



INTERIOR BOARD OF INDIAN APPEALS

West Bank Homeowners Association v. Acting Phoenix Area Director,
Bureau of Indian Affairs

31 IBIA 222 (10/23/1997)



United States Department of the Interior

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

WEST BANK HOMEOWNERS ASSOCIATION,	:	Order Dismissing Appeal
	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 97-8-A
	:	
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 23, 1997

This is an appeal from approximately 110 decisions issued by the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), on or about August 9, 1996, terminating permits on the Colorado River Indian Reservation. 1/ Appellant contended that "[t]he status of the land in question is currently under review by a Special Master appointed by the United States Supreme Court in * * * Arizona v. California, No. 8 Original." Notice of Appeal at 1. Appellant appeared to be challenging the validity of a 1969 Secretarial Order under which the land has been considered by Departmental officials to be within the reservation. 2/

Observing that it lacked jurisdiction to review an order issued by the Secretary of the Interior, the Board ordered Appellant to show what issues in this appeal Appellant believed the Board had jurisdiction over and what relief it believed the Board had authority to grant. Appellant, apparently misunderstanding the Board's order, requested in its response that the parties be allowed to brief the jurisdictional issues. In light of the apparent misunderstanding, the Board gave Appellant a further opportunity to show that the Board had jurisdiction over any issue raised by Appellant. In its second response, Appellant contended:

The Board states that it lacks jurisdiction to review a decision made by the Secretary of [the] Interior. However, there is simply no need for the Board to review an Order which the overwhelming weight of authority shows is void. The BIA claims jurisdiction over the disputed lands solely on the basis of an Order that has no merit.

Appellant's Jan. 10, 1997, Response at 2.

1/ Appellant attached only one such decision to its notice of appeal. That decision, addressed to Wendell Schubert, stated that Permit No. WB-195(R) was being terminated for failure to pay rent for 1993, 1994, 1995, and 1996.

2/ Memorandum dated Jan. 17, 1969, from the Secretary to the Director, Bureau of Land Management, titled "Western boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, California, through section 12, T. 5 S., R. 23 E., S.B.M., California."

At the same time it filed its second response, Appellant filed motions with the Secretary and the Director, Office of Hearings and Appeals, asking those officials to assume jurisdiction over this appeal. On February 4, 1997, the Board stayed proceedings in this appeal to allow the Secretary and the Director to act on Appellant's motions.

On June 25, 1997, the Secretary declined to assume jurisdiction over the appeal. On July 7, 1997, the Director also declined to assume jurisdiction.

On July 9, 1997, the Board gave the parties an opportunity to advise the Board as to what further proceedings they believed were appropriate before the Board ruled on its jurisdiction. The Area Director stated that he believed no further proceedings were necessary. Appellant requested an opportunity to file a "final brief" on jurisdiction. Noting that Appellant had already been given two opportunities to brief this issue, the Board nevertheless gave Appellant one further opportunity to do so.

In its Final Brief on Jurisdiction, Appellant again attacks the 1969 Secretarial order, contending: "For this tribunal to tell them [Appellant's members] that it cannot rule against its master is unfair and unacceptable. That is just another way of saying that it has to follow orders." Appellant's Final Brief on Jurisdiction at 13.

Appellant fails to recognize that this Board is not a court of general jurisdiction and has only those powers delegated to it by the Secretary. *E.g.*, Cherokee Nation v. Acting Muskogee Area Director, 29 IBIA 17 (1995); Kays v. Acting Muskogee Area Director, 18 IBIA 431 (1990). The Board has not been delegated authority to review acts or decisions of the Secretary, except as referred to it by the Secretary under 43 C.F.R. § 4.330(a)(2). Murdock v. Acting Phoenix Area Director, 22 IBIA 130 (1992). *See also* 43 C.F.R. §§ 4.1(b)(2); 4.331(b). This appeal has not been so referred.

Appellant raises no issues that are within the jurisdiction of this Board to decide. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for lack of jurisdiction. 3/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

3/ Appellant asks the Board "to make every effort to do the right thing and request [that] another board or committee unrelated to the [Colorado River Indian] Tribes be appointed in this matter." Appellant's Final Brief on Jurisdiction at 13. Appellant offers no suggestion as to what other Board or "committee" might have jurisdiction over this appeal. The Board is not aware of any such tribunal within the Department.

The Board observes that Appellant, at the same time it asked the Secretary and the Director to assume jurisdiction over this appeal, sought, in the alternative, to persuade those officials to appoint an ad hoc board to hear this appeal. Both officials declined to do so.