



INTERIOR BOARD OF INDIAN APPEALS

Yakima Ridgerunners, Inc. v. Acting Northwest Regional Director, Bureau of Indian Affairs

44 IBIA 72 (01/11/2007)

Related Board case:

36 IBIA 311

Distinguished and clarified in:

50 IBIA 61



United States Department of the Interior

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

YAKIMA RIDGERUNNERS, INC.,	:	Order Affirming Decision as Modified
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 05-23-A
ACTING NORTHWEST REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	January 11, 2007

Appellant Yakima Ridgerunners, Inc. has appealed an October 8, 2004 decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the adjustment of the annual rent of Recreational Lease No. 5-1-7865-9110, covering Yakama Trust Allotment Nos. 955 and 956 (Allotment Nos. 955 and 956). The Regional Director dismissed as untimely Appellant’s appeal of the November 26, 1996 decision of the Superintendent of the Yakama Agency (Superintendent; Agency) that notified Appellant of a rental rate adjustment from \$1,200 per year to \$3,230 per year effective December 1, 1995. The Regional Director ordered the Superintendent to bill Appellant for the unpaid balance and 18% interest thereon. Appellant does not appeal the rental increase itself, but contends it should be relieved of its obligation to pay the full amount because BIA continued to bill it at the \$1,200 rate and told it to continue paying that rate until the matter was resolved. For the reasons stated below, the Board affirms the Regional Director’s decision, as modified.

Procedural Background

This appeal continues the rental rate dispute that first led to the Board’s decision in Yakima Ridgerunners, Inc. v. Northwest Regional Director, 36 IBIA 311 (2001) (Yakima Ridgerunners I). In that decision and relevant to this second appeal, the Board vacated a portion of the Regional Director’s April 12, 2001 decision at his request and remanded the matter to him for possible settlement and further proceedings involving the Superintendent’s November 26, 1996 decision to increase the rental rate to \$3,230 as of December 1, 1995. Id. Those proceedings have now ended and Appellant has appealed the Regional Director’s latest decision to this Board.

Factual Background

On September 2, 1992, the Superintendent approved Recreational Lease No. 5-1-7865-9110 (lease) between Appellant, as lessee, and the Secretary of the Interior, on behalf of the Indian landowners of Yakama Allotment Nos. 955 and 956, as lessor. 1/ The lease covers Allotment Nos. 955 and 956, which are adjacent parcels located in the State of Washington that contain 15.17 acres, more or less.

The lease has a term of 20 years, which began January 1, 1991 and is to end on December 31, 2010. 2/ The initial annual rent was set at \$1,200 due each year on December 1 for the following year. Attached to the lease and entitled “Exhibit A” is a document containing additional lease provisions that was signed by Appellant. A section of Exhibit A titled “Delinquent Penalty” provides “if any installment or rental is not paid within 30 days after becoming due, penalty at the rate of 18 percent per annum will become due and payable from the date such rental became due and will run until said rental is paid.” The lease further provides on page 1 that “A FIVE (5) YEAR RENTAL REVIEW WILL BE CONDUCTED,” and Provision No. 14 of Exhibit A under “Rental Review” explains that the rent will be reviewed “at not less than 5 year intervals” and “shall give consideration to the economic conditions at the time, exclusive of improvements or developments required by the contract or the contribution value of such improvements.” 3/ (Emphasis in original.)

Pursuant to the five-year rental review provision of the lease, a rent appraisal was done in 1995 and, on November 26, 1996, the Superintendent determined that the annual

1/ The Superintendent approved the lease pursuant to 54 Stat. 745 (July 8, 1940), which authorizes the Superintendent to lease the restricted allotments of deceased Indians in certain circumstances. See also 25 C.F.R. § 162.2(a) (1991) (same). A separate lease certification identifies the Indian landowners as the Heirs of Kianpum Sappallel and Penape Sappallel.

2/ Appellant represented that it has leased this same property continuously since approximately 1952. June 4, 1981 Letter from Dale Hargraves, Appellant’s then-President, to BIA. Appellant’s previous lease for the subject property ran from January 1, 1971 to December 31, 1990.

3/ Appellant’s previous lease contained the same five-year rental review provision. However, the record before the Board is silent as to any specific rent increases that may have been implemented under this previous lease.

rental rate should increase to \$3,230. It is undisputed that Appellant did not timely appeal from this decision.

Notwithstanding the increase in Appellant's rent, BIA sent annual rent invoices to Appellant for the next four years in the initial \$1,200 rent amount instead of the new, \$3,230 amount. 4/ Appellant paid these invoices at their stated, \$1,200, amount and made no payment towards the \$2,030 rent increase. In October 1997, BIA notified Appellant that it was in violation of its lease for non-payment of rent and proposed to cancel the lease. Oct. 1997 Letter from Agency to Appellant. 5/ The amount due was then \$4,030 6/ for calendar years 1996 and 1997 plus 18% interest. This amount was not and has not been paid. This notice advised Appellant that it had ten days "to show cause why this lease should not be cancelled." Although the record does not contain a written response from Appellant to the violation notice, BIA did not cancel the lease. At or during this time, Appellant maintains that it had "been asking for negotiation on lease increases, retroactive billing, and interest accruing on debt not owed [sic] since 1997." Apr. 19, 2004 Notice of Appeal to the Regional Director at 2. Appellant further maintains that BIA told it to pay the old rental rate of \$1,200. The record does not reflect who it was that Appellant spoke with at BIA or when these conversations took place. 7/

4/ There is some dispute concerning the rental invoice for calendar year 2000. BIA submits a copy of the invoice that it maintains was provided to it by Appellant (BIA does not explain why it cannot provide its own copy of the invoice it sent to Appellant) on which the amount due is shown to be \$3,230. In its appeal to the Board, Appellant claims that this invoice is a "fabrication." Nov. 5, 2004 Notice of Appeal at 2. However, just six months earlier, Appellant admitted that "[i]n November 1999, the billing was in the amount of \$3230." Apr. 19, 2004 Notice of Appeal to the Regional Director at 2. We need not resolve this dispute, if such it is, and assume for purposes of this appeal that Appellant was consistently billed by BIA at the annual rate of \$1,200 throughout the second quarter of its lease.

5/ The full date is not legible on the copy provided to the Board. The certified mail receipt for the letter states that it was received by Appellant on October 10, 1997.

6/ The amount in arrears appears to have been miscalculated and should have been \$4,060 as Appellant continued to pay the original annual rent amount of \$1,200, but paid nothing towards the increased rent amount of \$2,030.

7/ Appellant states that it spoke with a BIA Realty Office employee, Ruben Bending, on six occasions. However, these conversations with Mr. Bending apparently took place after
(continued...)

On November 30, 2000, Appellant again was advised that it was in violation of its lease for non-payment of rent and BIA again proposed to cancel the lease. The amount then due was \$10,150 for calendar years 1996 through 2000 plus 18% interest. This amount remains unpaid. This notice also advised Appellant that it had 10 days “to show cause why this lease should not be cancelled.” By letter dated December 9, 2000, Appellant wrote to “show cause.” The record does not contain a response by the Agency, but it is apparent that the lease was not canceled.

Also in 2000, BIA performed the second five-year appraisal and determined that the annual rent amount should be increased to \$3,320 annually, effective December 1, 2000. The Agency notified Appellant of this increase by letter dated December 1, 2000. On January 5, 2001, Appellant appealed the 1996 and 2000 rental rate increases to the Regional Director. On April 12, 2001, the Regional Director dismissed Appellant’s appeal of the December 1, 2000 increase as untimely. He also declined to consider Appellant’s attempted appeal of the November 26, 1996 increase, stating that this earlier decision became final when Appellant did not file a timely appeal.

Appellant appealed to the Board. The Regional Director sought partial affirmance of his April 12, 2001 decision, specifically, his decision that the appeal was untimely as to the Superintendent’s December 1, 2000 decision to increase the annual rent by \$90. However, the Regional Director also stated that “to the extent Appellant has raised any issues with respect to the earlier [November 26, 1996] rental adjustment, or the enforcement actions taken or threatened by the BIA, [the Regional Director] requests that all those issues be remanded to him for potential settlement discussions among the Indian landowners, Appellant, and the BIA.” Aug. 8, 2001 Answer of Regional Director & Request for Expedited Consideration and Remand at 3.

By decision dated September 19, 2001, the Board affirmed the Regional Director’s dismissal of Appellant’s appeal from the December 1, 2000 decision, vacated the remainder of the Regional Director’s decision, and remanded the matter to him for further proceedings. Yakima Ridgerunners I, 36 IBIA at 312.

Following the Board’s decision, the Regional Director directed the Superintendent to discuss the 1995 rate adjustment with the landowners and Appellant and attempt to settle the dispute over the arrears and interest for the 1996 to 2000 lease years. On

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the Board’s 2001 decision in Yakima Ridgerunners I. Feb. 13, 2004 Letter from Appellant to Agency at 2; Apr. 19, 2004 Notice of Appeal to the Regional Director at 2.

February 20, 2004, the Trust Real Estate Services manager notified the Regional Director that there was an “impasse in negotiations.” Feb. 20, 2004 Memorandum from Manager, Trust Real Estate Services to Regional Director at 1. Thereafter, the Regional Director instructed the Superintendent to continue negotiation efforts by scheduling a face-to-face settlement meeting between Appellant and the landowners. This meeting occurred on June 16, 2004 but was unsuccessful.

On June 23, 2004, the Superintendent sent a letter to Appellant summarizing the June 16, 2004 settlement meeting, concluding that Appellant remained liable for the full amount of the rent increase for the period between December 1, 1996 through December 1, 1999, and calculating the amount of arrears and interest then due. ^{8/} The Superintendent determined that Appellant did not have to pay the rental rate increase or interest thereon that was due on December 1, 1995 because Appellant had not been notified of the increase until November 26, 1996.

On July 23, 2004, Appellant timely appealed the Superintendent’s June 23 decision. In a decision issued October 8, 2004, the Regional Director modified but otherwise affirmed the Superintendent’s decision. The October 8 decision is now the subject of this appeal.

With respect to the amount of arrears and interest thereon, the Regional Director rejected Appellant’s argument “that action taken by the Yakama Agency after the 1996 letter obviated [Appellant’s] need to file a timely appeal to stop the effectiveness of the decision,” and noted that Appellant’s obligation to pay the full amount was not dependent upon receipt of a bill for the full amount from the BIA. Oct. 8, 2004 decision at 2. The Regional Director concluded that it was Appellant’s burden to ensure that it was paying the appropriate amount. *Id.* The Regional Director further concluded that the Superintendent’s November 1996 decision, coupled with the October 1997 and November 30, 2000 show cause letters, “provided more than sufficient notice to [Appellant] that it had not paid the rent owed to the Indian landowners.” *Id.* The Regional Director directed the Superintendent to “immediately compute the amount owed, including interest at 18%

^{8/} The Superintendent’s decision calculated the amount of arrears as \$8,120 for calendar years 1997-2000 and 18% interest thereon as \$8,887.73 through June 30, 2004 for a total amount due of \$17,007.73.

as specified in [the] lease, and to send [Appellant] an invoice * * * for that amount.”
Id. 9/

Pursuant to the Regional Director’s decision, the Superintendent issued a Payment Demand Notice to Appellant on October 27, 2004. The Notice directed Appellant to pay \$22,773.85, which, according to the Superintendent, covered the “rental adjustment increase plus interest which was due annually 12/1/95 through 12/1/99 at the rate of 18 percent per year until date paid.” The Superintendent stated that a sheet showing his computation of interest owed was enclosed with this decision; however, the computation sheet was not included in the record submitted to the Board. The Superintendent stated that failure to pay the amount due within 15 days would subject the lease to cancellation.

On November 5, 2004, Appellant filed a timely appeal from the Regional Director’s October 8, 2004 decision. Appellant and the Regional Director have both filed briefs. The Board also received written statements from several owners of interests in Allotment Nos. 955 and 956.

Because Appellant stated in its opening brief that it favored mediation, the Board issued an order on January 31, 2005 requiring the parties to participate in an assessment conference to determine whether the matter could be resolved through alternative dispute resolution (ADR). On October 24, 2005, the Department’s Office of Collaborative Action and Dispute Resolution notified the Board that the parties had been contacted concerning ADR, and had concluded that ADR would not be successful in this case. The Board then returned the appeal to its active docket.

Discussion

Appellant challenges the Regional Director’s decision on three grounds: (1) BIA should be estopped by the totality of BIA’s actions from collecting the unpaid rent and interest thereon 10/; (2) Washington law disfavors retroactive increases; and (3) it is unfair

9/ The Regional Director also rejected Appellant’s suggestion in its July 23, 2004 letter that the improvements constructed by Appellant on the property could be used to mitigate the debt owed.

10/ Particularly, Appellant argues that BIA is estopped by its continuous billing at the original, \$1,200 amount; its verbal instructions to Appellant to pay the original, \$1,200
(continued...)

and unjust to seek full payment and interest. We consider and reject these arguments, as set out below, except as to interest due for calendar year 1996 for nonpayment of the rent increase for that year.

A. Estoppel

Appellant produced evidence that, notwithstanding the November 26, 1996 notice of rent adjustment, BIA consistently billed Appellant for the original annual rental amount of \$1,200 for calendar years 1996-2000. Appellant also claims that when it contacted BIA by telephone, BIA consistently stated that Appellant should pay the original \$1,200 rent amount until “a decision was made” or a “meeting was held.” See Notice of Appeal at 1; Opening Brief at 3; Reply Brief at 2. Appellant does not state who spoke on behalf of BIA apart from Bending or when these calls took place. ^{11/} In any event, Appellant maintains that this “process” is illegal, unfair, and unsupported, and essentially argues that BIA should be estopped from collecting arrears for lease years 1996-2000.

It is well-established that it is extremely difficult to establish estoppel against the government. See State Bank of Eagle Butte v. Director, Office of Economic Development, 41 IBIA 43, 52 (2005); First National Bank of Gordon v. Acting Deputy Commissioner of Indian Affairs, 37 IBIA 101, 109 (2002); see also Office of Personnel Management v. Richmond, 496 U.S. 414, 419 (1990) (“equitable estoppel will not lie against the Government as it lies against private litigants”). In particular, the law disfavors estoppel against the Government when it acts as trustee for Indians. Falcon Lake Properties v. Assistant Secretary - Indian Affairs, 15 IBIA 286, 299 (1987) (citing New Mexico v. Aamodt, 537 F.2d 1102, 1110 (10th Cir. 1976) and United States v. Ahtanum Irrigation District, 236 F.2d 321, 334 (9th Cir. 1956)). BIA acts as trustee for Indians when it takes action on leases of Indian trust lands, as it did here. Id.

Even assuming estoppel could lie against the government when it acts as trustee for Indians, Appellant has not met its burden of establishing that the four traditional elements of estoppel are satisfied in this case: Whether (1) BIA knew the true facts; (2) BIA intended that its conduct would be acted on or BIA acted in such a way that Appellant had a right to believe it was so intended; (3) Appellant was ignorant of the true facts; and

^{10/}(...continued)

amount until the dispute was resolved; and the delay in holding a meeting with the landowners and Appellant to resolve the rent dispute.

^{11/} See note 7.

(4) Appellant reasonably relied on BIA's conduct to its injury. See State Bank of Eagle Butte, 41 IBIA at 53; Falcon Lake, 15 IBIA at 298. All four elements must be established. Id. ("it is clear that one who seeks to estop the Government must at least demonstrate that the traditional elements of estoppel are present").

We accept that the first element of estoppel is established, as BIA knew the facts of the dispute, *i.e.*, BIA knew that it had determined that Appellant's rent should increase from \$1,200 to \$3,230; BIA knew that Appellant did not become aware of the increase until November 1996; BIA knew that Appellant was unhappy with the increase and sought a rescission or modification of the increase; and BIA knew that it continued to bill Appellant through 1999 for \$1,200 for rent. However, Appellant cannot establish the remaining elements: There is little, if any, evidence that BIA led Appellant to believe that no further rent beyond \$1,200 would be required for years 1996-2000 12/; Appellant has not claimed it was unaware that its rent had been increased; and any reliance by Appellant on the billing statements and selected conversations with BIA employees would be unreasonable in light of other actions by BIA. 13/

In particular, we note that Appellant admits that it has "been asking for negotiation on lease increases, retroactive billing, and interest accruing on debt not owed since 1997 * * * ." Apr. 19, 2004 Notice of Appeal to the Regional Director at 2. This statement directly contradicts Appellant's claim that it believed its untimely appeal of the rent increase had been resolved in its favor when it continued to receive annual invoices in the amount of \$1,200, rather than the increased amount of \$3,230. See Feb. 13, 2004 Letter from Appellant to Agency at 2; Dec. 9, 2000 Letter from Appellant to Agency at 1. Moreover, Appellant concedes that it has been subject to periodic rent increases "since the first signing of this lease in 1970." Apr. 19, 2004 Notice of Appeal at 2. Appellant also concedes that since 1970, "there [have] been [no] negotiations concerning [rent] increases, nor has there been any negotiation concerning the [Agency's] retroactive increases and interest on them." Id. Thus, Appellant is well aware that it is subject to periodic rent

12/ In October 1997, BIA sent Appellant a Notice of Violation for nonpayment of the increased rent with a demand for payment of interest in addition to the arrears. Thus, BIA actively discouraged any reliance on the original rent amount.

13/ It appears equally plausible that BIA's statements concerning the payment of the original rent did not suggest that Appellant's rent had been permanently set at \$1,200; rather, the statements suggest only that Appellant should continue to pay this amount until the dispute over the rental amount was resolved. Thus, Appellant accepted the risk that the dispute would be resolved against it.

increases under the terms of its long-term lease and that the amount of the increase is not necessarily subject to negotiation. ^{14/} Therefore, even assuming estoppel were to lie against BIA acting in its capacity as trustee for Indians, Appellant cannot establish the necessary elements of estoppel. Accordingly, and based on the foregoing, we reject Appellant's argument that BIA is estopped from collecting the adjusted rental rate for the payments due for years 1996-2000.

B. Applicability of State Law

Appellant also argues that the \$2,030 rent adjustment per year is “not a legally collectable debt.” Notice of Appeal at 2. Appellant does not cite to any authority for this proposition except to state that it is illegal “under the laws of the State of Washington,” that “it do[es] not know what the Federal Laws are concerning this matter,” and that it is unfair. Id. Appellant argues that “Washington State law is clear that if a bill is issued and paid in full, a retroactive increase is not allowed.” July 23, 2004 Notice of Appeal to the Regional Director at 1. It is not clear to us to what law Appellant refers. It may be to Washington's law of estoppel. If so, we have addressed the application of estoppel to the government. More importantly, we observe that state law ordinarily plays no role in the administration of government leases of Indian trust or restricted lands. ^{15/} See Bull Bear v. Acting Anadarko Area Director, 34 IBIA 163, 169 (1999); Peace Pipe, Inc. v. Acting Muskogee Area Director, 22 IBIA 1, 8 (1992).

Finally, we note that Appellant's rent increase is not a retroactive increase: Appellant's lease calls for the rent to be adjusted every five years and so it was and has been. The fact that Appellant may have been billed for a lesser amount or may have been notified of the rent increase a year after it went into effect does not make the increase “retroactive.”

^{14/} Appellant does not inform us of the source of its belief that it is entitled to negotiate any proposed rent increase with BIA. The parties' lease does not so state nor do the governing regulations. See 25 C.F.R. §§ 162.8 (1997), 162.607 (2004). That said, there is also no prohibition against negotiating rent increases with the lessee.

^{15/} In some instances, provisions of state law may be specifically incorporated into a lease of Indian trust or restricted lands. See Kearny Street Real Estate Co., L.P. v. Sacramento Area Director, 28 IBIA 4, 15 n.8 (1995). The parties in the instant case did not do so.

C. Injustice

Appellant's final argument appears to be that given (a) the passage of time, (b) the delay in setting a meeting between Appellant and the landowners to mediate the rent dispute, (c) the conversations with BIA, and (d) the erroneous billings, Appellant should not be held liable for the unpaid rent and interest. Appellant claims it is unfair and unjust.

We are not unsympathetic to Appellant's position — BIA should have timely informed Appellant of the rent increase for 1996-2000 in 1995 and should have issued bills in the appropriate amount. Nevertheless, as we have previously noted, Appellant well knows that it is subject to rental increases every five years and knows that it is subject to interest on unpaid rent at the rate of 18%. Appellant specifically agreed to these terms and, since it has held a lease for this allotment since at least 1970, concedes that it is well aware of the lease provisions for rent increases and interest assessments. See Apr. 19, 2004 Notice of Appeal to the Regional Director at 2.

Moreover, Appellant does not claim that BIA ever rescinded the rental increase or stated that no further amount would ever be due beyond \$1,200. Instead, Appellant admits that BIA said it could pay the original rent amount until such time as some further action (a decision or a meeting) occurred. Indeed, a meeting was held in June 2004 with the landowners from whom Appellant is leasing the land and the landowners declined to negotiate the amount of the increase; a decision was made when the Superintendent determined that Appellant would be required to pay the arrears plus interest. June 23, 2004 Decision.

The bottom line is this: In return for having a 20-year lease with a fixed annual rent for a minimum of five years, Appellant agreed that its rent could be adjusted periodically at increments of not less than five years. 16/ The parties' lease so states in two separate places. See Lease at 1 & Ex. A at Provision No. 14. Since the new lease began with calendar year 1991, Appellant's annual rent would remain fixed at \$1,200 until calendar year 1996, when it became subject to the five-year adjustment. Therefore, when Appellant received notice that its rent had been adjusted, it could not claim surprise — it knew it was subject to a rent increase and it agreed to have its rent adjusted.

The decision to adjust Appellant's rent became final and effective at the end of the 30-day appeal period when Appellant did not file an appeal in this timeframe. Therefore,

16/ BIA and the landowners benefit from the agreement by having a long-term tenant for the property with the protection of periodic adjustments in the rent.

for the second quarter of Appellant's lease, the annual rental amount due then became \$3,230. Thus, there is nothing in the above "process" that merits vacating the Regional Director's decision that Appellant is liable for \$10,150 in unpaid rent for calendar years 1996-2000. For these reasons, we affirm the Regional Director's decision on the issue of unpaid rent.

We do, however, conclude that Appellant is entitled to an adjustment in the interest. We disagree with the Regional Director that interest may be assessed against Appellant for the unpaid rent increase for calendar year 1996. Although the annual rent for 1996 was due on December 1, 1995, nothing in the record shows that Appellant was informed of the rent adjustment prior to November 26, 1996. Appellant cannot be expected to remit payment until it has been informed of the amount due. Therefore, we conclude that it is not reasonable to impose interest prior to the time the new adjustment was communicated to Appellant and became due and payable. However, once the rate adjustment was communicated to Appellant and was not timely paid thereafter, interest — in accordance with the terms of the lease — then began to accrue. Appellant's remedy to avoid interest during its belated appeal of the rent adjustment was to pay the full amount of rent due (including the rent increase) and request that the disputed increase be held by BIA pending resolution of any appeal. Once the decision became final in 1997, Appellant proceeded at its risk by choosing not to pay the increase.

In sum, we affirm the Regional Director's decision with respect to the assessment of interest for the unpaid rent, subject to the following modification: We modify the Regional Director's decision to the extent that it requires the payment of interest for calendar year 1996.

Conclusion

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 October 8, 2004 decision is affirmed as modified in this decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge