



INTERIOR BOARD OF INDIAN APPEALS

Tony W. Enemy Hunter v. Acting Rocky Mountain Regional Director,
Bureau of Indian Affairs

51 IBIA 322 (06/29/2010)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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TONY W. ENEMY HUNTER,)	Order Affirming Decision
Appellant,)	
)	
v.)	
)	Docket No. IBIA 08-114-A
ACTING ROCKY MOUNTAIN)	
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS,)	
Appellee.)	June 29, 2010

Tony W. Enemy Hunter (Appellant) has appealed the May 14, 2008, decision of the Acting Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), informing Appellant that he had to secure the consent of the remaindermen for any leases he executes for trust lands on which he holds a life estate interest.¹ Appellant challenges the Regional Director's decision, arguing that, as the life estate holder, he has the authority to make all the decisions regarding the land during his lifetime since the remaindermen's title to the land will not fully vest until he dies. We find that the applicable regulations support the Regional Director's decision that both Appellant and the remaindermen had to consent to and execute the leases, and thus we affirm that decision.

¹ The Regional Director's decision specifically addressed Appellant's leases for Allotment Nos. 202-688-D, 202-688-H, and 202-3323. Since all the allotments contain the prefix "202," we will omit that prefix when identifying a specific allotment.

Background

Appellant, a competent Crow Indian,² owned a 100% interest in several allotments on the Crow Reservation in Montana.³ On December 1, 2006, Appellant entered into a 5-year lease with Padlock Ranch Company c/o Agri Leasing, Inc. (Padlock), for Allotment Nos. 688-D and 688-H. In accordance with 25 C.F.R. § 162.500(c), BIA recorded the lease on February 11, 2008. Appellant also entered into a 5-year lease with Padlock for Allotment No. 3323 on December 1, 2006; BIA recorded that lease on May 16, 2007. *See* AR, Tab 8.

On October 11, 2007, Appellant executed gift deeds for Allotment Nos. 688-D and 688-H, conveying those allotments to Toni Lee Pease and Tina Lynn Pease Headswift, respectively, but reserving a life estate in those lands to himself, “subject to all valid existing rights-of-way and leases in effect of record.” AR, Tab 9. The Superintendent of the Crow Agency, BIA, approved the gift deeds on October 24, 2007. On November 7, 2007, Appellant executed a gift deed for Allotment No. 3323 transferring ownership of that allotment to Fallon Lynn Falcon Fuller, and again reserving a life estate interest in the allotment to himself. The Superintendent approved that gift deed on November 8, 2007. *See* AR, Tab 9. The effect of the gift deeds was to convey the allotments to the recipients (who are Appellant’s family members) as remaindermen of the trust property, subject to the life estates held by Appellant.

On December 3, 2007, after the gift deeds were approved, Appellant signed another 5-year lease with Padlock for Allotment No. 3323.⁴ This lease was not executed by Padlock nor was it recorded by BIA. *See* AR, Tab 8. Apparently during the process of attempting

² Among other things, Crow Indians classified as competent under the Act of June 4, 1920, 41 Stat. 751, may lease their trust lands for up to 5 years for farming and grazing purposes without the approval of the Secretary of the Interior, pursuant to the Act of May 26, 1926, 44 Stat. 658, as amended by the Act of March 15, 1948, 62 Stat. 80. *See* 25 C.F.R. § 162.500(a).

³ The Individual Interests Report for Appellant included in the Administrative Record (AR) identifies these allotments as Allotment Nos. 688-D, 688-H, 688-J, 3323, 3323-G, 3323-H, 3323-I, and 1119-A. *See* AR, Tab 12.

⁴ Appellant describes this lease as a cancel/renew lease. *See* AR, Tab 5, “Request for review of BIA decision regarding Life Estate Holder and Remainderman Rights,” June 2, 2008 (Notice of Appeal).

to secure this lease, Appellant learned that the remaindermen also were required to sign any leases for the allotments conveyed in the gift deeds. *See* Notice of Appeal.

By letter dated April 14, 2008, Appellant contacted the Regional Director about the relationship between life estates and competent leases. AR, Tab 7. Appellant stated that he had issued the gift deeds to his family members in order to prevent fractionation of the allotments upon his death but had reserved the life estates to retain, among other things, his right to continue the competent leases throughout his lifetime. He asserted that he was never advised that one of the consequences of his gift deeds would be that the remaindermen would have to sign those leases. He claimed that this regulatory requirement violated his sole ownership rights as the life tenant and that, if he had known of that requirement, he would have requested that he be exempted from complying with the regulation. Appellant requested that BIA honor his original intent in retaining the life estates in the executed gift deeds.

In his May 14, 2008, decision, the Regional Director explained that Appellant's life estate entitled him to the beneficial use of the property during his lifetime, but that Appellant also held the land in trust for the remaindermen during that time. AR, Tab 6. The Regional Director advised Appellant that, as the life tenant, he has "neither title nor claim to any part of the corpus of the estate and [is] entitled only to the rents, issues, and profits thereof." *Id.* The Regional Director further confirmed that, in order to secure leases on the properties on which Appellant retained a life estate, both Appellant and the remaindermen had to consent to the leases. *Id.* The Regional Director did not identify any regulation or cite any other authority for his assertions and conclusions.

Appellant appealed the Regional Director's decision and submitted an opening brief. The Regional Director did not file an answer brief, and the matter is now ready for review.

Discussion

As an initial matter, we address the question of Appellant's standing to bring this appeal. The Regional Director raised this question in his August 8, 2008, memorandum transmitting the administrative record to the Board, and we requested Appellant to provide evidence supporting his standing as part of his opening brief. *See* Notice of Docketing and Order Setting Briefing Schedule, Aug. 14, 2008, at 4.

Under the applicable regulations, in order to have standing, an appellant must be an interested party whose interests could be adversely affected by the decision being appealed. *See* 43 C.F.R. § 4.331 (limiting standing to interested parties affected by a final administrative action or decision of a BIA official); 43 C.F.R. § 4.330 (adopting the

definitions set out in 25 C.F.R. § 2.2); 25 C.F.R. § 2.2 (defining “interested party” as “any person whose interests could be adversely affected by a decision in an appeal”); *see also Hardy v. Northwest Regional Director*, 51 IBIA 152, 158 (2010); *Rosebud Indian Land and Grazing Ass’n and its Members v. Acting Great Plains Regional Director*, 50 IBIA 46, 53 (2009); *Northern Cheyenne Livestock Ass’n and its Members v. Acting Rocky Mountain Regional Director*, 48 IBIA 131, 137 (2008). Appellant has the burden of establishing standing. *Hardy*, 51 IBIA at 158; *Parker v. Southern Plains Regional Director*, 45 IBIA 310, 317 (2007).

Appellant avers that he has been adversely affected by the Regional Director’s decision because, upon learning from BIA that a lease had to be signed by all the owners, which included the remaindermen as well as the life estate holder, Appellant’s potential lessee decided not to execute the lease.⁵ We find Appellant’s contention that the signature requirement caused his potential lessee to back out of the lease adversely affected his interest in obtaining the lease (and, presumably, receiving income from the lease) and is sufficient to support his standing to bring this appeal.

We now turn to the merits of his appeal. Appellant claims that BIA informed him that 25 C.F.R. § 162.500(d)(1) requires the signatures of both the life estate holder and the remaindermen, as owners of the land, on leases for the land subject to the gift deeds. AR, Tab 1 (Letter from Appellant to Karen Dunnigan, June 3, 2008). Appellant asserts that a life tenant is entitled to make all decisions regarding property during his or her lifetime since title fully transfers to remaindermen only upon the life estate holder’s death. The issue of the proper interpretation of 25 C.F.R. § 162.500(d)(1) is a legal one, over which the Board exercises de novo review. *See A C Building & Supply Co. v. Western Regional Director*, 51 IBIA 59, 71 (2010); *Smartlowit v. Northwest Regional Director*, 50 IBIA 98, 104 (2009). We conclude that the Regional Director’s Decision is supported by 25 C.F.R. §§ 162.102(b) and 162.500(d)(1) and affirm his decision.

BIA’s role *vis a vis* competent Crow farming and grazing leases is a limited one: BIA does not need to approve such leases, but it does need to record them. *See* 25 C.F.R. § 162.500(a), (c). The regulation at issue here, 25 C.F.R. §162.500(d), elaborates on BIA’s recordation duties, providing that “[w]here any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition: (1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease.” The regulations define an “*Indian landowner*” as

⁵ We presume that Appellant is referring to the December 3, 2007, lease for Allotment No. 3323, which was neither executed by Padlock nor recorded by BIA. *See* AR, Tab 8.

“a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.” 25 C.F.R. § 162.101. “*Interest*” is defined as “an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.” *Id.* The regulations further specifically define both a life estate and a remainder as interests in Indian land. *Id.* (definitions of “*Life estate*” and “*Remainder*”). Thus, these regulatory definitions make clear that, contrary to Appellant’s contention, the Regional Director correctly interpreted the phrase “all owners” in section 162.500(d)(1) to include the remaindermen.

To the extent Appellant may be arguing that section 162.500(d)(1) does not, by its express terms, “require” him to obtain the signatures of the remaindermen, he is not necessarily incorrect. That regulation does, however, identify the failure of all owners to execute the lease as one of several “deficiencies” about which BIA must notify the lessee. *See* 25 C.F.R. § 162.500(d)(1)-(4).⁶ In any event, 25 C.F.R. § 162.102(b) explicitly provides that “[w]here a life estate and remainder interest are both owned in trust or restricted status, the life estate and the remainder interest must both be leased under these regulations, unless the lease is for less than one year in duration.” Thus, under 25 C.F.R. §§ 162.102(b) and 162.500(d)(1), both the life tenant and the remaindermen are owners who must execute leases affecting their mutual property.⁷ We therefore find no merit in Appellant’s challenge to the Regional Director’s interpretation of section 162.500(d)(1).

Appellant argues that, as the sole life tenant of the properties he seeks to lease, he has the legal authority to negotiate the leases without including the remaindermen. Appellant does not cite any legal authority for his position, although he suggests that it may be part of the American Indian Probate Reform Act (AIPRA), Pub. L. No. 108-374, 118 Stat. 1773 (Oct. 27, 2004). While Appellant is correct that AIPRA provides for life estates in Indian lands, AIPRA does not address the powers that a life tenant may exercise with respect to the land except to the extent that a life estate may be without regard to waste. *See, e.g.,* 25 U.S.C. § 2206(a)(2)(A)(ii). Under AIPRA, “without regard to waste” means “that the holder of [a life] estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.” 25 U.S.C. § 2201(10).

⁶ Subsection (d)(4), which is a catch-all provision, refers to “other deficiencies” necessitating notice to the lessee.

⁷ The regulations that appear in Part 162, Subparts A-F are applicable to competent Crow leases, except to the extent that they are inconsistent with section 162.500, in which case section 162.500 controls. *See* 25 C.F.R. § 162.100(b). Section 162.102 is in Subpart A.

AIPRA is silent on whether a life tenant may lease the land that is subject to the life estate without the consent of the remaindermen.

There is good reason for BIA to require the consent of the remaindermen, where the remaindermen are known: To avoid any dispute with the remaindermen concerning the validity or scope of a lease (among other things) in the event the life tenant dies before the expiration of the lease. If Appellant is dissatisfied with this requirement, he may ask the remaindermen to deed the property back to him (and execute a will in which he devises each parcel to a particular person if he so chooses), or he may enter into leases of no more than one year duration pursuant to 25 C.F.R. § 162.102(b).⁸

Appellant also appears to seek an exemption from compliance with the regulatory signature requirement. Sections 162.102 and 162.500, however, are duly promulgated regulations, which have the force and effect of law and are binding on both BIA and this Board. *Yakama Nation v. Northwest Regional Director*, 51 IBIA 175, 181 (2010). The Board cannot disregard duly promulgated regulations nor may it authorize BIA to disregard such regulations. *Id.*; *Louriero v. Acting Pacific Regional Director*, 37 IBIA 158, 159 (2002). Accordingly we have no authority to grant Appellant's request for an exemption from compliance with the regulatory requirements.

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 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.

⁸ Of course, in some instances, the whereabouts of the remaindermen may not be known or, in the case of contingent remaindermen, the identity of the remaindermen may not yet be known. We express no opinion on the execution of leases of lands subject to life estates in such circumstances.