



INTERIOR BOARD OF INDIAN APPEALS

William Hunter v. Navajo Regional Director, Bureau of Indian Affairs

37 IBIA 274 (06/11/2002)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

WILLIAM HUNTER, Appellant	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 01-182-A
	:	
NAVAJO REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	June 11, 2002

This is an appeal from a June 22, 2001, letter notifying Appellant William Hunter of the approval of a homesite lease for Mr. and Mrs. Theodore Nez for a one-acre tract of Navajo Nation land within the NE 1/4, sec. 22, T. 5 N., R. 10 W., Apache County, Arizona. The letter was signed by the Navajo Regional Director, Bureau of Indian Affairs (Regional Director; BIA), and informed Appellant that the lease had been approved on June 13, 2001. For the reasons discussed below, the Board affirms the Regional Director's decision to approve the lease.

The matter at issue here is part of an ongoing dispute between Appellant and Theodore Nez. An earlier appeal before the Board concerned an Agricultural Land Use Permit (ALUP) for a 17.3-acre tract of land which, as noted below, includes the one-acre tract involved in this appeal. The Board dismissed the earlier appeal in order to allow the disputants to resolve the matter in the appropriate tribal forums. Hunter v. Acting Navajo Area Director, 34 IBIA 13 (1999).

Sometime in 1998, Nez filed a homesite lease application with the Chinle Navajo Land Office. The application was evidently put on hold during the tribal proceedings concerning the ALUP. On March 12, 1999, the Resources Committee of the Navajo Nation Council, before which the ALUP dispute was pending, decided in favor of Nez, although it did not issue a written decision at the time. Nez was informed of the decision in an April 8, 1999, letter from the Chairperson of the Navajo Nation Council, who also stated that a formal Committee resolution would be forthcoming.

In a June 4, 1999, letter signed by both the Executive Director of the Navajo Division of Natural Resources and the Director of the Navajo Land Department, Nez was advised that the Resources Committee's decision authorized a one-acre homesite lease within the 17.3-acre

ALUP to be issued to Nez. The letter informed Nez that he was authorized to move his trailer home onto the proposed lease site pending final issuance of a lease and ALUP. In a memorandum also issued on April 4, 1999, the Director of the Navajo Land Department directed that the homesite lease be processed as soon as possible. ^{1/}

On June 10, 1999, the Resources Committee enacted Resolution RCJN-92-99, titled "Issuing a Decision to Settle a Land Use Permit Dispute Between William Hunter and Theodore Nez of Chinle Chapter, Chinle, Arizona." The resolution states in relevant part:

The Resources Committee of the Navajo Nation Council hereby recommends to the Secretary of the Interior, or designee, to cancel Mr. William Hunter's 17.3 acre Land Use Permit and reissue a new permit to Mr. Theodore Nez for 17.3 acres for the same area based on aboriginal, ancestral and traditional interest, and to approve a homesite lease for Mr. Theodore Nez.

On July 16, 1999, Appellant appealed the Resources Committee's decision to the Navajo Nation District Court in Window Rock. The district court dismissed the appeal for lack of jurisdiction. Appellant appealed to the Navajo Nation Supreme Court. In a July 5, 2000, order, the Supreme Court held that the district court correctly dismissed the appeal because appeals from decisions of the Resources Committee must be filed directly with the Supreme Court. The Court then stated:

However, that [i.e., the Court's affirmance of the district court's decision] does not foreclose the Appellant from seeking other relief. The Appellant can demonstrate to the Resources Committee the grave injustice that would result from the denial of his right to take an appeal and ask the Committee to vacate the date listed on its judgment (June 10, 1999) and enter a new date so the Appellant can have the opportunity to appeal to this Court using the new date. * * * This procedure should not be problematic as administrative proceedings are not as stringent as court proceedings.

Hunter v. Nez, No. SC-CV-08-2000 (Nav. Nat. S. Ct. July 5, 2000) at 2.

On July 17, 2000, Appellant, through his attorney, wrote to BIA stating that he was pursuing the matter before the Resources Committee. He requested that BIA hold the ALUP and homesite lease in abeyance pending action by the Resources Committee. On August 7, 2000, Nez, through his attorney, asked the Supreme Court to reconsider its July 5, 2000, decision and to delete the paragraph quoted above.

^{1/} The record copy of the homesite lease shows that it was signed by the Director of the Navajo Land Department on behalf of the Nation on Oct. 4, 1999.

By letter of September 8, 2000, the Regional Director advised Nez that she considered the dispute between Appellant and Nez to be still pending before the Nation and so would not act on Nez's homesite lease application until formally advised by the Nation that the dispute had been resolved. She also noted that the Nation intended to establish a task group to review the dispute.

On May 31, 2001, Nez visited the Regional Office, requesting action on his homesite lease. BIA contacted Appellant's attorney, who stated that she was waiting to hear from the Nation. BIA then contacted the Nation. In a June 4, 2001, memorandum, a BIA staff member reported what he had learned: (1) Appellant had not requested a new decision date from the Resources Committee, as the Supreme Court had recommended in its July 5, 2000, decision; (2) the Supreme Court had not acted on Nez's request for reconsideration; (3) Nez had begun construction of a house on the one-acre tract without opposition from the Nation; (4) Appellant had sought injunctions against the construction in the Chinle and Window Rock District Courts but had been denied relief; (5) the task group established by the Nation had made no progress; and (6) the task group had contacted Appellant's attorney in November 2000, and the attorney had promised to furnish materials to the group but had not done so.

The June 4, 2001, memorandum also reported that the tribal attorney assigned to the task group stated that he had no objection to approval of the homesite lease because the issue had not been pursued any further within the Nation.

As noted above, the Regional Director approved the lease on June 13, 2001, and informed Appellant of the approval on June 22, 2001.

On appeal to the Board, Appellant contends that the Regional Director was precluded from approving Nez's homesite lease because she stated in her September 8, 2000, letter to Nez that the lease would not be approved until BIA was formally advised by the Nation that the dispute had been resolved. Appellant also contends that, in approving the lease, the Regional Director was attempting to "surpass the review process of the Navajo Nation." Appellant's Opening Brief at 6.

In her answer brief, the Regional Director argues that the Regional Director's September 8, 2000, commitment to hold the lease in abeyance was based upon the representation made by Appellant's attorney that Appellant was pursuing the matter before the Resources Committee. She contends that she waited a reasonable amount of time for Appellant to pursue his tribal remedies and, upon learning that he had not done so, acted reasonably in approving the lease.

In apparent response to the Regional Director's argument that Appellant did not pursue his tribal remedies, Appellant states in his reply brief: "The Appellant sought reconsideration by the Navajo Nation to the approval of the homesite lease citing improprieties of the policy

and procedure, and given the guidance by the Supreme Court of its dismissal of the appeal upholding the District Court's dismissal of the appeal for lack of jurisdiction." Appellant's Reply Brief at 1. Appellant does not support this vague statement with any evidence that he pursued the matter before either the Resources Committee or the task group.

Appellant made no allegation in his opening brief that he had pursued his remedies in any tribal forum. However, he attached to his brief an undated, unsigned document titled "PROPOSED RESOLUTION OF THE RESOURCES COMMITTEE OF THE NAVAJO NATION COUNCIL RESCINDING RESOLUTION RCJN 92-99 OF THE RESOURCES COMMITTEE OF THE NAVAJO NATION COUNCIL." The document does not show when or by whom it was prepared. Nor does it show that it was ever presented to the Resources Committee. Appellant did not mention the document in his opening brief.

In her answer brief, the Regional Director noted, among other things, the lack of any evidence that the document had been submitted to the Resources Committee for consideration. She continued: "In fact, it is impossible to determine whether this document was created prior to this Appeal or after this Appeal was filed." Regional Director's Answer Brief at 4.

Appellant's only response to this argument is that he "takes exception to the [Regional Director's] accusation that a proposed resolution of the Resources Committee * * * is fabricated or presented after the fact." Appellant's Reply Brief at 2. Despite the Regional Director's explicit challenge to the document, Appellant continues to fail to explain it. Under these circumstances, the Board cannot consider the document evidence of any action taken by Appellant to pursue his remedies in any tribal forum.

The Board finds that Appellant has failed to show that he pursued this matter in any tribal forum.

From all appearances, Appellant has, by his own inaction, essentially foreclosed any formal tribal action in this dispute. Under these circumstances, it is disingenuous for him to contend that BIA must await formal action by the Nation before approving the homesite lease.

It is clear from the Regional Director's September 8, 2000, letter that she expected Appellant to pursue his tribal remedies and that she therefore expected the Nation to issue a further decision. Given the representation made by Appellant's attorney in July 2000, this was a reasonable expectation at the time. However, when BIA learned after several months that Appellant had not pursued his tribal remedies, it reasonably concluded, on the basis of that and other information it obtained from the Nation, that a further decision by the Nation was unlikely. Having obtained the relevant information from the Nation, as well as the informal concurrence of the tribal attorney assigned to the matter, the Regional Director acted reasonably in approving the lease in accordance with the Nation's original recommendation. Appellant has failed to show otherwise.

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 Regional Director's approval of a homesite lease for Mr. and Mrs. Theodore Nez is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge