



INTERIOR BOARD OF INDIAN APPEALS

Larry L. Horob, et al. v. Aberdeen Area Director, Bureau of Indian Affairs

34 IBIA 95 (09/02/1999)



United States Department of the Interior

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

LARRY L. HOROB, JAMES L. HOROB, : Order Dismissing Appeal
and TODD K. HOROB, :
Appellants :
v. :
ABERDEEN AREA DIRECTOR, : Docket No. IBIA 98-101-A
BUREAU OF INDIAN AFFAIRS, :
Appellee : September 2, 1999

Appellants Larry L. Horob, James L. Horob, and Todd K. Horob seek review of an April 21, 1998, letter from the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to sign affidavits attesting that forced fee patent claims have not been identified against certain lands in Williams County, North Dakota. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of authority to grant the relief requested.

Appellants own certain real property in Williams County, North Dakota, described as the E $\frac{1}{2}$ NE $\frac{1}{4}$, sec. 10, T. 155 N., R. 104 W., 5th P.M., lots 1 and 2. This real property was at one time allotted as Tract 1850 to Elise Lavia, Turtle Mountain A-1850. Appellants sought to purchase other real property in Williams County, North Dakota, described as the NW $\frac{1}{4}$, sec. 13, T. 156 N., R. 104 W., 5th P.M.; and the E $\frac{1}{2}$ NE $\frac{1}{4}$, sec. 22, T. 156 N., R. 104 W., 5th P.M., lots 1 and 2. The property in sec. 13 was at one time allotted as Tract 2463 to Baptiste A. Premeau, Turtle Mountain A-2463; while the property in sec. 22 was at one time allotted as Tract 1135 to Rachel Morin, Turtle Mountain A-1135.

On July 29, 1997, an attorney for Appellants' mortgage company concluded that title to these tracts was uncertain because the patents were granted to Indian individuals and the validity of the patents could not be assumed. The attorney based this conclusion on North Dakota Title Standard § 1-01.1, which, according to the copy provided by Appellants, states: "A title examiner may not assume the validity of a fee patent issued pursuant to the General Allotment Act of February 8, 1887 [25 U.S.C. § 348]." Based on the attorney's report, Appellants' mortgage company would only grant them a "conditional" mortgage, and released only partial funds, pending Appellants' providing satisfactory proof of the validity of the patents.

In August 1997, Appellants contacted the Aberdeen Area Office, BIA, requesting written verification that the patents were not forced fee patents. By letter dated August 15, 1997, the Acting Aberdeen Realty Officer notified Appellants that BIA did “not have any [28 U.S.C. §] 2415 or Forced Fee Patent claims against the land descriptions.” Following additional communications on this issue, on February 26, 1998, Appellants’ attorney wrote the Realty Officer and provided an affidavit for his signature.

On April 21, 1998, the Area Director issued the letter which is the subject of this appeal. She stated:

We received the affidavits prepared by you, requesting we sign the affidavits. The affidavits would attest that Forced Fee Patent Claims have not been identified against the lands described in our letter of August 15, 1997. I am returning the affidavits in their entirety unsigned.

I will not attest that Forced Fee Patent claims have not been identified within the described lands because of the liability it could place on the United States.

According to our records, the Forced Fee Patent claims have not been identified against the lands described in our letter of August 15, 1997.

Appellants appealed to the Board. At page 3 of their Notice of Appeal, Appellants state that they

request either (1) an Order or other method of certification from the Area Office providing that the patents in question were properly applied for and/or issued and are not forced fee patents, or (2) an Order or other form of certification from the Area Office or Secretary of [the] Interior that a review of the policies and procedures of the agency or agencies which issued the patents in question at the time they were issued demonstrates that the patents were properly issued and are not forced fee patents.

Appellants appear to continue to seek a sworn certification. However, they have not cited any authority under which they are entitled to a sworn certification, or under which they are entitled to dictate the form in which the Federal government responds to their information request.

The Board has no authority to order a government official to make a sworn statement. Under 43 C.F.R. § 2.82, the authority to authorize a Departmental employee to testify under oath is committed to the head of a bureau, or his designee, or to the Secretary of the Interior,

or his designee. Nothing in 43 C.F.R. Part 2 delegates authority to the Board to review a decision not to provide a sworn statement or not to allow a Departmental employee to provide a sworn statement. Furthermore, nothing in the Board's general delegation of authority in 43 C.F.R. § 4.1(b)(2) grants it jurisdiction to review such decisions. Thus, the Board lacks authority to grant the relief Appellants seek.

For purposes of this discussion, the Board will also assume that Appellants would be satisfied with an unsworn certification. The Area Director states that BIA provided Appellants with "the best information available and all that the BIA currently has in its possession or at its disposal." Answer Brief at 2. However, Appellants' statement of the relief sought shows that they are seeking more than data. Instead, they seek a statement from the Department as to the legal significance of that data in regard to title to the lands. The Area Director responds: "The BIA does not have the authority to adjudicate the issue of existence of forced fee patents." Id. Although Appellants filed a reply brief, they did not attempt to show the existence of authority in the Department to adjudicate the status of title to these lands.

The Board has held in several contexts that it lacks authority to adjudicate title to land. See, e.g., Estate of Walter Sydney Howard, 32 IBIA 51, 54 (1998), and cases cited therein. Because the Board will not order the Area Director to certify, or otherwise make a statement about, an issue that it lacks authority to adjudicate, and because it lacks authority to adjudicate title to land, the Board again cannot grant the relief Appellants request.

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 Aberdeen Area Director's April 21, 1998, decision is dismissed for lack of authority to grant the relief requested.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge