



INTERIOR BOARD OF INDIAN APPEALS

Jay and Theresa Blakslee v. Acting Phoenix Area Director, Bureau of Indian Affairs

31 IBIA 234 (11/03/1997)



United States Department of the Interior

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

JAY AND THERESA BLAKSLEE, : Order Vacating Decision
Appellants : and Remanding Case
: :
v. : :
: Docket No. IBIA 96-117-A
ACTING PHOENIX AREA DIRECTOR, : :
BUREAU OF INDIAN AFFAIRS, : :
Appellee : November 3, 1997

This is an appeal from an August 9, 1996, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), declaring forfeit and terminating Permit No. WB-153(R) in Rymer Subdivision on the Colorado River Indian Reservation. For the reasons discussed below, the Board vacates the Area Director's decision and remands this matter to him for further proceedings.

Permit No. WB-153(R) is a homesite permit for a 0.18-acre tract of tribal land. It was issued to Richard and Jean Knight in 1979 and was approved by the Superintendent, Colorado River Agency, BIA, on December 18, 1979. The Knights assigned the permit to Appellants in May 1986. The assignment was approved by the Superintendent on May 28, 1986.

In December 1987, Appellants initiated efforts to persuade the Colorado River Indian Tribes (Tribes) to reduce Appellants' rent, which was then \$2000 per year. They contended that they were being charged rent for a riverfront lot even though the Colorado River had changed course and no longer ran in front of the lot for which they held a permit. ^{1/} Despite these efforts, however, Appellants were notified in late 1991 that their rent would be increased to \$4500 per year beginning in 1992.

On January 14, 1992, the Tribes formally denied Appellants' request for a rent reduction, stating that the Bureau of Reclamation would be dredging the area in front of their residence so that they would again have river frontage. Upon learning that the dredging was scheduled for late 1992 or early 1993, Appellants requested a rent reduction for 1992 only. Stating that they believed a fair amount of rent would be \$2000-\$2500, rather than \$4500, they made a payment of \$2000 for 1992. For 1993, they made a payment of \$1086, an amount which they stated was "based on the 'Back Lot' rate of \$.12/sq. ft. and the size of [the] lot." Appellants' Dec. 28, 1992, Letter to the Tribes' Resources Development Committee. As far as the record shows, Appellants made no further rental payments.

On June 24, 1994, the Chairman of the Tribes wrote to Appellants, stating:

^{1/} According to other materials submitted by Appellants, the river changed course in 1984.

You have not paid the full rental of \$4,500.00 for each lease year, 1992, 1993 and 1994. Our records show you owe a balance of \$10,414.00. Non-payment of full rental is a violation of Article 5 [of Appellants' permit].

To cure this violation we are enclosing a bill in the amount of \$12,134.68. Interest is calculated at the rate of 12% per annum to July 11, 1994.

In accordance with Title 25, Chapter 1, Code of Federal Regulations, Part 162.14, you are hereby notified that you have ten (10) days from your acknowledged receipt of this notice to show cause why Permit No. WB-153(R) should not be cancelled for your failure to comply with the above cited lease requirement. Should you fail to show cause within the specified time, we will proceed with the remedies set forth in ARTICLE 18, DEFAULT, which includes immediate cancellation.

Tribal Chairman's June 24, 1994, Letter at 1.

Appellants responded on July 5, 1994, describing their efforts to get their rent reduced, stating that the promised dredging had not occurred, and requesting that their rent be reduced to the "back lot rate" until the river again flowed in front of their lot.

By letter of January 20, 1995, a Tribal Real Estate Services employee informed Appellants that their rent reduction request had been approved by the Tribes' Resource Development Committee and was scheduled for Tribal Council action on February 10, 1995. Apparently, Appellants did not receive any formal notification of the Tribal Council's action. In late 1995, they were sent a bill for 1996 in the amount of \$4500. ^{2/} They then inquired about the status of their rent reduction request. On February 14, 1996, the Tribes sent them a revised bill for 1996, in the amount of \$948. Although this was evidently the reduction Appellants had sought, there is no indication that Appellants paid this reduced amount.

On August 9, 1996, the Area Director issued the decision on appeal here. He stated:

You are hereby notified, as Permittees of Permit No. WB-153(R) * * * that your permit is declared forfeited and is terminated effective immediately in accordance with the following provision:

ARTICLE 18. DEFAULT:

"If Permittee shall fail to pay . . . or should Permittee default in payment of any installment or rent or any other sums when due as herein provided . . . the Secretary, at his option may declare this permit forfeited by giving Permittee written notice thereof,

^{2/} This bill, which is undated, appears to have been sent by the Colorado River Agency, BIA, rather than by the Tribes.

and upon such forfeiture, Permittee shall have no further rights or interests hereunder or in or to the permitted premises or any part thereof, and Permitter may re-enter and take possession of the permitted premises and all buildings and improvements thereon, and may cast . . . Permittee and all persons claiming under the permit from the premises." [3/]

You have failed to make rental payments for the years of 1992, 1993, 1994, 1995 and 1996. We demand payment in the amount of \$19,414 plus interest at 12 percent per annum; interest will run until the rent is paid in full. Termination of this permit does not relieve you of your responsibility to make payment in full.

You have thirty days from the date of receipt but not later than September 12, 1996 to remove any removable personal property from the permitted area.

Area Director's Aug. 9, 1996, Decision at 1.

In their notice of appeal to the Board, Appellants recount the history described above. They continue:

In February, 1996, we received a new 1996 lease bill from [the Tribes] for \$948.00 per year with no mention of the previous \$12,134.68 owed to them. If we pay the \$948.00 for 1996, what do we owe for 1995 and 1994? From 1987 to 1993 [the Tribes have] been overpaid. So, who owes who? See enclosed Statement of Account.

Notice of Appeal at 2. In their statement of account, Appellants make the assumption that their rent reduction was retroactive to 1987. They contend, based upon that assumption, that they have overpaid the Tribes by \$3658.

In their opening brief, Appellants state:

3/ In addition to the forfeiture provision in Article 18, there is a termination provision in Article 4, TERM OF PERMIT.

Article 4 provides:

"The term of this permit shall be for an initial term commencing on the date of approval by the Superintendent, Colorado River Agency, ending on December 31, of that calendar year, and continuing thereafter for successive periods of one (1) year each; provided however that the permit may be terminated on December 31, of any year during its term or any extension thereof by written notice served by the Permittee upon the Secretary or the Permittee [sic] at least 60 days in advance thereof, and provided further that said permit may be terminated at the end of the initial term or at the end of any such successive one year period by written notice served by the Secretary or [sic] the Permittee at least ninety (90) days in advance thereof."

As is evident from the language of Article 4, no reason need be given when a permit is terminated under this article. The Area Director did not invoke the termination provisions of Article 4.

[W]e feel we have been extremely patient and in good faith have attempted to resolve this matter for the past 10 years. Therefore, we request a change in our lease effective 1987 to present modifying the status of river frontage to back lot with respective pricing changes from \$45/river frontage foot to \$0.12/square foot for a total of \$948.00 per year.

Opening Brief at 2.

The record does not contain a copy of the Tribes' decision to reduce Appellants' rent. Therefore, it is not possible to tell whether or not the Tribes intended the reduction to be retroactive. The Tribes' revised bill for 1996 shows that only \$948 was due, suggesting the possibility that the Tribes had forgiven the earlier billed amount of \$12,134.68. It is also possible, however, that the 1996 bill was not intended to cover past due amounts but only amounts currently due.

Also absent from the record is any breakdown of the \$19,414 which the Area Director stated was owed by Appellants as of August 9, 1996. Presumably, however, that amount included the (possibly forgiven) amount of \$12,134.68.

Under these circumstances, the Board finds that the record in this case fails to support the Area Director's decision to terminate Appellants' permit. Therefore, the Board vacates that decision and remands this matter to the Area Director.

From the materials before the Board, it appears that Appellants have, on the whole, made a good faith effort to resolve matters with the Tribes, even though their failure to pay rent as assessed, and especially their failure to pay any rent at all after 1993, was probably not entirely justified. Clearly, Appellants have had difficulties in communicating with the Tribes. They have, however, indicated that they are willing to pay a fair rent and that they want to resolve this rental dispute.

Although it seems that this matter ought to be resolvable through discussions between Appellants and the Tribes, the prospects of meaningful discussions will probably be greater if the discussions are sponsored by a third party. Upon remand of this case, therefore, the Area Director shall make an effort to promote settlement discussions between Appellants and the Tribes. If settlement efforts fail, the Area Director shall issue a new decision, taking into account the history of this dispute and supporting his decision with evidence as to, inter alia, the Tribes' intent in reducing Appellants' rent.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's August 9, 1996, decision is vacated, and this matter is remanded to him for further proceedings as discussed herein.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge