



INTERIOR BOARD OF INDIAN APPEALS

Leatrice and Ramon Noriega v. Acting Anadarko Area Director,  
Bureau of Indian Affairs

27 IBIA 157 (02/06/1995)



# United States Department of the Interior

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

LEATRICE and RAMON NORIEGA, : Order Affirming Decision  
Appellants :  
 :  
v. :  
 :  
 : Docket No. IBIA 95-41-A  
ACTING ANADARKO AREA DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : February 6, 1995

Appellants Leatrice and Ramon Noriega seek review of an October 12, 1994, decision issued by the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to approve a mortgage of trust land owned by Mrs. Noriega. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

By letter dated September 7, 1994, Kaw Valley State Bank and Trust Co. (bank) submitted a request to the Horton Agency, BIA, for the approval of a mortgage of two tracts of trust land owned by Mrs. Noriega in Jackson County, Kansas. The bank indicated that appellants sought the mortgage in order to pay legal expenses for their sons, and that it was ready to grant a \$20,000 mortgage if BIA approved the mortgage request. On September 14, 1994, the bank informed BIA that the amount of the mortgage was being increased to \$31,000.

The Horton Agency reviewed appellants' financial status. In a memorandum dated September 26, 1994, the Agency Superintendent recommended that the Area Director not approve the mortgage.

On October 12, 1994, the Area Director declined to approve the mortgage. The Area Director stressed that he understood appellants' desire to assist their sons, even to the extent of jeopardizing their personal economic security. He stated: "However, in your particular case the asset being placed at risk is trust property and as trustee I should stand between you and the mortgagee and make a decision based upon a careful evaluation of the facts, without emotional involvement. A decision in the long-range best interest of the trust owner" (Letter at 2). The Area Director concluded he could not approve the mortgage, stating: "Assuming financial conditions remain at basically the same ratio, you and your husband would be on the edge of insolvency for the next ten years and your trust properties would be at risk" (*Id.*).

Appellants appealed to the Board. By letter dated January 27, 1995, they requested expedited consideration because their son's trial was set for February 6, 1995. The Board hereby grants expedited consideration.

On appeal, appellants object that, in reaching his decision, the Area Director considered guidelines that were in draft form. Decisions concerning whether a conveyance of trust land should be approved are committed to BIA's discretion. See, e.g., Estate of Clifford Celestine, 26 IBIA 220 (1994); Estate of George Levi, 26 IBIA 50 (1994); Bulletproofing, Inc. v. Acting Phoenix Area Director, 20 IBIA 179 (1991). Because this is a discretionary decision, and probably because of the very emotional and stressful reason for which appellants sought the mortgage, the Area Director looked to whatever guidance he could find to aid him in exercising his discretion. The Board cannot conclude that the Area Director committed reversible error because the guidelines he consulted were in draft form.

Appellants contend that they are mature people, and are fully aware of what they would be undertaking in executing the mortgage. They state that they should be able to do as they wish with the land, and that BIA is not looking after the best interests of Mrs. Noriega and their sons by denying the mortgage.

In this case, BIA's trust responsibility is to Mrs. Noriega as the owner of the trust land. See, e.g., Celestine, supra; Gullickson v. Aberdeen Area Director, 24 IBIA 247 (1993); Smith v. Acting Billings Area Director, 18 IBIA 36 (1989). Although the result appears harsh in this case, BIA's first responsibility is to ensure that Mrs. Noriega's future is not jeopardized. The Board declines to reverse the Area Director's decision because his assessment of Mrs. Noriega's best interests was different than hers.

Appellants also mention discussions they had with the Area Office in which they were told that the interest rate was the problem. The administrative record contains comments to the same effect. The Area Director did not, however, base his decision on the interest rate, but rather on the best interests of the Indian landowner.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Anadarko Area Director's October 12, 1994, decision is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge