



INTERIOR BOARD OF INDIAN APPEALS

Isaac and Katherine Bonaparte v. Commissioner of Indian Affairs

9 IBIA 115 (11/06/1981)



# United States Department of the Interior

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

ISAAC AND KATHERINE BONAPARTE  
v.  
COMMISSIONER OF INDIAN AFFAIRS

IBIA 80-44-A

Decided November 6, 1981

Appeal from a decision of the Commissioner of Indian Affairs approving the cancellation of a business lease.

Reversed.

1. Indian Lands: Leases and Permits: Revocation or Cancellation

A Departmental official may change a decision regarding cancellation of a lease of Indian lands as long as the reason for the change is clearly set forth in order to show that the departure from the prior administrative position is not arbitrary or capricious.

2. Indian Lands: Leases and Permits: Revocation or Cancellation

A business lease on Indian lands may not be canceled on the grounds that the business was not continuously open when the lease does not require the business to operate for a specified period.

3. Indian Lands: Leases and Permits: Revocation or Cancellation

A business lease on Indian lands may not be canceled on the grounds that the leasehold was also being used for residential purposes when the lease does not specifically prohibit this use and it is shown that the business requires continual protection against vandalism and robbery and the residence does not interfere with the operation of the business.

APPEARANCES: Katherine Bonaparte, appellant, pro se; James Kuhn, Esq., for appellee Commissioner of Indian Affairs. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Isaac and Katherine Bonaparte (appellants) have sought review of a May 13, 1980, decision of the Commissioner of Indian Affairs affirming the cancellation of Nez Perce Lease No. 1169-T on Tribal Unit No. 44 of the Nez Perce Reservation in Idaho. The Board referred this appeal to the Hearings Division of the Office of Hearings and Appeals on August 14, 1980, for a recommended decision. A hearing was held before Administrative Law Judge Robert C. Snashall on April 22, 1981. Judge Snashall recommended on July 29, 1981, that the Commissioner's decision be upheld. The Board has reviewed the file provided by the Bureau of Indian Affairs (BIA), the record developed before Judge Snashall, and the recommended decision. The Board does not agree with that recommendation and so reverses the Commissioner's decision. This opinion sets forth both the Board's findings of fact and conclusions of law.

Background

In January 1966 appellants applied to the BIA for a business lease on a portion of Nez Perce Tribal Unit No. 44 near Orofino, Idaho. The Real Property Management Officer for the Northern Idaho Agency, BIA, forwarded the application to the Nez Perce Tribal Executive Committee (tribal committee; committee) on January 10, 1966, with the comments that the lease would not "conflict with any other intended use" of the land and that the committee's "favorable action on this request would be consistant [sic] with good land use." 1/ On January 14, 1966, the committee informed appellants that the property had been leased as a residence. After negotiations with the residential leaseholder, however, the committee determined that both leases would be allowed. Resolution NP 66-115, adopted by the committee on March 8, 1966, authorized the granting of a business lease to appellants.

Lease No. 1169-T was entered into between appellants, the committee, and the Northern Idaho Agency on May 3, 1968, for a period of 25 years. The lease provided for an annual rental payment of \$50 2/

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1/ Memorandum of Jan. 10, 1966, from Supv. Real Property Management Officer, Northern Idaho Agency, BIA, to Chairman, Nez Perce Tribal Executive Committee.

2/ According to a tribal committee official, a rental of \$50 per year was charged because the tribe was

"trying to be helpful to our fellow members in trying to get them started in some role or some business of some kind and since Isaac Bonaparte is a Nez Perce Tribe enrollee and we were hoping then to have him started on some business and try to be self sufficient. That was a policy that the Committee had at the time \* \* \*. We're sort of a charitable deal trying to get our people started \* \* \*." (Tr. 29).

and an annual lease fee of \$5. Significant clauses in the lease provided that the property was "to be used only for the following purposes: Doughnut shop and luncheonette;" that rental payments were subject to review at 5-year intervals; that "Lessees shall have the right during their occupancy of the leased premises to use such premises for the primary purpose of conducting thereon a Do-Nut Shop and luncheon food catering service and for any other lawful business appurtenant thereto that will not materially interfere with said primary use;" and that improvements were the property of the lessee unless otherwise agreed.

Because appellants were unable to secure a loan for the total cost of constructing the restaurant, they borrowed \$3,500 and built only enough to open (Tr. 54). Problems began when a dispute arose between the State and the tribe over whether appellants should charge sales tax. Appellants decided to close the restaurant until a resolution could be reached. When the State passed legislation requiring the sales tax to be paid by businesses operating on Indian land, appellants reopened the business (Tr. 68-69). Appellants discovered shortly after they resumed operations that flooding had caused the floor of the restaurant to rot. They were forced to close in order to lay a concrete floor (Tr. 56, 70).

By letter dated October 18, 1973, the tribal committee informed appellants that it had decided to cancel lease No. 1169-T "due to [appellants'] failure to operate a donut shop and luncheonette \* \* \* as stipulated in" the lease agreement. <sup>3/</sup> This decision required the concurrence of the Secretary of the Interior under 25 CFR 131.14. The Superintendent of the Northern Idaho Agency, exercising the delegated power of the Secretary, informed the committee by letter dated November 6, 1973, that there were no grounds for cancellation of the lease. <sup>4/</sup>

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<sup>3/</sup> Letter of Oct. 18, 1973, from Secretary, Nez Perce Tribal Executive Committee to appellants.

<sup>4/</sup> Letter of Nov. 6, 1973, from Superintendent, Northern Idaho Agency, BIA, to Chairman, Nez Perce Tribal Executive Committee:

"The lessee did in fact construct and operate a Donut Shop and Luncheonette on the premises. It is also our information that the lessee has and is currently making repairs on a portion of the building, said repairs being necessary in order to reopen the premises for business. The lease does not include any provision which stipulates that the business must be continually in operation, or in operation at all, except that the leased premises are to be used only for the following purposes: 'Donut Shop and Luncheonette.' All lease fees and rentals are paid to date. Accordingly, as there are no apparent grounds for cancellation [sic] of the lease, [Nez Perce Tribal Executive Committee] resolution [NP 74-76] is being returned without action."

The letter further suggested that the committee might want to negotiate a lease modification "specifying an annual period of time during which the premises are to be open for business. A violation of such a modification would then be possible reason for future cancellation [sic] action." There is no evidence in the record that the committee sought such a lease modification.

Following receipt of this letter, the committee rescinded resolution NP 74-76. 5/

Appellants reopened the restaurant after completing repairs and continued to work on the restaurant as finances became available. Perhaps because of the restaurant's rather isolated location (the nearest neighbor was an elderly woman who lived alone, had vision problems, did not have a telephone or car, and was gone much of the year), the restaurant was vandalized and robbed on at least two occasions (Tr. 56). In order to provide some protection for the restaurant, appellants asked their daughter and son-in-law to move their mobile home behind the restaurant. Appellants' daughter, son-in-law, and their children began living behind the restaurant in 1976, and the vandalism and robberies ended (Tr. 56, 70).

By letter dated September 13, 1976, the Acting Superintendent issued appellants a show-cause letter in accordance with 25 CFR 131.14, informing them that they were apparently in violation of their lease for failure to pay the rent and for allowing the land to be "used for residential purposes which is not permitted in your lease." 6/ Appellants responded to this letter by paying the rent and explaining that their children lived in the trailer in order to provide protection for the restaurant. 7/ The Acting Superintendent found this explanation acceptable and took no action against the lease. 8/

Another show-cause letter was sent by the Acting Superintendent on January 10, 1977, charging that appellants were illegally selling alcoholic beverages at the restaurant. 9/ Appellants replied that they were unaware that they were violating the law and had acquired beer licenses from the State and county in 1974. In that letter they requested that the committee adopt an ordinance allowing them to sell beer. 10/ The Acting Superintendent informed the tribal committee of appellants' request for an ordinance on January 24, 1977. That letter suggested that the committee could adopt the requested ordinance, or that appellants could be ordered "to cease selling beer or face final

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5/ According to a Nov. 26, 1973, memorandum from the Acting Superintendent, Northern Idaho Agency, BIA, to the Portland Area Director, BIA, discussing the attempted lease cancellation, "the lease continue[d] in good standing."

6/ Letter of Sept. 13, 1976, from Acting Superintendent, Northern Idaho Agency, BIA, to appellants.

7/ Letter of Sept. 26, 1976, from appellants.

8/ Letter of Sept. 30, 1976, from Acting Superintendent, Northern Idaho Agency, BIA, to appellants: "On September 26, 1976 you submitted a letter explaining in good detail the necessity of having your children live in a trailer on the premises to protect the property from vandalism. Your response was satisfactory and your lease is considered to again be in good standing."

9/ A special ordinance voted by the tribal committee was required in order to sell alcohol on reservation lands (Tr. 41-43).

10/ Undated letter from appellants.

cancellation of the lease." 11/ Because the committee refused to adopt such an ordinance, appellants stopped selling beer (Tr. 66). In an April 21, 1977, letter to the Chairman of the Reservation Development Committee the Acting Superintendent acknowledged that appellants' lease was in good standing because they had stopped selling beer. 12/

On April 26, 1977, the tribal committee adopted resolution NP 77-237 requesting the BIA to reappraise appellants' lease in order to determine whether the rental rate could be increased in accordance with the lease provisions. The BIA conducted an appraisal and, on October 20, 1977, the Acting Superintendent informed the tribal committee that the rent could be increased to \$360 per year. 13/ There is no indication in the file that any further action was taken toward increasing appellants' rent.

On May 5, 1978, the Superintendent again gave appellants 10 days to show why their lease should not be canceled. The letter charged that appellants were not operating the restaurant and were using it as a homesite. 14/ Appellants' response to this letter was received on May 24, 1978. The Superintendent responded the same day, informing appellants that their explanation was unacceptable and their lease was canceled. 15/ The Superintendent treated appellants' May 24, 1978,

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11/ Letter of Jan. 24, 1977, from Superintendent, Northern Idaho Agency, BIA, to Chairman, Nez Perce Tribal Executive Committee.

12/ Letter of Apr. 21, 1977, from Acting Superintendent, Northern Idaho Agency, BIA, to Chairman, Reservation Development, Nez Perce Tribe of Idaho: "The Bonapartes ceased selling beer and removed all of same from the property within the ten-day period [established in 25 CFR 131.14]. Accordingly, this lease is now in good standing according to law."

13/ Letter of Oct. 20, 1977, from Acting Superintendent, Northern Idaho Agency, BIA, to Chairperson, Nez Perce Land Commission Enterprise.

14/ Letter of May 5, 1978, from Superintendent, Northern Idaho Agency, BIA, to appellants. After reciting the previous history of this lease, the letter stated:

"In each case you either corrected the violation or indicated the condition to be temporary until you could complete repairs and open the business. The time factor has now changed the situation, and it is apparent that you have in fact not operated the business on the premises, and that it has been used by your consent as a homesite. This is in direct violation of the lease."

The letter further stated that because the tribe held a mortgage on the buildings on the site and because appellants were in default of that mortgage in the amount of \$7,062.54, the provisions of the lease allowing appellants to remove the improvements would not apply.

15/ Letter of May 24, 1978, from Superintendent, Northern Idaho Agency, BIA, to appellants: "You presented a ten-year history of financial and structural problems, none of which can be contributed [sic] even in part to the

letter as an appeal and sent the file to the Portland Area Director, outlining the history of appellants' lease and informing him that the lease would be canceled if the decision were sustained. 16/ On June 8, 1978, the Acting Assistant Area Director (Economic Development) returned the file to the Superintendent without action so that the procedures set forth in 25 CFR 131.14 could be completed. Accordingly, the Superintendent informed appellants that the lease was canceled on June 14, 1978. 17/

The file was returned to the Portland Area Director by the Superintendent on June 21, 1978, in accordance with appellants' appeal. On June 29, 1978, the appeal was denied by the Portland Area Office. 18/ Appellants' appeal of this decision, sent to the Portland Area Office, was received on July 11, 1978. Appellants were given until August 11, 1978, to file any further statements in support of the appeal, which the area office said would then be forwarded to the Assistant Secretary for Indian Affairs. 19/

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fn. 15 (continued)

lessor, the Nez Perce Tribe or its Executive Committee. We are sympathetic towards your continued problems, however the fact remains that you have enjoyed possession of the land since May 1, 1968 and for much of that time the business was not in operation. During the past year, the business has not been in operation, and you did in fact utilize the property as a homesite for your children, albeit as custodians. It is concluded that your explanation is not an acceptable reply to the notice of May 5, 1978. Accordingly, your lease will now be cancelled." (Emphasis in original.)

16/ Memorandum of May 24, 1978, from Superintendent, Northern Idaho Agency, BIA, to Area Director, Portland Area:

"The answer was not deemed adequate to prevent cancellation as (1) the residential use of the premises is a continuation of the violation charged in the notice dated September 13, 1976, which charge now becomes justified because the business has not been in operation during the past year, and (2) past history and the lessees' letter of May 23, 1978 leaves [sic] little doubt that the business will remain closed during the foreseeable future."

The letter concluded that, if the lease was canceled, appellants would be given 30 days to vacate, "removing the house trailer but leaving the business building, which is subject to a defaulted tribal loan."

17/ Letter of June 14, 1978, from Superintendent, Northern Idaho Agency, BIA, to appellants:

"Extended periods of closure have existed over the ten year duration of the lease to date. The present noncommercial use of the premises as a homesite has continued for many months. It appears that this mode of operation would remain unchanged in the foreseeable future."

18/ Letter of June 29, 1978, from Acting Assistant Area Director (Economic Development), Portland Area Office, BIA, to appellants.

19/ Letter of July 18, 1978, from Assistant Area Director (Economic Development), Portland Area Office, BIA, to appellants.

Appellants retained counsel to assist them in their appeal to the Assistant Secretary. Their attorney, pursuant to an extension of time, filed a formal notice of appeal and statement in support of appeal on August 30, 1978.

On July 17, 1979, following several inquiries by appellants' counsel and the tribe, the appeal file was transmitted to the Commissioner of Indian Affairs. 20/ On January 17, 1980, the Commissioner of Indian Affairs wrote appellants requesting additional information from them and the tribe before deciding their appeal. Appellants, again appearing pro sese, filed a letter response on February 27, 1980. The tribe, through counsel, filed a memorandum of law dated March 17, 1980.

The Commissioner issued a decision affirming the Portland Area Office on May 13, 1980. The Commissioner's office received an appeal letter from appellants on June 12, 1980. Apparently, this letter was not recognized as an appeal, because on July 21, 1980, the Superintendent of the Northern Idaho Agency wrote appellants informing them that the lease cancellation was final and that they had 60 days to vacate the property. The letter further informed appellants that they could not do any business or reside upon the property. 21/

Appellants informed the BIA that they had filed an appeal. On August 7, 1980, the case was transmitted to the Board of Indian Appeals by the Acting Deputy Commissioner of Indian Affairs. The Board docketed the appeal on August 14, 1980, and referred it to the Hearings Division of the Office of Hearings and Appeals for a recommended decision. A hearing was held before Administrative Law Judge Robert C. Snashall on April 22, 1981. Following the filing of post-hearing briefs by both parties, Judge Snashall recommenced on July 29, 1981, that the Commissioner's decision be affirmed. In making this recommendation, the Judge adopted completely the post-hearing brief filed for the Commissioner. No exceptions to the recommended decision were filed. 22/

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20/ Memorandum of July 17, 1979, from Assistant Area Director, Portland Area Office, BIA, to Commissioner of Indian Affairs.

21/ Letter of July 21, 1980, from Superintendent, Northern Idaho Agency, BIA, to appellants: "You are prohibited from attempting to do any business whatsoever, to reside upon, or otherwise utilize the premises other than as a base for operation of your improvement removal rights under the contract. You are also put on notice that the lessor, the Nez Perce Tribe, may lease out or utilize the land immediately, without regard to your temporary presence, provided however, such use shall not infringe upon your improvement rights if properly exercised."

Nothing further was said about the alleged defaulted loan which would have prevented appellants from removing their improvements.

22/ On Sept. 17, 1981, the Acting Deputy Assistant Secretary for Indian Affairs (Operations) issued a memorandum accepting Judge Snashall's recommended decision. Because that recommendation was made to the Board, which exercises the final review authority of the Secretary in such cases, 43 CFR 4.1, the Chief Administrative Judge of the Board requested on Sept. 22, 1981, that the memorandum be rescinded. The memorandum was rescinded on Oct. 2, 1981.

Discussion and Conclusions

Under 25 CFR 131.14 a lease is subject to cancellation if a satisfactory showing is made to the Secretary that there has been a violation of the terms of the lease or of the regulations. The Commissioner's May 13, 1980, decision sets forth three alleged violations of the lease for which cancellation was deemed appropriate: frequent closings of the restaurant; use of the property for residential purposes; and the sale of alcoholic beverages at the restaurant.

[1] Lease cancellation on the grounds of frequent closing of the restaurant was first sought in October 1973; on that of use of the property for residential purposes in September 1976; and on that of sale of alcoholic beverages in January 1977. On each of these occasions, appellants explained the situation to the Superintendent's satisfaction or ceased the activity giving rise to the complaint. Thereafter they continued operation of the restaurant after being assured that the lease was "in good standing." If the Superintendent later determined that those explanations were legally inadequate and that his decisions were based on a mistake of law, he was entitled to reverse his decisions as long as he clearly set forth and identified the mistake of law in order to show that the departure from the prior administrative position was not arbitrary or capricious. <sup>23/</sup> See, e.g., Squaw Transit Co. v. United States, 574 F.2d 492 (10th Cir. 1978); FTC v. Crowther, 430 F.2d 510 (D.C. Cir. 1970); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). In this case, however, the decision to cancel the lease is not supported in law.

[2] In 1973 appellants were told that their lease did not require the restaurant to be open a specified period of time. The Commissioner attempted to justify his contrary ruling by citing the concluding sentence of Clause 14 of the lease, which provides that if the leased premises were rendered unusable for more than 30 consecutive days by an act of God, the lessees (appellants here) could suspend rental payments for that period of time. From this statement, the Commissioner concluded that the parties intended that "the doughnut shop normally would remain in continuous operation, and that an interruption of service in excess of 30 days would be considered extraordinary." <sup>24/</sup> This conclusion misconstrues the lease provision. The quoted language is a standard rental constructive eviction clause and pertains to the

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<sup>23/</sup> In addition, when such a mistake of law is discovered, it would appear that the person adversely affected by the new determination should be given an opportunity to conform to the new interpretation before cancellation of the lease. The procedure followed in this case resulted in the cancellation of appellants' lease immediately after they presented explanations that had previously been accepted. No opportunity was given them to take corrective measures once they discovered that the Department had changed its position. Appellants might have agreed to any of a number of alternatives that would have complied with the Department's new interpretation.

<sup>24/</sup> Decision of May 13, 1980, by Commissioner of Indian Affairs, at 3.

lessees' right to occupy the property during the lease term. It does not relate to any promise by appellants as to the extent or duration of their use of the property.

The Commissioner further justified his decision by stating that the frequent closings of the restaurant constituted a failure of consideration; *i.e.*, that the tribal committee entered into this lease so that a business would be established and operated on the property. Consequently, he concluded that "[m]ore seems to have been intended by the parties here than the construction of a doughnut shop to be left vacant and unused over extended periods." He cited the Board's decision in Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (1980), in support of this conclusion. <sup>25/</sup> In Mark Small the Northern Cheyenne Tribe leased 200 acres of tribal lands to Small to establish a pole and post business for a rental of \$1 per year. The Board stated that

[t]he essence of the transaction was the conduct by appellant of a pole and post business on the reservation which the parties anticipated would create added employment opportunities for members of the tribe, enhance the general climate for business on the reservation, and supply appellant with income from profits earned by the business.

Mark Small, *supra* at 19. The business failed during its first year, the inventory was sold at auction, and Small left the State. When the tribe applied for cancellation of the lease 2 years later, Small had not returned to the reservation.

It is readily apparent that these two cases are almost totally dissimilar. First, the only reason given by the tribal committee for entering into the present lease was an attempt to help appellants toward self-sufficiency (Tr. 29-30). There could never have been any reasonable expectation that a doughnut shop or restaurant of the size envisioned would offer employment for tribal members other than its owners and perhaps their immediate family. A restaurant would not significantly enhance the general climate for business on the reservation. The annual rent of \$50, established in 1968, represented a much closer approximation of the actual fair market rental of this property than did \$1 for 200 acres in Mark Small. Appellants have never abandoned the business, but have continually improved it to the point where, in 1978, the restaurant was appraised at \$29,260. <sup>26/</sup>

The only consideration owed to the tribe by appellants is expressed in the lease terms. The decision in Mark Small adds nothing to the intent of the parties in a totally separate transaction. Therefore, there has been no failure of the consideration owed to the tribe.

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<sup>25/</sup> Decision of May 13, 1980, by Commissioner of Indian Affairs, at 4-5.

<sup>26/</sup> Appraisal of June 21, 1978, by Harry Sanders, affiliated with Al White Agency, Orofino, Idaho.

Furthermore, even if the business use had been abandoned, there was no showing that such abandonment harmed either the leasehold or the lessor. In Administrative Appeal of Paul G. Siegfried v. Area Director, Billings, 3 IBIA 195, 81 I.D. 718 (1974), the Board held that failure to use a leasehold for the purpose specified in the lease does not constitute a breach of the lease sufficient for cancellation of the lease in the absence of a showing on the record of detriment to the landowner or the leasehold. In this case there is no evidence that appellants have in any way damaged the leasehold. The evidence is that they have cleared brush (Tr. 12), established a picnic area (Tr. 44-45, 48-49, 52-53), and constructed a restaurant valued in excess of \$29,000. There is similarly no showing of damage to the landowner. Because the annual rental was due regardless of whether or not the restaurant conducted business and there was no provision in the lease for payment based on the amount of income generated by the restaurant, the tribe suffered no financial or other harm because the restaurant was closed. 27/

[3] In 1976 appellants explained that their children moved onto the property in order to protect the restaurant against vandals and robbers. This identical explanation was apparently rejected in 1978 because the children had continued to live behind the restaurant since 1976 even though the restaurant was closed for an extended period of time in 1978. There is, however, no evidence in the record that the property was no longer subject to vandalism and robberies or that the restaurant contained nothing of value. The fact that the restaurant was closed for a disputed period of time does not mean that it no longer required protection or that the business use had been abandoned in favor of an exclusively residential use. 28/ Because the lease did not specifically prohibit this use and there is no evidence that the residence interfered in any way with the operation of the business, appellants did not violate their lease by allowing their children to reside on the site to protect the business.

Finally, in 1977 appellants were informed that it was illegal for them to sell alcoholic beverages at the restaurant. When the tribal committee declined to pass an ordinance allowing such sales, appellants removed all alcohol from the premises. The Commissioner relies on a February 28, 1980, affidavit by Maurice R. Slickpoo, 29/ to establish

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27/ At the hearing, a spokesman for the tribe attempted to argue that permitting appellants' children to reside on the leased property established a bad precedent for other leases of tribal lands (Tr. 30). Any such precedent can easily be eliminated by citing to the special factual circumstances of this case and inserting a clause prohibiting any form of residential use of business property in appropriate future leases.

28/ Appellants testified that their children both wanted to move and had several immediately available options for locating their home (Tr. 58, 60, 74). While not conclusive, such uncontroverted testimony strongly suggests that the children continued to live behind the restaurant for the reasons stated.

29/ The record indicates that a Maurice Slickpoo was Chairman of Reservation Development for the Nez Perce Tribe on Apr. 21, 1977, and was involved in earlier attempts to cancel the present lease.

that appellants sold beer and wine at the restaurant on August 18, 1979. The evidence presented at the hearing indicates that appellants did not serve alcoholic beverages after they discovered it was illegal and that they never served wine because they did not have a wine license (Tr. 66). Mr. Slickpoo was not available for cross-examination and no independent corroboration of his affidavit was presented. Under the circumstances, the affidavit will be given no credence. Because there is no other evidence that appellants continued to sell alcoholic beverages, the lease cannot be canceled for this reason.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. Departmental officials of the BIA responsible for overseeing this lease are directed to ensure that appellants receive the full benefit of their lease.

This decision is final for the Department.

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//original signed

Franklin D. Arness  
Administrative Judge

We concur:

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//original signed

Wm. Philip Horton  
Chief Administrative Judge

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//original signed

Jerry Muskrat  
Administrative Judge