



INTERIOR BOARD OF INDIAN APPEALS

Alexander Ortiz v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

41 IBIA 293 (10/20/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ALEXANDER ORTIZ,
Appellant,

v.

ACTING SOUTHERN PLAINS
REGIONAL DIRECTOR, BUREAU
OF INDIAN AFFAIRS,
Appellee.

: Order Affirming Decision
:
:
:
: Docket No. IBIA 04-35-A
:
:
: October 20, 2005

Alexander Ortiz (Appellant) seeks review of a December 9, 2003, decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), disapproving Residential Lease No. 020169. For the reasons stated below, the Board affirms the Regional Director's decision.

Background

This appeal involves the disapproval of a residential lease between Appellant and the heirs of AH SUN AH PAH or Maria Chicharello, members of the Navajo Tribe. The lease covers a 1.0 acre site in McKinley County, New Mexico, Allotment No. 020169.

The land is owned in undivided ownership by six individuals: Vivian Chicharello, Clifford Chicharello, Lucy (Rosie) Ortiz Chicharello, Mary Ortiz Chicharello, Elouise Chicharello, and Kenneth Chicarello. ^{1/} The proposed lease was signed by two of these individuals, Lucy Ortiz Chicharello and Mary Ortiz Chicarello, who together own 66.67 percent of the undivided interests in the property. The other four owners refused to sign.

^{1/} Mary is identified as Mary Ortiz Chicharello on the BIA title report for the allotment, but she signed the lease as "Mary C. Ortiz" and is identified by Appellant and in a prior appeal as "Mary Ortiz."

By memorandum dated October 23, 2000, the Deputy Commissioner of Indian Affairs delegated authority to the Southern Plains Regional Director to “exercise the authority of the Secretary to approve, modify, or disapprove any and all realty transactions that affect any allotment within the Navajo Region in which the Navajo Regional Director has an ownership interest.” Chicharello v. Southern Plains Regional Director, 39 IBIA 195, 196 (2003). The Navajo Regional Director is an owner of the allotment at issue here and is one of the individuals who refused to sign the lease. Thus, the Eastern Navajo Agency forwarded the matter to the Southern Plains Regional Director for a determination whether to approve the lease. See 25 U.S.C. § 415 (requiring the Secretary’s approval for leases of Indian trust property).

The Regional Director determined that the lease could not be approved because it did not meet the requirements of 25 U.S.C. § 2218(b), which provides that a lease on trust property that is jointly held by more than five but fewer than 11 owners may be approved if the holders of 80 percent of the interests in the trust property agree to the lease. 2/ Here, holders of only 66.67 percent of the interests agreed to the lease. Accordingly, the Regional Director determined not to approve Appellant’s lease.

Appellant filed a timely appeal with the Board. Appellant set forth the reasons for his appeal in his Notice of Appeal. No parties have filed briefs.

Discussion

Appellant argues that the lease should not have been disapproved because he was not seeking approval for a new lease but was renewing an existing lease that had expired. Appellant also states that he has had a residential lease on the allotment since 1969 and that only four owners were listed in that lease, including Mary Ortiz and Lucy Ortiz, who signed the lease at issue in this appeal. 3/

The Board is unclear as to exactly what Appellant’s argument is. The record does not contain a copy of the prior lease allegedly held by Appellant. However, it appears that the typical residential lease used in recent years by the Eastern Navajo Agency provides for a lease

2/ The Regional Director’s decision also noted: “There is no provision in the lease for fair annual rental to be paid to the non-consenting owners. If a fair annual rental appraisal was obtained that would show the annual income due the non-consenting owners, it is not included in the packet submitted by the Eastern Navajo Agency.”

3/ The Board assumes that the individuals identified by Appellant as Mary Ortiz and Lucy Ortiz are the individuals identified in the BIA title report as Mary Ortiz Chicharello and Lucy Ortiz Chicharello.

with a period of 25 years, which renews automatically and without notice for an additional 25 years. Those are the terms of the proposed lease at issue in this appeal, and they were the terms in another one-acre residential lease located on part of the same allotment, which was the subject of a recent appeal to the Board. ^{4/} See Chicharello, 39 IBIA at 195. If Appellant had a valid 1969 lease with such terms, it would presumably still be in effect and the Regional Director's consideration and disapproval of the lease at issue in this appeal would not negate such a prior existing lease. If Appellant has such a lease, then Appellant is not harmed by the Regional Director's decision, and Appellant has no basis to appeal here.

On the other hand, if Appellant had a lease that expired and that lease did not contain an automatic renewal provision, or if Appellant did not have a valid prior lease, then Appellant was required to obtain BIA approval for a new lease and thus was subject to statutory and regulatory requirements in place at the time he sought to obtain the new lease. Appellant's own actions suggest that he understood he needed such a lease, since he signed the proposed new lease. Thus, the Board assumes that Appellant does, in fact, have a personal interest in obtaining approval of the lease disapproved by the Regional Director and thus has a right to appeal to the Board.

Nevertheless, Appellant's appeal fails because the Regional Director correctly applied 25 U.S.C. § 2218(b)(1) and determined that, without agreement from holders of 80 percent of the interests in the allotment, he lacked authority to approve the lease.

It is immaterial whether, as Appellant asserts, only four individuals were identified as owners of the property when he allegedly obtained his prior lease in 1969. The statutory requirement that holders of 80 percent of the property's interests agree to a lease applies with respect to those individuals who owned the property at the time Appellant sought approval for his lease. The statute specifically requires the Regional Director to rely on records of the Department of the Interior that identify the owners of allotted land and their interests on the date on which a lease is submitted to BIA for approval. See 25 C.F.R. § 2218(b)(2)(A). Appellant does not contend that there is any error in these records or that the statutory requirement for 80 percent approval was met. The Regional Director correctly interpreted and applied the law.

^{4/} Allotment No. 020169 consists of 159.75 acres. The lease in the prior appeal has the same number as the lease in this appeal, No. 020169. It appears that the Eastern Navajo Agency uses allotment numbers as lease numbers. The two leases appear to be for separate parcels and involve different lessees.

Conclusion

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 Board affirms the December 9, 2003, decision of the Regional Director.

I concur:

// original signed
Katherine J. Barton
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge