



INTERIOR BOARD OF INDIAN APPEALS

Thomas Dailey v. Billings Area Director, Bureau of Indian Affairs

34 IBIA 128 (09/29/1999)

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United States Department of the Interior

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

THOMAS DAILEY,
Appellant

v.

BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Approving Partitionment Agreement
: and Dismissing Appeal
:
:
: Docket No. IBIA 97-142-A
:
:
: September 29, 1999

Appellant Thomas Dailey sought review of a May 22, 1997, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the leasing of Allotments 1436, 1437, 1515, 1531, 1532, and 3028 on the Crow Reservation. The allotments are jointly owned by Appellant and his siblings, Rita Campbell, Twila Meacham, Leonard Dailey, Jr., and Clyde W. Dailey. The appeal has been stayed since August 19, 1997, while Appellant and his siblings investigated the possibility of a partitionment of the allotments.

By memorandum dated February 25, 1999, the Area Director notified the Board that the parties had signed an agreement partitioning their lands. Because the lands were not susceptible to an even division, Appellant was to receive some money from each of his siblings in addition to sole title to some of the lands. On April 12, 1999, the Superintendent, Crow Agency, BIA, informed the Area Director that the deeds effectuating the partitionment had been signed and were approved on March 31, 1999, and that the funds to be paid to Appellant should be deposited into his Individual Indian Money account by April 14, 1999. The Area Director forwarded the Superintendent's memorandum to the Board as part of a submission which the Board received on April 23, 1999.

By order dated April 26, 1999, the Board gave the parties an opportunity to show cause why this appeal should not be dismissed based upon the partitionment. Appellant responded that he had not yet received the agreed-upon funds. No other responses were received.

On July 13, 1999, the Board gave the parties an additional opportunity to make any statements about the partitionment. The Area Director responded that Appellant had now received the full amounts due to him from his siblings. Appellant acknowledged that he had received payment, but stated that he believed two issues remained unresolved. No other responses were received.

By order dated August 25, 1999, the Board requested a copy of the signed agreement to partition the lands and gave the parties an opportunity to respond to Appellant's filing. The Area Director submitted the partitionment agreement. No other responses were received.

Appellant indicates that he believes there are two unresolved issues. Appellant's statement could be interpreted as an objection to the Superintendent's March 31, 1999, approval of the deeds effectuating the partitioning of these lands. Under BIA's appeal regulations in 25 C.F.R. Part 2, any objection to a Superintendent's decision must first be raised to the Area Director. However, because this partitionment arose in the context of a case pending before the Board, and because the Area Director has not expressed any reservations about the partitionment, the Board addresses Appellant's issues.

Appellant's first issue is that he did not receive interest. He contends:

The [BIA] paid my siblings knowing this agreement was imminent. After the agreement was made final, I had to wait in order for the BIA to collect the money from my siblings and then pay me. The BIA has better resources to absorb interest than I do. I would like to be paid interest from the closing of the partitionment.

The Board understands Appellant's contention to be that BIA paid lease income to Appellant's siblings, which, in Appellant's opinion, delayed his receipt of the funds due him under the agreement. The Board further understands Appellant's contention to be that he should be paid interest by BIA from the date the partitionment agreement was signed to the date he actually received payment.

Appellant seeks interest from BIA. Although the Board is unclear as to the legal theory under which Appellant makes this claim, in essence he is seeking money damages from BIA. The Board has consistently held that it is not a court of general jurisdiction and has only that authority which has been delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against BIA. See, e.g., Kosechata v. Acting Anadarko Area Director, 33 IBIA 198, 201 (1999); Toyon Wintu Center, Inc. v. Sacramento Area Director, 29 IBIA 290, 295 (1996), and cases cited therein. If Appellant believes he should receive interest from BIA, he must pursue this claim in an appropriate forum.

Appellant's second issue is that the partitionment was based on appraised value, with no mention of income. He asserts that his income from the lands partitioned to him declined from what he was accustomed to receiving prior to the partitionment. Appellant does not challenge the appraisal which formed the basis for the partitionment, but instead asks whether BIA owed him a trust responsibility relative to income from the partitioned lands.

BIA's trust responsibility in a partitionment case is to ensure that the land is equitably divided among the landowners. In considering a proposed partitionment, BIA owes a trust responsibility to all of the landowners. Davis v. Acting Aberdeen Area Director, 27 IBIA 281, 286 (1995). An appraisal, which takes into account differences in the type and value of specific lands within the tract(s), is the fairest method of determining that the proposed division is equitable. Partitionment decisions are routinely based on appraisals of the lands to be partitioned. Gray v. Acting Aberdeen Area Director, 33 IBIA 26 (1998); Soper v. Acting Anadarko Area Director, 29 IBIA 182 (1996); Davis, supra. The Board finds that the Area Director did not violate any trust responsibility owed to Appellant, or to his siblings, by approving this partitionment on the basis of an appraisal.

The Board concludes that the issues raised by Appellant are not obstacles to the approval of this partitionment agreement.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the partitionment agreement reached among the parties is approved and this appeal is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge