



INTERIOR BOARD OF INDIAN APPEALS

James Morgan, Jr. v. Aberdeen Area Director, Bureau of Indian Affairs

5 IBIA 14 (01/22/1976)

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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 JAMES MORGAN, JR.

v.

AREA DIRECTOR, ABERDEEN AREA OFFICE, ET AL.

IBIA 75-67-A

Decided January 22, 1976

Appeal from the decision of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs, dated March 31, 1975, declaring a lease approved by the Superintendent on November 5, 1974, null and void.

Affirmed.

1. Indian Lands: Leases and Permits: Generally

Leases may be granted by the Secretary pursuant to 25 CFR 131.2(a)(4) only where adult owners who qualify under 25 CFR 131.3 are unable to agree upon a lease.

APPEARANCES: Russel A. Eliason, of Ryan, Scoville, and Uhlir, for appellant,
James Morgan, Jr.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The Superintendent of the Winnebago Indian Agency, Nebraska, on December 2, 1974, awarded a lease embracing 160 acres of land described as the SE 1/4, section 7, Township 24, Range 10, Thurston County, Nebraska, to James Morgan, Jr., the appellant herein. Prior to awarding the lease, pursuant to 25 CFR 131.2(a)(4), the land was advertised by the Superintendent on November 5, 1974, for a period of 14 days. The appellant as the high bidder, was awarded the lease for a term of 5 years beginning March 1, 1975, and ending February 28, 1980.

The land being the original allotment of Simon Porter, Allottee No. 25-0, is owned by six individuals, four of whom are the appellees herein. Subsequent to the approval of the lease by the Superintendent but prior to the beginning of its term, four of the six owners on January 31, 1975, protested the action of the Superintendent by letter to the Area Director. Two of the protestors stated they never received their notice of May 14, 1974, wherein the Superintendent advised the owners that he would lease the land in question if no lease was negotiated by them within 90 days.

The Area Director considered the protest as an appeal and decided that the Superintendent had no authority to lease the

property. On March 31, 1975, the Area Director declared the lease null and void. The Superintendent on April 2, 1975, advised the appellant of the Area Director's decision in the following manner:

Due to the action of Aberdeen Area Office, we can not accept your lease on the Simon Porter allotment, Allotment No. 25-0. Thank you for your interest.

The action referred to by the Superintendent in his letter of April 2, 1975, was to the final paragraph of the Area Director's memorandum indicating the date of February 2, 1975, which read as follows:

Upon a cursory examination of what has been submitted to us for review, I might call your attention to 54 IAM 5.3 and 25 CFR 131.6, which expresses that the Secretary is without authority to grant a lease on land of an adult Indian (except those who are not non-compos mentis and those whose whereabouts are unknown). I believe you will need to make a careful review of the action approving the lease to Mr. Morgan which appears to have been granted under 25 CFR 131.2(a)(4).

On April 16, 1975, the appellant filed with the Superintendent of the Winnebago Indian Agency, a petition seeking administrative review of the actions taken by the Area Director and the Superintendent. The petition was forwarded to the Commissioner, Bureau of Indian Affairs, who in turn referred the matter to this Board on June 25, 1975, for review and decision.

Paragraph 14 of the petition fairly sums up the appellant's argument for setting aside the action of the Area Director and the Superintendent and for declaring the appellant to be the lawful lessee of the allotment in question. Paragraph 14 reads as follows:

The United States, acting through their Department of Interior and Bureau of Indian Affairs, has the authority and duty to lease the allotment involved in this action, and having done so, the action is final and binding on all heirs and devisees and the Bureau of Indian Affairs. The Secretary of Interior has the authority to approve all leases. He approved the lease in question, and the lessee has entered upon the land and began farming. It would be improper and illegal for the Secretary to approve any other lease.

The controversy appears to focus on the interpretation of 25 CFR 131.2(a)(4) which in relevant part provides:

(a) The Secretary may grant leases on individually owned land on behalf of; * * * (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the 3-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; * * * [Emphasis supplied.]

[1] 25 CFR 131.2(a)(4) uses the discretionary words "may grant." Clearly, the purpose of this section is not meant to force heirs or devisees into negotiations. Rather, this section gives the Secretary the authority to grant leases only if the heirs or devisees

have been unable to agree on a lease and not on the mere fact that the heirs or devisees have not entered into a lease within the 90-day period.

The failure of the owners to respond or comply to the Superintendent's notice of May 14, 1974, cannot be interpreted as inability on the part of the owners to negotiate a lease, nor does it indicate disagreement per se.

The Board notes that the owners, although living in different parts of the country, have in the past been able to negotiate leases on the allotment in question. There apparently has been no disagreement among the heirs in the past regarding lease negotiations.

Clearly, the record is void of any evidence to indicate the owners were actually unable to agree to a lease. At most, disagreement can only be inferred by the owners' nonresponse to the Superintendent's notice. Under the foregoing circumstances, the Superintendent was without authority to award a lease on the premises on behalf of the adult owners who qualified to negotiate leases under 25 CFR 131.3.

Moreover, contrary to the appellant's contention, the unauthorized action of the Superintendent in awarding the lease in question is not final and binding upon the Secretary.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the interior, 43 CFR 4.1, the decision of the Area Director dated March 31, 1975, and the Superintendent's action of April 2, 1975, concurring thereto, declaring appellant's lease null and void, is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge