agency and this office. However, neither of us ever received this letter and we were not informed about it until another tenant \* \* \* came to the Agency on August 29, 1997, with a copy of the appeal letter. We provided [your attorney] with ten days to show that his notice of appeal was timely filed. He did not respond and so on September 30, 1997, we dismissed the appeal \* \* \*. The effect of this decision was to affirm the rental adjustments which were made by the Superintendent. At that point you became obligated to pay the adjusted rental amount.

The Area Director found that the only issues on appeal were whether or not the rent had been paid and whether an Assignment of Savings in the amount of \$5,040 had been obtained and provided to the Superintendent. He found that neither action had been taken, and therefore affirmed the Superintendent's cancellation of Appellant's lease.

Appellant appealed to the Board. The Board issued an order on April 8, 1998, in which it stated:

In his Notice of Appeal, Appellant raises only issues related to the rental rate adjustment. Appellant is hereby

ordered to show cause why the Area Director's decision should not be summarily affirmed. In order to make this showing, Appellant must show that he timely appealed the Superintendent's July 7, 1997, decision adjusting his rental rate and that he timely appealed the Area Director's September 30, 1997, dismissal of his appeal. See, e.g., Miles v. Portland Area Director, 31 IBIA 279 (1997); Kerwin v. Portland Area Director, 31 IBIA 276 (1997) \* \* \*. Failure to respond to this order \* \* \* will result in the dismissal of this appeal for failure to prosecute.

Apr. 8, 1998, Order at 2. Appellant's response was due on or before May 15, 1998.

No response has been received.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Portland Area Director's March 12, 1998, decision is docketed but dismissed for failure to prosecute.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge