



INTERIOR BOARD OF INDIAN APPEALS

Milo E. Cadotte v. Acting Aberdeen Area Director, Bureau of Indian Affairs

31 IBIA 175 (09/22/1997)



United States Department of the Interior

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

MILO E. CADOTTE,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	Docket No. IBIA 97-136-A
	:	
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 22, 1997

Appellant Milo E. Cadotte seeks review of a May 15, 1997, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), cancelling agricultural Lease No. 1-0367.0-93-98 (lease), covering Allotment No. 302-367 on the Standing Rock Sioux Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The lease, which covers approximately 315 acres, has a term running from November 1, 1993, through October 31, 1998. Rent in the amount of \$1,072.50 is due November 1 of each year.

By letter dated April 3, 1996, the Acting Superintendent, Standing Rock Agency, BIA (Superintendent), notified Appellant that he had failed to pay the 1995 rent and administrative fee. The Superintendent stated that, as of April 3, 1996, Appellant owed a total of \$1,165.53, including interest. The Superintendent informed Appellant that he had 10 days from his receipt of the Superintendent's letter in which to show cause why the lease should not be cancelled. The return receipt card for this letter shows that Appellant received it on April 10, 1996.

Appellant responded to the show-cause notice by letter dated April 22, 1996 (more than 10 days after receipt of the show-cause notice). He stated: "The probate for my mother was final on 4-16-96 so I'll be an owner in the land now and will like to use the land if all possible. My financing went to bankruptcy - so now I'll have to make payment."

The next piece of correspondence contained in the administrative record is a February 27, 1997, letter from the Superintendent cancelling the lease based on Appellant's failure to pay the 1995 rent. On March 25, 1997, Appellant appealed this decision to the Area Director. He stated: "I am appealing the cancellation * * * because I am part landowner and would like to try to keep it. The Standing Rock Sioux Tribe is coming out with a program in livestock and I would like to raise horses. If I lose my bond, I may not be able to get one again. I put improvements such fences, corrals and a well on the land."

On May 15, 1997, the Area Director affirmed the Superintendent's decision to cancel the lease on the basis of non-payment of rent. Appellant

appealed this decision to the Board. Appellant's Notice of Appeal states in its entirety:

Lease No. 1-0367.0-93-98,

I am without an attorney right now, but ask reconsideration of the cancellation because

(1) the Reservation has high rate of unemployment.

(2) the Standing Rock Sioux Tribe is starting a agricultural program for horses & cows.

(3) I have an education in agriculture A.A. degree in Farm & Ranch Management Certificate in Agri Business.

(4) I will become a heir to the land.

(5) the trust responsibility of the B-I-A.

(6) am able to pay the lease.

I would like to try to hold onto the lease and get into the agriculture business.

Thank you.

Although advised that he bore the burden of proving the error in the Area Director's decision and that he had the right to file an opening brief, Appellant did not file a brief. No other briefs were filed.

Considering Appellant's filings both before BIA and the Board, the primary basis of his appeal appears to be his belief that he should be permitted to retain the lease because he owns an interest in the land. On February 28, 1996, Administrative Law Judge Vernon J. Rausch issued an Order of Correction Nunc Pro Tunc in the Estate of Melda Demery Cadotte, IP TC 119R-92. That Order provides that, if section 207 of the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2206 (1994), were held to be unconstitutional, all of the property in Melda Cadotte's estate would pass in equal shares to 13 individuals, including Appellant here. Section 207 of ILCA was held unconstitutional in Youpee v. Babbitt, 857 F.Supp. 760 (D. Mont. 1994), aff'd, 67 F.3d 194 (9th Cir. 1995), aff'd, 117 S.Ct. 727 (1997). The administrative record here includes a July 10, 1997, title report for the allotment which indicates that Appellant owns an undivided 115/8736 interest in Allotment 302-367.

The fact that Appellant owns an undivided interest in the allotment does not excuse his non-payment of rent. Appellant does not own the complete interest in the allotment. His co-owners have the right to receive compensation for his use of their interests in the allotment. Such compensation normally takes the form of rent. See, e.g., Lower Peoples Creek Cooperative v. Acting Billings Area Director, 23 IBIA 297, 304 (1993). Cf. Smith v. Acting Billings Area Director, 17 IBIA 231, 236 recon. denied, 17 IBIA 285 (1989) (finding an Indian in trespass on land of which she was a co-owner). Although there might be circumstances under which Appellant could use the allotment without compensating his co-owners (for example, all of the other co-owners could agree in writing to allow Appellant to use the allotment without paying rent, or a tribal ordinance might authorize such use), Appellant has not attempted to show any justification for his use of the allotment without compensating his co-owners. Appellant's failure to pay rent, even after being given an opportunity to cure this breach of the lease, was sufficient grounds for cancelling the lease.

The other items listed in Appellant's Notice of Appeal are not relevant to the question of whether Appellant did or did not pay the rent, and do not justify his failure to pay the rent. The Board concludes that Appellant has failed to carry his burden of proving error in the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Aberdeen Area Director's May 15, 1997, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge