



INTERIOR BOARD OF INDIAN APPEALS

Alvin B. Iron v. Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

51 IBIA 264 (05/20/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ALVIN B. IRON,)	Order Vacating Decision and Remanding
Appellant,)	
)	
v.)	
)	Docket No. IBIA 08-107-A
ACTING ROCKY MOUNTAIN)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	May 20, 2010

Alvin B. Iron (Appellant) has appealed a May 16, 2008, decision of the Acting Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the Crow Agency Superintendent's February 11, 2008, decision to cancel 15 of Appellant's Indian agricultural leases for nonpayment of rental.¹ The Regional Director found that there was insufficient evidence to warrant setting aside the cancellation decision.

On appeal, Appellant argues that he did not receive the "10-day Show Cause Letter" (Show Cause Letter) sent to him by BIA prior to the cancellation decision and that the subsequent cancellation decision is therefore invalid. He also avers that he paid the November 1, 2007, rent for the leases on February 8, 2008. Appellant did not raise these, or any, issues in his appeal to the Regional Director. The Interior Board of Indian Appeals (Board) generally limits its review to those issues raised before the Regional Director and does not consider arguments raised for the first time on appeal to the Board unless the failure to do so would result in manifest error or injustice. In this case, we find that the

¹ The Regional Director's decision affirmed the cancellation of 15 leases: Lease No. 0-17845 for Tract T-3296-B; Lease No. 0-17376 for Tract 3294-A; Lease No. 0-17377 for Tract 2820; Lease No. 0-17379 for Tract 0432-A; Lease No. 0-17380 for Tract 1762; Lease No. 0-17381 for Tract 1762-A; Lease No. 0-17383 for Tract 1757; Lease No. 0-17385 for Tract 1763-A; Lease No. 0-17386 for Tract 3293; Lease No. 0-17387 for Tract 3293; Lease No. 0-17387 for Tract 1758; Lease No. 0-17388 for Tract 1760-A; Lease No. 0-17389 for Tract 1760; Lease No. 0-17390 for Tract 3040-A; Lease No. 0-17391 for Tract 3295-A; and Lease No. 0-17392 for Tract 0434.

Regional Director committed manifest error when he affirmed the cancellation of the leases without noting the plain error committed by the Agency — a misrepresentation of Appellant’s right to at least request an extension to cure the lease violation. When Appellant missed the due date for his lease payment, BIA sent him a Show Cause Letter, but BIA’s letter summarily foreclosed even the possibility of an extension, whereas 25 C.F.R. § 162.251(b) expressly allows a tenant to at least request an extension (and have it considered by BIA in good faith). We therefore vacate the Regional Director’s decision and remand the matter to BIA for further action.

Background

BIA issued the 15 leases to Appellant pursuant to 25 C.F.R. Subpart 162, for 5-year terms beginning on November 1, 2005, and ending on October 31, 2010. Annual rental payments for the leases are due on November 1. *See* Administrative Record (AR), Tab F. BIA sent Appellant invoices dated September 24, 2007, for the rent due on November 1, 2007. AR, Tab E. Appellant did not pay the rent by the due date and on December 10, 2007, BIA sent Appellant a certified letter advising him that he had 10 days from the date of the letter to show cause why the leases should not be cancelled due to nonpayment of rent (Show Cause Letter).² AR, Tab D. The letter also advised Appellant that “[n]o extension of time will be granted,” and stated that a copy of the letter was being forwarded to him by regular mail to ensure that he received it. The certified letter was returned to BIA with the notation “REFUSED.” *Id.*³ Appellant indicates that he paid the rent for the 15 leases on Friday, February 8, 2008. *See* Attachments to Appellant’s Statement of Reasons.

On Monday, February 11, 2008, the Superintendent issued his decision cancelling Appellant’s leases for nonpayment of rent. AR, Tab B. The cancellation decision listed the affected leases and then stated: “In accordance with the Code of Federal Regulation[s],

² BIA issued the Show Cause Letter in accordance with 25 C.F.R. § 162.251(a), which states that, if BIA determines that an agricultural lease has been violated, it will send the tenant “a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.” Section 162.251(b) directs that within 10 days of receipt of the notice of violation, a tenant must either (1) cure the violation and notify BIA in writing that the violation has been cured, (2) dispute the determination that a violation has occurred and/or explain why the lease should not be cancelled, or (3) request additional time to the cure the violation.

³ The record does not reflect that the letter sent by regular mail was returned to BIA.

Title 25, 162.2 you are notified that the Leases(s) are hereby **CANCELLED** for non payment.” *Id.* Appellant signed for the certified cancellation letter on February 21, 2008. AR, Tab C.

Appellant appealed the cancellation decision to the Regional Director on March 15, 2008.⁴ The Notice of Appeal stated: “Please accept this letter as my official NOTICE OF APPEAL OF THE DECISION TO CANCEL my leases.” The Notice of Appeal then provided a list of the affected leases, followed by a statement that Appellant had received the cancellation decision by certified mail on February 21, 2008. The Notice of Appeal concluded by thanking the Regional Director for his attention to the matter. The Notice of Appeal did not contain any reasons for the appeal, nor does the record contain a separate statement of reasons or any other information from Appellant identifying any grounds for the appeal.

The Regional Director issued his decision affirming the cancellation of the leases on May 16, 2008. AR, Tab A. He found that there was insufficient evidence warranting reinstatement of the leases.⁵ The Regional Director indicated that Appellant could have avoided lease cancellation if Appellant had responded to the Show Cause Letter, which BIA had sent to him by certified mail but which he had refused. The Regional Director therefore concluded that the Superintendent’s cancellation decision was correct and denied Appellant’s appeal.

Appellant appealed the Regional Director’s decision to the Board and submitted a Statement of Reasons and a November 3, 2008, letter, which he characterized as a closing brief. BIA did not submit an answer brief.

⁴ Although Appellant’s Notice of Appeal to the Regional Director was not originally included in the administrative record forwarded to the Board, the Regional Director provided that document on September 15, 2008, for inclusion in the case file.

⁵ The Regional Director characterizes the evidence as insufficient to warrant “reinstatement of the leases,” but, of course, the cancellation decision remained — and still remains — ineffective due to Appellant’s appeals. *See* 25 C.F.R. § 2.6(b); 43 C.F.R. § 4.314(a); *Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 331 (2009) (a BIA decision is automatically stayed during the appeal process).

Discussion

Appellant raises several issues for the first time in his appeal submissions to the Board. He contends that the Show Cause Letter was not delivered to him and that, since he did not receive the certified Show Cause Letter, as required by the regulations, BIA's cancellation decision is invalid.⁶ He further avers that he paid the overdue lease rental due on February 8, 2008; that the majority of landowners with interests in the leases do not want the leases cancelled; that he is a long-time rancher who lives in the middle of the leased area and who will be put out of business if the leases are cancelled; that he has made improvements to the leased area; and that he did not have any intention of not paying the rent for the leases. *See* Statement of Reasons at 1-3; *see also* Closing Brief.

Appellant did not raise these or any other issues before the Regional Director, and thus the Regional Director had no opportunity to address them. As a general rule, the Board is limited in its review to those issues raised before or considered by the Regional Director. 43 C.F.R. § 4.318. In the present case, we conclude that an exception to the general rule applies because the Regional Director committed a manifest error in failing to consider the fact that BIA's Show Cause Letter conflicted with the regulations.

The Regional Director failed to consider that BIA expressly misrepresented the alternative actions Appellant could take under 25 C.F.R. § 162.251(b) to cure the lease violations. The statement in the letter that no extension of time would be granted directly conflicts with 25 C.F.R. § 162.251(b)(3), which specifically permits a tenant to request additional time to cure a violation. *See Gourneau v. Acting Rocky Mountain Regional Director*, 50 IBIA 33, 45 (2009). Of course, the regulations do not give a tenant a *right* to an extension, but the right to request one necessarily implies that BIA will consider such a request on the merits and in good faith. Here, BIA effectively announced that it would not even consider an extension, implying that Appellant had no right to request one and make his case. In light of the manifest error in BIA's Show Cause Letter and in the Regional Director's failure to consider that error, we vacate the Regional Director's decision and remand the matter to BIA for further action.

⁶ Appellant's submissions to BIA and the Board identify Appellant's address as P.O. Box 7457, Yellowtail, MT 59035, but BIA addressed the Show Cause Letter to "P.O. Box 457, Yellowtail, MT 59035." The evidence, however, is ambiguous as to whether Appellant either received or refused the letter. We need not consider this or Appellant's other arguments because we vacate the Regional Director's decision on other grounds.

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 vacates and remands the Regional Director's decision.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.