



INTERIOR BOARD OF INDIAN APPEALS

Kenneth Gullickson v. Aberdeen Area Director, Bureau of Indian Affairs

24 IBIA 247 (10/14/1993)



United States Department of the Interior

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

KENNETH GULLICKSON

v.

ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-55-A

Decided October 14, 1993

Appeal from the approval of a sale of trust land.

Affirmed.

1. Indians: Lands: Individual Trust or Restricted Lands: Alienation--
Indians: Trust Responsibility

In actions relating to the sale of an individual Indian's interest in trust property to another Indian or an Indian tribe, the Bureau of Indian Affairs' trust duty is to the Indian for whom the interest is held in trust, not the prospective purchaser or purchasers.

APPEARANCES: Gary J. Montana, Esq., Rapid City, South Dakota, and Heidi A. Drobnick, Esq., Red Wing, Minnesota, for appellant; Benjamin C. Pulkrabek, Esq., Fort Yates, North Dakota, for the Standing Rock Sioux Tribe.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Kenneth Gullickson seeks review of a January 25, 1993, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), affirming the approval of a deed in which Robert White Twin conveyed an interest in trust land to the Standing Rock Sioux Tribe (Tribe). For the reasons discussed below, the Board affirms the Area Director's decision.

Background

White Twin owned a 1/6 interest in Allotment 3723 on the Standing Rock Reservation. ^{1/} Appellant owns a 1/3 interest in the same allotment. On February 5, 1991, White Twin applied to the Standing Rock Agency, BIA, to sell his interest in the allotment to appellant.

On October 8, 1991, the Standing Rock Sioux Tribal Council adopted a resolution authorizing tribal purchase of Allotment 3723 at a minimum price of \$110 per acre.

^{1/} Allotment 3723 contains approximately 168.05 acres and is described as the S^{1/2} SW^{1/4}, Lots 3 and 4, sec. 5, T. 132 N., R. 79 W., fifth principal meridian, North Dakota.

The BIA appraisal of the allotment, which was received at the agency on November 12, 1992, valued it at \$12,500. On November 19, 1992, the Superintendent wrote to White Twin, informing him of the appraisal and noting that White Twin's interest, at the appraised value, was worth \$2,083.33. The Superintendent also informed White Twin of the Tribe's offer, pursuant to which White Twin's interest would bring \$3,081. He enclosed two deeds for White Twin's consideration, one to appellant at the appraised value and one to the Tribe at the Tribe's offered price. White Twin executed the deed to the Tribe and returned it to BIA. The Superintendent approved it on December 3, 1992.

Appellant appealed the approval to the Area Director, who affirmed it on January 25, 1993, stating, inter alia, that "[t]he landowner is entitled to negotiate a sale to whom he may choose to secure the highest return in accordance with regulations."

Appellant's notice of appeal from the Area Director's decision was received by the Board on March 2, 1993. Appellant and the Tribe filed briefs.

Discussion and Conclusions

Appellant makes a number of arguments on appeal, none of which are persuasive. First, he contends that BIA should have informed him of the Tribe's offer. This notice was required, he argues, because BIA had a dual trust responsibility in this matter--toward himself and the Tribe.

[1] Appellant entirely misconstrues the nature of BIA's trust responsibility in this transaction. In matters concerning the whole of Allotment 3723, such as the management or leasing of the tract, BIA has a trust responsibility toward all co-owners, including appellant. Moses v. Acting Portland Area Director, 24 IBIA 233 (1993). However, with respect to the sale of White Twin's interest in the allotment, BIA's trust duty was to White Twin, not to either appellant or the Tribe, both of whom, in this context, were simply potential purchasers. Smith v. Acting Billings Area Director, 18 IBIA 36 (1989).

BIA's duty to White Twin required it to inform him of the Tribe's offer, which substantially exceeded the appraised value. It was up to White Twin to decide whether to accept the Tribe's offer or to inform appellant of that offer and give him an opportunity to meet it. 2/ The Board finds that BIA had no duty to inform appellant of the Tribe's offer.

2/ The record for this appeal includes a memorandum prepared by a BIA employee who delivered the deeds to White Twin and explained the appraisal and the Tribe's offer to him. The memorandum indicates that White Twin expressed an interest in receiving the higher compensation offered by the Tribe. It states further: "While visiting with [White Twin], he stated that [appellant], had called him a lot about the land sale but [appellant] had never offered him anything higher than the appraised value of the land." Dec. 22, 1992, Memorandum for the Record.

Appellant also argues that the Tribe failed to make a written request to acquire the interest, although such a request is required by 25 CFR 151.9. Clearly, BIA considered the tribal resolution an adequate request. Section 151.9 explicitly states that a request need not be in any special form. 3/ The Board finds that BIA reasonably construed the resolution as the request required by section 151.9.

Next, appellant argues that, under 25 CFR 151.7(e), the sale of White Twin's interest to the Tribe required the consent of all the co-owners of Allotment 3723 and that none of the co-owners had consented. 25 CFR 151.7(e) sets out one of several alternative conditions under which trust acquisition of a fractional interest may be approved. 4/ The Tribe's request was approved under another of the alternatives, subsection 151.7(c), because the Tribe had offered to purchase the remaining interests in the allotment at a price not less than the fair market value. Because the conditions in section 151.7 are alternatives, only one of them was required to be met. The Board finds that consent of the co-owners was not required in this case.

Finally, appellant appears to argue that the sale of White Twin's interest should have been advertised, rather than negotiated. Appellant concedes, however, that a negotiated sale was permitted in this case under 25 CFR 152.25(a), which provides: "Indian owners may, with the consent of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value * * * (2) when the sale is to the tribe or another Indian." Because a negotiated sale was permitted in the circumstances of this transaction, the Board finds that BIA was not required to advertise the sale.

3/ 25 CFR 151.9 provides:

"An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part."

4/ 25 CFR 151.7 provides:

"Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

"(a) The buyer already owns a fractional interest in the same parcel of land; or

"(b) The interest being acquired by the buyer is in fee status; or

"(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

"(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

"(e) The owner[s] of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer."

Appellant has not shown that BIA committed error in approving White Twin's deed to the Tribe.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's January 25, 1993, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge