INTERIOR BOARD OF INDIAN APPEALS

Lorna Grant v. Acting Billings Area Director, Bureau of Indian Affairs

33 IBIA 156 (02/05/1999)

United States Department of the Interior

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

LORNA GRANT,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-102-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 5, 1999

Appellant Lorna Grant seeks review of an April 29, 1998, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning an alleged violation of Lease Contract No. 572-93-97 by Ray and Glenn Huestis (lessees). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant is the owner of one of the six allotments covered by the lease at issue here. The lease was approved by the Superintendent, Fort Belknap Agency, BIA (Superintendent), on April 7, 1993, for a five-year term which ended on December 31, 1997. Paragraph 17.B of the lease provided: "Unless specifically granted in the additional provisions of this lease, breaking of sod is prohibited. Furthermore, the lessee shall not break any sod unless indicated as cropland without permission from the Secretary." Nothing in the lease authorized the breaking of sod.

Appellant entered into a private agreement with the lessees. That agreement, signed by the lessees in December 1992 and by Appellant in January 1993, concerned only Appellant's allotment and provided in Special Provision D:

> BREAKING OF SOD: The balance or portions of the remaining pasture which contains, 113.85 Acres, shall be converted to farm acres all of which will be in accordance to the restrictions applied by the Fort Belknap Agency and the United States Department of Agriculture. This breaking is to [be] completed as soon as possible. The price for rent will be negotiated prior to the undertaking of the work and will be made part of this lease. This will also affect the amount that is currently figured in for payment of pasture rent on page 2 of this lease.

The private agreement was not approved by the Superintendent, and the provision quoted was not included in Lease Contract No. 572-93-97. The record indicates that the Superintendent did not receive a copy of this document until January 27, 1995.

Appellant wrote to the Superintendent on December 31, 1997, contending that the lessees had violated Lease Contract No. 572-93-97 by not breaking sod in accordance with the private agreement she had reached with them. She asked the Superintendent not to release the lease bond, alleging that she had suffered losses during the entire term of the lease. By letter dated February 19, 1998, the Superintendent concluded that the lessees had not violated the lease. Appellant appealed to the Area Director who, on April 29, 1998, affirmed the Superintendent's decision. Appellant appealed to the Board.

Appellant's Notice of Appeal merely stated her intention to appeal the Area Director's decision. Although advised of her right to file a brief and of her responsibility to show the error in the decision from which she was appealing, Appellant did not file a brief. However, she sent a letter to the Area Director on August 31, 1998, which the Area Director transmitted to the Board. That letter states:

> I still feel that my lease agreement had been violated, Lease Contract No. 572-93-97 by lessees Ray & Glen Huestis. I believe I have provided all the information necessary to prove that my land lease was violated.
>
> As I had pointed out before, I need the rest of my land broke out into farming so that I may increase my income. I had privately negotiated with the Huestis' to do so. After the second year or there about, I found they were not doing any breaking of sod, then at that point I started asking why. The end of the lease had come and there still was no breaking of sod and no increase in land income; now these individuals are out of business and I am left holding the empty bag. This action still put me five (5) years behind on sod breaking and income increase.
>
> Once more, I will state that my wishes have been violated by the sod not being broke up and receiving the income increase.

Appellant's private agreement with the lessees was not approved by BIA and was not incorporated into Lease Contract No. 572-93-97. The private agreement was not even submitted to BIA until almost three years into the lease term.

As the Board held in a similar situation presented in Smith v. Billings Area Director, 17 IBIA 231, 235 (1989), a private agreement between an Indian landowner and a lessee that is not approved by BIA "is void ab initio and grants no rights whatsoever to anyone." As in Smith, Appellant's reliance here on such a document "is totally misplaced." Id. The lease approved by

BIA constitutes the agreement between the parties. Nothing in that lease required the lessees to break sod. In fact, such an action would have violated the lease.

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 Area Director's April 29, 1998, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge