



INTERIOR BOARD OF INDIAN APPEALS

Miles Johns III v. Portland Area Director, Bureau of Indian Affairs

31 IBIA 279 (11/25/1997)

Judicial review of these cases:

Oral ruling for government, *Miller v. Bureau of Indian Affairs*, Case No. C98-330Z
(W.D. Wash. Mar. 24, 1999)

Related Board cases:

23 IBIA 114

28 IBIA 72

Reconsideration denied, 34 IBIA 16

31 IBIA 7

31 IBIA 273

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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MILES JOHNS III, : Order Dismissing Appeals
Appellant :
 :
v. : Docket Nos. IBIA 96-71-A
 : IBIA 97-38-A
PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : November 25, 1997

In Docket No. IBIA 96-71-A, Appellant Miles Johns III seeks review of an April 12, 1996, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), cancelling his residential/recreational lease along Pull and Be Damned Road on the Swinomish Indian Reservation. In Docket No. IBIA 97-38-A, Appellant joined in an appeal from a decision issued by the Area Director on August 26, 1996, which, in general, adjusted the rental rates for several leases in the Pull and Be Damned area.

In October 1994, the Superintendent, Puget Sound Agency, BIA (Superintendent), adjusted the rental rate for Appellant's lease. At that time, six appeals from similar rental rate adjustments were pending before the Board. Appellant appealed his rental rate adjustment to the Area Director. By agreement, Appellant's appeal, along with appeals from other similarly situated lessees, was stayed before the Area Director pending the Board's decision in the appeals already before it. On June 19, 1995, the Board affirmed the earlier rental rate adjustments. Gossett v. Portland Area Director, 28 IBIA 72.

After the issuance of Gossett, the Area Director resumed processing the appeals before him. However, on September 19, 1995, the Area Director dismissed Appellant's appeal for failure to increase his bond and, alternatively, failure to demonstrate any basis for overturning the rental rate adjustment. The Area Director's decision letter informed Appellant of his right to appeal the dismissal to the Board and stated that "[i]f no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal." Sept. 19, 1995, Letter at 4.

Appellant failed to appeal from this decision.

Appellant was subsequently informed that he was required to pay the adjusted rent. When Appellant did not pay the adjusted rent, the Superintendent cancelled Appellant's lease on December 19, 1995. Appellant appealed this cancellation to the Area Director, who affirmed the Superintendent's decision on April 12, 1996.

Appellant appealed the April 12, 1996, cancellation decision to the Board in Docket No. IBIA 96-71-A.

On August 26, 1996, the Area Director issued a decision adjusting the rental rates for several leases along Pull and Be Damned Road. With regard to Appellant, that decision states at pages 2-3:

Three of the 22 original appellants * * * [including present Appellant and the appellants in Kerwin v. Portland Area Director, 31 IBIA 276 (1997), and Dentel v. Portland Area Director, 31 IBIA 282 (1997)], failed to post a bond as required, and we dismissed their appeals. These dismissal actions were not appealed to the [Board] within the requisite time frame and are, therefore, final for the Department. In your Statement of Reasons you indicate that these * * * appellants request that "* * * the Portland Area Director reconsider the * * * prior decisions and consider them with the remainder of the present appeals." Since these individuals did not comply with the bonding requirements as agreed upon, and did not appeal the bonding decisions, we will not consider their appeals now.

Appellant appealed the August 26, 1996, decision to the Board in Docket No. IBIA 97-38-A.

By order dated October 9, 1996, the Board required Appellant to show the relationship between his two appeals. In his response, Appellant does not dispute that he failed to post a bond or failed to pay the adjusted rent, but instead argues:

19 of the 22 [lessees seeking to appeal] were able to post the bonds, however, three appellants were not able to do so * * *.

* * * * *

We requested that because of the financial hardship they were suffering, that the * * * Area Director waive the requirement of an additional bond with respect to these * * * tenants. The * * * Area Director refused. The * * * Area Director issued an order dismissing those * * * appeals for failure to post a bond. While this order was appealable, if they did not have the money to post a bond, where were they to get the money to pursue an appeal independently.

Oct. 31, 1996, Response at 2.

Appellant responded further at page 18 of the Opening Brief filed in Elliott v. Portland Area Director, 31 IBIA 287 (1997):

The three appellants had requested that the bond requirement be waived because the excessive rent increases were causing them hardship. * * * The appellants acknowledge that they could have appealed without the assistance of counsel, but it is not just an issue of counsel. To the best of appellants knowledge, no appeals have been successful unless they were prepared by counsel and supported by professional opinions such as appraisers. The deference given to the agency is just too great to overcome

without spending very significant sums on professional assistance. This can amount to thousands of dollars.

The decision from which Appellant failed to appeal was the dismissal of his appeal to the Area Director for failure to post a bond. No special professional assistance is needed for an appellant to inform the Board of the reasons he believes he should not be required to post a bond. Even assuming that Appellant thought he would have to argue the entire case at that time, he still has not shown why his failure to file an appeal should be forgiven.

Appellant's appeals from both the Area Director's April 12, 1996, and August 26, 1996, decisions can only be viewed as attempts to file untimely appeals from the Area Director's September 19, 1995, 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, these appeals from the Portland Area Director's April 12, 1996, and August 26, 1996, decisions are dismissed as attempts to file an untimely appeal from the Area Director's September 19, 1995, decision.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge