



INTERIOR BOARD OF INDIAN APPEALS

Bernard and Mildred Bumgarner v. Commissioner of Indian Affairs

4 IBIA 247 (12/03/1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF BERNARD	:	Order of Dismissal
AND MILDRED BUMGARNER	:	
	:	
v.	:	IBIA 76-17-A
	:	
COMMISSIONER, BUREAU OF INDIAN	:	
AFFAIRS, <u>ET AL.</u>	:	December 3, 1975

Administrative appeal of Bernard and Mildred Bumgarner through their attorney, Daniel A. Raas, from a decision of the Commissioner, Bureau of Indian Affairs.

Docketed and Dismissed

The Commissioner in his decision of August 29, 1975, affirmed the action of the Area Director, Portland Area Office, in declining to convert to trust status certain fee property belonging to the appellants.

The Commissioner, as basis for his decision, found that the Area Director's decision of March 24, 1975, was a proper exercise of discretionary authority.

A review of the record, as presently constituted and received from the Commissioner on November 17, 1975, indicates that the matter is one involving the exercise of discretionary authority delegated by the Secretary to the Bureau of Indian Affairs, and not within the Board's review authority as governed by 43 CFR 4.351, et seq.

This Board in the Administrative Appeal of Hannah Finnesand, 3 IBIA 263, February 25, 1975, held that the delegation of authority by the Secretary to this Board on December 14, 1973 (211 D.M. 13-7), did not include the power or authority to exercise the Secretary's discretionary authority.

In view of Finnesand, supra, and controlling regulations, the appeal herein must be dismissed for lack of jurisdiction and the decision of the Commissioner considered as final for the Department.

It would also follow for the same reason that there appears to be no necessity for the Board to consider and rule on the motions filed by appellants in connection with their appeal.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior,

43 CFR 4.1(2), the appeal of Bernard and Mildred Bumgarner dated October 31, 1975, be and the same is hereby DISMISSED for lack of jurisdiction and the decision of the Commissioner dated August 29, 1975, be and the same is considered as FINAL for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Administrative Judge

//original signed
Mitchell J. Sabagh
Administrative Judge