



INTERIOR BOARD OF INDIAN APPEALS

Crow Leaseholders Association v. Rocky Mountain Regional Director,
Bureau of Indian Affairs

52 IBIA 156 (10/08/2010)



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

CROW LEASEHOLDERS)	Order Vacating Decision and
ASSOCIATION,)	Remanding
Appellant,)	
)	
v.)	
)	Docket No. IBIA 09-32-A
ROCKY MOUNTAIN REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	October 8, 2010

The Crow Leaseholders Association (Appellant) appeals to the Board of Indian Appeals (Board) from a December 2, 2008, decision of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director upheld a decision by the BIA Crow Agency Superintendent (Superintendent)¹ refusing to allow agents with powers of attorney (POA) to submit bids for and execute leases on behalf of lessees for leasing Indian trust lands on the Crow Reservation. We vacate the Regional Director's decision because BIA's leasing regulations expressly contemplate the use of agents for signing leases on behalf of lessees of Indian lands, and even if BIA may be justified in refusing to accept agents' signatures in particular circumstances, BIA's decision in this case applied across-the-board and relied on no special circumstances or fact-specific justification.

Background

In June of 2008, the Deputy Superintendent of the Crow Agency returned an unspecified number of leases to The Lease Company in Hardin, Montana, announcing that "[e]ffective June 13, 2008, the Superintendent is requiring all leases and stipulations . . . be signed by the Lessee." AR Tab 13. No further explanation was provided, nor were appeal instructions included in the correspondence. About the same time, BIA advertised for lease Indian trust land on the Crow Reservation, and the announcement stated that "**ALL Leases**

¹ The Superintendent's decision (Superintendent's Decision) is dated July 22, 2008. Administrative Record (AR) Tab 9.

awarded will be signed by the Lessee, not the Leasing Agents.” AR Tab 12 at (unnumbered) 2. The announcement also stated that “Leasing Agents are not allowed to sign the bid sheets. **Power of Attorney will not be accepted.”** *Id.* at 1. In response to an inquiry from Appellant requesting that the Superintendent cancel the requirement that lessees personally sign leases, the Superintendent confirmed that he was requiring lessees to sign their own lease contracts, and stated that he had “the authority to accept or reject any [POA] or any portion of the POA.” Superintendent’s Decision at 1.

The regulations governing leases and permits of Indian trust land provide that “[a]n agricultural lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.” 25 C.F.R. § 162.220(b).

The Superintendent’s decision did not mention § 162.220(b), but instead relied on BIA’s trust responsibility to Indian landowners, and on regulatory provisions committing BIA to ensure that tenants meet their payment obligations and comply with operating requirements in their leases. *See* Superintendent’s Decision at 1 (citing 25 C.F.R. § 162.108). In his decision, the Superintendent posed the question of who is responsible — the agent or the lessee — if a lease violation occurs. The Superintendent suggested that unless BIA had direct contact with the lessee, there could be delay in resolving a violation, which might place trust assets at risk. The Superintendent cited no examples of any such problems having occurred, nor did he explain why allowing an agent to execute a lease on behalf of a lessee would preclude BIA from contacting the lessee directly if a leasing violation occurred.

The Regional Director upheld the Superintendent’s decision, summarily concluding that Appellant had failed to provide “sufficient evidence” to demonstrate that the Superintendent’s decision was arbitrary and capricious, or to provide an adequate explanation for why Appellant believed that the Superintendent’s decision was not in accordance with the regulations or the law. Although Appellant specifically argued on appeal to the Regional Director that § 162.220(b) allowed the use of agents by tenants in executing leases, the Regional Director did not respond to that argument. In addition, Appellant challenged the Superintendent’s prohibition against the use of POAs in the bidding process. The Regional Director did not address this argument in his decision.

Appellant then appealed to the Board. Appellant again relies on § 162.220(b) as necessarily recognizing the law of agency in Indian leasing transactions, by referring to “individuals having the necessary capacity and authority to bind the tenant.” According to Appellant, that language would be unnecessary if BIA intended to require all tenants to personally sign their leases. Appellant argues that the law of agency is commonly accepted

in business transactions, and that § 162.220(b) recognizes this fact. In addition, Appellant contends that the only purported justification provided by the Superintendent for requiring tenants to individually sign leases is both speculative and based on events that might happen after a lease is in effect. Finally, Appellant contends that the Superintendent's decision represents a change from a long-established pattern and practice of allowing leasing agents to execute leases on behalf of the lessees for agricultural leases on the Crow Reservation.

The Regional Director did not file a brief or otherwise respond to Appellant's brief.

Discussion

The Board reviews issues of law and of the sufficiency of evidence de novo. See *Brinkoetter v. Midwest Regional Director*, 52 IBIA 59, 61 (2010), and cases cited therein. In matters reserved for BIA's exercise of discretion, the Board will not substitute its judgment for BIA's judgment. The Board does require, however, that BIA provide sufficient reasoning to support a discretionary decision and that the administrative record provide evidentiary support for the decision. See *Bonanza Fuel, Inc. v. Director, Office of Economic Development*, 33 IBIA 203, 205 n. 5 (1999); *Wallace v. Aberdeen Area Director*, 26 IBIA 150, 154 (1994); *ZCA Gas Gathering, Inc. v. Acting Muskogee Area Director*, 23 IBIA 228, 239 (1993).

We vacate the Regional Director's decision because BIA's leasing regulations clearly accept the law of agency as applied to the execution of leases by lessees of Indian land, and neither the Regional Director nor the Superintendent provided any legal or fact-based justification for an across-the-board decision to require lessees on the Crow Reservation to individually sign their leases. Instead, the Superintendent simply declared that he would not accept any POAs for executing leases, and broadly declared that he had authority to take that action.

We agree with Appellant that the language of § 162.220(b) contemplates that third-party agents may execute leases on behalf of tenants. The regulation does not require individual tenants to sign leases personally. Instead, it requires only that leases be executed by "individuals having the necessary capacity and authority to bind the tenant." The language necessarily implies the possibility of execution of a lease by an agent, i.e., an individual other than the tenant who has authority to bind the tenant. In the present case, no question has been raised about the validity or sufficiency of POAs as establishing the capacity and authority of agents to execute leases on behalf of Appellant's members.

On the other hand, although § 162.220(b) clearly contemplates that a lease may be executed by an agent on behalf of a tenant, it does not expressly require BIA to accept an

agent's signature in all cases. In that respect, BIA has at least some discretion to decline to accept an agent's signature in a particular case, if facts are present to justify such a decision. In the present case, as justification for his decision, the Superintendent relied on BIA's obligation to ensure that tenants meet their payment obligations and comply with operating requirements of the lease, and he suggested that allowing an agent to sign a lease somehow hindered BIA's ability to contact a tenant directly during the course of a lease if a violation occurs. But it is not apparent how BIA's ability to ensure compliance with a lease by the lessee is affected by the fact that the lease was executed by the lessee's agent. The execution of a lease by an agent does not preclude BIA from contacting the lessee directly if a lease violation occurs. Without more, the Superintendent's justification for his decision is speculative and without foundation. Neither the Regional Director nor the Superintendent provided any examples of leasing problems that would justify an across-the-board refusal to accept POAs for the execution of leases by tenants on the Crow Reservation. Moreover, Appellant contends that the Superintendent's decision was a departure from long-standing practice. The Regional Director did not file a brief and thus did not respond to or dispute that contention.² And finally, neither the Superintendent nor the Regional Director addressed Appellant's challenge to the Superintendent's refusal to allow agents with POAs to submit bids on behalf of prospective lessees in response to lease advertisements.

In summary, BIA's leasing regulations contemplate the use of third-party agents to execute agricultural leases of Indian lands. Although the regulations do not require that BIA accept the action of an agent in all circumstances, BIA's refusal to accept the signature of an agent who has the capacity and authority to submit a bid on behalf of a prospective lessee, and to bind his or her principal by executing the lease on behalf of the principal as lessee, must be clearly justified on the basis of specific evidence. Neither the Regional Director nor the Superintendent referred to any such evidence that would support the decision in this case, nor is there any supporting evidence in the record. We conclude that neither the Regional Director nor the Superintendent has provided a legal and factual justification for the Superintendent's decision refusing to accept POAs for bids on behalf of prospective lessees and for executing leases on behalf of lessees, rendering their decisions arbitrary and capricious.

² Assuming that an across-the-board refusal to accept POAs for bidding on and executing leases would be permissible without amending the regulations, a departure from long-standing practice to accept POAs would appear to warrant an explanation.

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 the Regional Director's decision and remands the matter for further proceedings consistent with this decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge