



INTERIOR BOARD OF INDIAN APPEALS

Leota Hardy v. Acting Midwest Regional Director, Bureau of Indian Affairs

42 IBIA 255 (03/22/2006)



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

LEOTA HARDY,	:	Order Dismissing Appeal and
Appellant,	:	Referring Appeal to Regional
	:	Director
v.	:	
	:	
ACTING MIDWEST REGIONAL	:	Docket No. IBIA 06-51-A
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee.	:	March 22, 2006

On March 2, 2006, the Board of Indian Appeals (Board) received a letter from Leota Hardy (Appellant), pro se, apparently seeking to appeal a matter concerning a dispute involving Leech Lake Allotment No. 267 (Allotment 267) and the Minnesota Chippewa Tribal Housing Corporation (MCTHC). The Board docketed the appeal, dismisses it for lack of jurisdiction, and refers it to the Midwest Regional Director (Regional Director) for consideration as an appeal from a February 14, 2006 decision by the Minnesota Agency Superintendent (Superintendent) to approve a mortgage executed by Appellant on August 31, 2000.

Appellant's letter to the Board, which was dated February 27, 2006, did not identify any decision by the Bureau of Indian Affairs (BIA) as the subject of her appeal. Separately, however, Appellant submitted a copy of a March 17, 2005 letter from the Acting Regional Director to Appellant concerning a mortgage foreclosure action by the Leech Lake Tribal Court involving Appellant's home and residential lease on Allotment 267. The Regional Director's March 17, 2005 letter acknowledged receipt of a March 11, 2005 letter from Appellant regarding the matter, and stated that the Regional Director was forwarding the matter to the Superintendent. ^{1/} The Regional Director's response, however, was not a decision letter, but instead simply referred Appellant to the Superintendent as the official with initial responsibility over the matter for BIA.

^{1/} Appellant's March 11, 2005 letter objected to actions by the MCTHC and alleged that BIA had not approved the mortgage against which MCTHC sought foreclosure.

The Board's legal assistant contacted the Minnesota Agency and Midwest Regional offices of BIA to inquire whether the Regional Director had issued a decision regarding this matter. Both offices stated that the Regional Director has not issued a decision regarding this matter.

The Superintendent, however, sent to the Board some documentation related to this dispute. The documents included a February 14, 2006 memorandum from the Superintendent to the Great Plains Land Title and Records Office (LTRO), requesting that Appellant's mortgage be recorded, although no approval documents were attached. On March 20, 2006, the Board received from Appellant a copy of the mortgage at issue in this dispute, and an approval certificate for the mortgage, signed by the Superintendent. The documents indicate that the mortgage with MCTHC was executed by Appellant on August 31, 2000, but was not approved by the Superintendent until February 14, 2006, well after the dispute arose between Appellant and MCTHC. The certificate of approval and mortgage appear to have been recorded by the LTRO on February 17, 2006.

Based on the materials submitted to the Board and information from the Regional Office, it appears that the LTRO may have recorded the mortgage as a matter of course, without action or a decision by the Regional Director on whether or not BIA should now approve the mortgage. It also appears that Appellant wishes to appeal the Superintendent's February 14, 2006 approval of the mortgage.

Under 25 C.F.R. § 2.4(a), appeals from a Superintendent's decision must be taken first to the appropriate Regional Director. The Regional Director's decision, in turn, may be appealed to the Board. *Id.* § 2.4(e). Because Appellant is seeking to appeal action by the Superintendent, and the Regional Director has not yet considered her appeal or issued a decision, the Board lacks jurisdiction at this time. See Snell v. Fort Peck Agency Superintendent, 27 IBIA 243 (1995). ^{2/}

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 docket this appeal but dismisses it without prejudice as premature. The Board refers the appeal to the Regional Director for

^{2/} To the extent Appellant may be seeking direct review of actions by tribal officials or the MCTHC, the Board lacks jurisdiction to review such actions. See Rosebud Indian Land and Grazing Ass'n v. Acting Great Plains Regional Director, 42 IBIA 47, 52 (2005), and cases cited therein.

consideration as an appeal from the Superintendent's February 14, 2006 approval of the mortgage. 3/

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

3/ The Board has no documentation showing that the Superintendent advised Appellant of her appeal rights pursuant to 25 C.F.R. § 2.7. If that is indeed the case, the Regional Director should consider her appeal as timely filed. The Board expresses no views regarding the merits of Appellant's appeal.