



INTERIOR BOARD OF INDIAN APPEALS

Rose Yellow Eagle Wassana and John Leonard Yellow Eagle, Jr.
v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

38 IBIA 160 (10/25/2002)



United States Department of the Interior

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

ROSE YELLOW EAGLE WASSANA and	:	Order Affirming Decision
JOHN LEONARD YELLOW EAGLE, JR.,	:	
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 02-21-A
ACTING SOUTHERN PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	October 25, 2002

Appellants Rose Yellow Eagle Wassana and John Leonard Yellow Eagle, Jr., seek review of an October 24, 2001, decision issued by the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), declining to void a May 3, 1976, deed to restricted Indian land. For the reasons discussed below, the Board of Indian Appeals (Board), affirms that decision.

On June 26, 1973, Leonard Yellow Eagle and his wife Lena Yellow Eagle entered into a lease with the Housing Authority of the Cheyenne-Arapaho Tribes of Oklahoma (Housing Authority). The lease covered a 1.8-acre tract of Allotment 963. The tract was described as:

A tract or parcel of land lying in the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section 18, Township 13 North, Range 14 W.I.M., Custer County, Oklahoma, described as follows: Beginning at the Northeast Corner of said Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of said Section 18; thence West for a distance of 747.6 feet; thence South for a distance of 344.0 feet; thence East for a distance of 160.0 feet; thence North for a distance of 304.0 feet; thence East for a distance of 587.6 feet; thence North for a distance of 40.0 feet to the point of beginning, containing 1.80 acres, more or less.

The purpose of the lease was for a homesite under the Mutual-Help Housing program of the Department of Housing and Urban Development (HUD). The term of the lease was 25 years with an automatic renewal for an additional 25 years. The lease was approved by the Concho Agency Superintendent, BIA (Superintendent), on July 2, 1973. It is due to expire in 2023.

On May 3, 1976, Leonard and Lena executed a Deed to Restricted Indian Land Special Form in which they conveyed to their daughter Minnie Yellow Eagle the same tract of land as was described in the Housing Authority lease. The Acting Anadarko Area Director, now Southern Plains Regional Director, approved the deed on June 23, 1976.

According to the Regional Director's decision, Leonard died in October 1976, and Lena died in December 1986.

Sometime in or around late 1997, questions apparently arose concerning the use of tracts within Allotment 963, and specifically the location of a house that had been occupied by Rufus Yellow Eagle, and the ownership of the house and 1.8 acres which Minnie was occupying. ^{1/} At that time, Allotment 963 had apparently been divided into at least three tracts: Allotment 963-A, which contained 35.2 acres, more or less, had been included in Leonard's estate and inherited by Lena and their children; Allotment 963-C contained 3 acres, more or less, and had been deeded to Rufus by Leonard and Lena on October 28, 1969; and Allotment 963-D contained 1.8 acres, more or less, and, as mentioned above, had been deeded to Minnie by Leonard and Lena on May 3, 1976. Nothing in the materials presently before the Board show that any action was taken at that time concerning the 1.8-acre tract.

By letter dated July 14, 1999, Appellants, through counsel, wrote to the Superintendent concerning Allotment 963-D. They asserted that Allotment 963-D contained Leonard and Lena's personal residence and that Leonard and Lena had not intended to convey their residence to Minnie. They stated their belief that the May 3, 1976, deed contained an incorrect description of the tract which Leonard and Lena had intended to convey to Minnie, and argued that their position was supported by the former Executive Director of the Housing Authority. Appellants stated: "This letter is written to request that your office administratively correct the deed of May 3, 1976 to reflect the appropriate legal description therein contained and thereafter cause a deed to be issued to Minnie Yellow Eagle reflecting the true description of the tract that her father and mother intended to deed to her on May 3, 1976." July 14, 1999, Letter at 2.

The Superintendent allowed Minnie an opportunity to respond to Appellants' assertions. Minnie informed BIA that she believed the deed was correct. Additional correspondence ensued, during which Appellants submitted an April 18, 2000, affidavit from the former Executive Director of the Housing Authority, in which he stated that he was familiar with the transactions between Leonard and Lena and their children, particularly including their transactions with Minnie, and that they had not intended to deed Minnie their own home. He further stated that the tract could not be conveyed as long as it was under lease

^{1/} From a Nov. 21, 1997, letter written by the Superintendent, it appears that Rufus had died. The questions may, therefore, have arisen in the context of the probate of his estate.

to the Housing Authority and therefore BIA should not have approved the deed. After considering the information presented, on October 16, 2000, the Superintendent wrote to Appellants stating that BIA had “no evidence that would support your request for an administrative decision to invalidate” the 1976 deed.

Appellants continued to request action by the Superintendent. By letter dated April 13, 2001, the Superintendent informed Appellants that she had requested the original allotment file from the Federal Records Center. On May 2, 2001, the Superintendent notified Appellants that the National Archives had researched the original allotment record and was unable to locate any documents that supported Appellants’ assertion that the 1976 deed was incorrect. She also noted that Appellants had not provided any such documentation. She stated that “in view of the absence of hard evidence to support the fact that the deed describes erroneously the parcel conveyed, your request is denied.” Superintendent’s May 2, 2001, Letter at 1. The Superintendent advised Appellants of their right to appeal to the Regional Director.

Appellants appealed and filed Freedom of Information Act requests with the Superintendent. On October 24, 2001, the Regional Director issued the decision presently under review. Finding that there was no evidence to show Leonard and Lena’s true intent, he declined to issue a decision based on hearsay.

Appellants appealed to the Board. Only they have participated in this appeal.

On appeal, Appellants bear the burden of proving error in the Regional Director’s decision. See, e.g., Carrywater v. Rocky Mountain Regional Director, 38 IBIA 116, 118 (2002), and cases cited there.

Appellants appear to argue that the fact that Leonard and Lena remained in their home until their deaths proves that they did not intend to deed that home to Minnie. There are many scenarios under which parents might remain in their home even though they had deeded that home to a child. The fact that Leonard and Lena remained in their home does not carry Appellants’ burden of proving error in the Regional Director’s decision.

Appellants contend that the affidavit from the former Executive Director of the Housing Authority proves that the land description in the deed was erroneous. This affidavit contains the former Executive Director’s statement concerning Leonard and Lena’s intent. It is thus hearsay evidence. Furthermore, this individual makes no claim that he was involved with the preparation of the deed, which was executed three years after the lease. Therefore he has no knowledge of the discussions Leonard and Lena had with the BIA personnel preparing the deed. Under these circumstances, the Board cannot conclude that this affidavit carries Appellants’ burden of proving that the Regional Director’s decision was erroneous.

Appellants assert that no one, including Leonard and Lena, was aware of the 1976 deed. This assertion is obviously incorrect. Leonard and Lena were aware of the deed, having signed

it. If Appellants meant to assert that Leonard and Lena were not aware of the land description in that deed, this is an assertion that cannot be proven at this time because Leonard and Lena are not available to tell us what they knew about the deed. However, the fact that they signed the deed is evidence that they were aware of its contents.

Appellants argue that the conveyance of the land while it was leased to the Housing Authority violated HUD and BIA regulations. They do not, however, cite even one regulation which was allegedly violated. Appellants have failed to show that the deed violated HUD and/or BIA regulations.

Appellants contend that Paragraph 3 of the lease prohibits the termination of the lease without HUD consent; that Paragraph 5 of the lease prohibits subleasing or assigning the lease without Housing Authority approval; and that Paragraph 10 of the lease required Leonard and Lena to guarantee the Housing Authority and its tenants peaceful enjoyment of the leased premises without hindrance, interruption, ejection, or molestation. They do not, however, show that the conveyance of the leased premises caused a termination of the lease; that the conveyance of the leased premises constituted a subleasing or assignment of the lease; or that the Housing Authority or any of its tenants have been denied peaceful enjoyment of the leased premises. Appellants have failed to carry their burden of showing error in the Regional Director's decision with this argument.

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 October 24, 2001, decision of the Regional Director is affirmed. 2/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ Arguments made but not specifically addressed were considered and rejected.