



INTERIOR BOARD OF INDIAN APPEALS

Oscar Bull Bear v. Acting Anadarko Area Director, Bureau of Indian Affairs

34 IBIA 163 (11/12/1999)



United States Department of the Interior

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

OSCAR BULL BEAR

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 98-86-A

Decided November 12, 1999

Appeal from a decision declining to cancel a Mutual Help Housing lease.

Vacated and remanded.

1. Indians: Housing: Generally--Indians: Leases and Permits:
Cancellation or Revocation

Until 1998, the Indian housing regulations of the U.S. Department of Housing and Urban Development explicitly provided that, prior to terminating a Mutual-Help and Occupancy Agreement, an Indian Housing Authority must provide the homebuyer with written notice and an opportunity to respond. *E.g.* 24 C.F.R. § 805.424(b) (1976); 24 C.F.R. § 950.446(b) (1997).

APPEARANCES: Amos E. Black III, Esq., Anadarko, Oklahoma, for Appellant; L. Susan Work, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for the Acting Area Director; Ryland L. Rivas, Esq., Chickasha, Oklahoma, for Ronald L. Corriveau.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Oscar Bull Bear seeks review of a March 3, 1998, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to cancel a Mutual Help Housing lease. For the reasons discussed below, the Board vacates the Area Director's decision and remands this matter to him for further proceedings.

Background

On October 6, 1972, Appellant and the Kiowa Housing Authority (Housing Authority) entered into Mutual Help Housing Lease 29499 (the lease) in which Appellant leased to

the Housing Authority a 1.25-acre tract of trust land. 1/ The lease was approved by the Acting Superintendent, Anadarko Agency, BIA, on November 6, 1972, and provides in paragraph 1 that the leased property would "comprise approximately one dwelling site[]." Paragraph 2 provides: "The premises shall be used for the purpose of constructing and operating a Mutual-Help Housing Project, and its appurtenances, known as Oklahoma 98-1, with the financial assistance of the Public Housing Administration." 2/ Paragraph 3 provides:

Lessee shall have and hold the described premises with their appurtenances for a term of 25 years beginning on the date first above written. This lease shall automatically and without notice renew for an additional term of 25 years on the same terms and conditions contained herein. This lease may not be terminated by either or both parties during the initial or renewal terms of the lease without the consent of [HUD] or until [HUD's] interest in the project has been terminated.

Also on October 6, 1972, Appellant and his wife entered into a Mutual-Help and Occupancy Agreement (MHOA) with the Housing Authority, setting out the conditions under which Appellant and his wife would be entitled to occupy a house to be constructed on the property.

The house was constructed, and Appellant moved in. Because of marital difficulties, Appellant and his wife alternated occupancy of the house. Appellant states that, during a period in which he was living there, the house burned down. While he does not remember the date of the fire, he believes it occurred in 1977 or 1978. Appellant further states that the house was rebuilt after the fire.

By August 23, 1976, Appellant had fallen behind in making payments on the house. On that date, Appellant reached an agreement with the Housing Authority for payment of the arrearages. 3/ However, he was apparently still in arrears in November 1976. On November 10, 1976, the Housing Authority wrote to him, stating:

1/ The tract is part of Kiowa Allotment 412 and is described as the E¹/₂ SE¹/₄ SE¹/₄ SE¹/₄ SW¹/₄ Sec. 14, T. 7 N., R. 11 W., Indian Meridian, Caddo County, Oklahoma. It was conveyed to Appellant by deed approved on Oct. 2, 1972.

2/ The U.S. Department of Housing and Urban Development (HUD) is the successor to the Public Housing Administration. 42 U.S.C. § 3534.

3/ The document reflecting this agreement was not signed by Appellant. It was signed by the Executive Director of the Housing Authority and states that Appellant agreed to it by telephone.

[Y]ou have ten days from the date of this letter to respond to the following:

- A. Move back into your home.
- B. Catch up the past due balance.
- C. Clean up the home, yard and make repairs that need to be made.

The Board of Commissioners, in their regular Meeting stated the following violations of the Mutual help agreement that you signed with the Kiowa Housing Authority.

- 1. Sec. 3 - A, B, C.
- 2. Sec. 7 - Breach of Agreement.
- 3. Abandonment of House.

Should you not do the following [sic], then of course you must vacate the home by no later than the 23rd day of November, 1976 at 12:00 noon, and leave the home in a clean and orderly manner.

Twelve days later, on November 22, 1976, the Housing Authority again wrote to Appellant, stating:

This is to advise you that effective December 15, 1976, this Authority will not tolerate past due accounts. The Mutual Help and Occupancy Agreement that you signed with the Kiowa Housing Authority, paragraph (3) A, B, C, agrees that you will make a monthly payment. This payment is due on the first day of each month and you have until the 5th day to pay. Should you not make your payment by the 5th, then you become delinquent which is a serious violation of the agreement.

Therefore, it is by this letter, you are advised that if your past due balance is not paid in full by December 15, 1976, then this Authority will take the necessary legal steps to repossess your home. 4/

4/ This letter was addressed to Appellant at "Route 3, Anadarko, OK 73005" and was returned to the Housing Authority as undeliverable because of the lack of a forwarding address.

The Nov. 10, 1976, letter was sent to Appellant at "213 West Texas, Anadarko, OK 73005" and was presumably delivered.

There is no evidence in the record showing what actions, if any, the Housing Authority took after December 15, 1976. Appellant states that he paid \$600 after he received a per capita payment from a Kiowa judgment fund distribution but does not state the date on which he made the payment. If the fire occurred in 1977 or 1978 as Appellant believes, 5/ and Appellant was living in the house at the time, then presumably the Housing Authority did not take legal steps against Appellant immediately after December 15, 1976.

Appellant states that he lived in Oklahoma City while the house was being rebuilt but kept in touch with the Housing Authority. Nevertheless, he states, the Housing Authority allowed the Corriveau's to occupy the new house without his knowledge.

On March 1, 1979, the Housing Authority entered into another MHOA for the house with Suzanne and Ronald Corriveau. 6/ By December 1992, the Corriveau's had completed all payments on the house. On December 30, 1992, the Housing Authority issued a bill of sale in which it transferred its interest in the house and the land to Suzanne Corriveau. 7/ On February 18, 1993, the Housing Authority assigned the lease to Suzanne Corriveau. The assignment document states: "This assignment and conveyance of leasehold rights and interest is not intended to cancel or nullify said lease."

Suzanne Corriveau died on November 18, 1996. Ronald Corriveau remained in the house, apparently with some of his family members. 8/

5/ It seems apparent that the fire could not have occurred prior to November 1996 because neither of the Housing Authority's November 1996 letters mentions it.

While the date of the fire is uncertain, there is apparently no dispute that there was a fire and no dispute that the house was rebuilt after the fire.

6/ Only Suzanne Corriveau's name appeared in the text of the MHOA, but both Suzanne and Ronald Corriveau signed it.

7/ On its face, the Bill of Sale purports to transfer the land itself to Suzanne Corriveau. Undoubtedly, however, it was intended to implement ¶ 5.c of the MHOA, which provides: "When payment of the debt is completed, the Authority will grant, assign, and/or convey to the Participant the maximum interest in the Participant's house and grounds that it can give."

8/ By letter of Oct. 13, 1999, Corriveau's attorney informed the Board that Corriveau died recently. The attorney also stated that he believed Corriveau had executed an assignment of his interest in the house and/or lease to one of his children.

For purposes of this decision, the Board assumes that Corriveau's interest, whatever that might be, survived his death. In referring to Corriveau in this appeal, the Board intends to include his successor(s) in interest.

In April 1995, Appellant, through his representative, 9/ contacted the Housing Authority, inquiring about the house and land. In July 1996, he contacted the Anadarko Agency, BIA, making similar inquiries. On March 8, 1997, he asked BIA to cancel the lease, giving as reasons:

1. [Appellant] is the landowner of the 1.25 acre homesite on Trust Land, Lease 29499. He has been wrongfully deprived of his property more than 18 years.
2. [Appellant] has not been evicted, nor had he abandoned his property. Therefore, Lease 29499 should not have been assigned to another person.
3. The assignee of Lease 29499 occupied the rebuilt house on [Appellant's] Trust Land 17 3/4 years and is now deceased.
4. The current occupant of the house on [Appellant's] Trust Land is non-Indian.

Appellant also wrote to HUD, requesting its permission to cancel the lease. HUD then wrote to the Housing Authority, stating that the debt on the house had been paid off and HUD had no further legal interest in it. Having received a copy of HUD's letter to the Housing Authority, BIA requested the Housing Authority's determination concerning cancellation. The Housing Authority responded on May 12, 1997, stating:

[O]ur office does not intend to pursue cancellation of the lease for the following reasons. Ronald and Suzanne Corriveau agreed to occupy the home located on the premises with the understanding that the lease would renew for an additional 25 year term upon expiration of the first 25 year term. Mr. and Mrs. Corriveau fulfilled their obligation by paying off the balance of the home. In addition, Mr. Corriveau is in very bad health at the present and the Authority does not feel it is in the best interest of the occupant to seek cancellation of the lease. Further, [Appellant] was advised of the terms of the lease when the [MHOA] was signed.

On September 5, 1997, the Superintendent conducted an information gathering hearing at which interested parties were given an opportunity to state their positions and submit information. The hearing was attended by Appellant's representative; Ronald Corriveau, together with his attorney and some of his family members; representatives of the Housing Authority; and BIA staff members. The hearing was transcribed.

9/ This was Jeanine Hodges, to whom Appellant had given a power of attorney and who represented him prior to Appellant's appeal to the Board.

Following the hearing, BIA requested a further statement from HUD as to its position. HUD responded on September 29, 1997, stating:

1. Project 98-1 contained 288 units and the HUD debt for all of them has been paid off.
2. When all debt for a trust property unit is paid off, we advise the Housing Authority (IHA) to:
 - A. Cancel the lease if the unit is occupied by the original participant.
 - B. Assign the IHA lease rights to the current participant if the unit is not occupied by [the] original participant.
3. It is our understanding that the Oscar Bull Bear unit was not occupied by [Appellant] at the time of debt pay off; consequently, the IHA assigned their lease rights to the participant occupying the unit at that time.

Considering that the debt for the unit has been liquidated and that the IHA lease were appropriately assigned, HUD has no further interest in the unit or the lease.

In a decision issued on October 22, 1997, and amended on October 23, 1997, the Superintendent terminated the lease. Corriveau appealed to the Area Director. On March 3, 1998, the Area Director reversed the Superintendent's decision. Appellant then appealed the Area Director's decision to the Board.

Discussion and Conclusions

Appellant first contends that the "lease terminated by its own terms once the interest of HUD (PHA) was terminated and [Appellant's] lease gave the right to either party, which includes [Appellant], to initiate termination proceedings, which he did do." Appellant's Opening Brief at 16. Appellant seems to be contending that, once HUD's interest had terminated, Appellant had the right to cancel or terminate the lease regardless of whether any third parties had acquired rights under the lease.

In Comanche Housing Authority v. Anadarko Area Director, 22 IBIA 271 (1992), the Board considered a lease and MHOA similar to those at issue here. The lessor and the Comanche Housing Authority sought a voluntary cancellation of the lease, although a third party had acquired rights under a MHOA. Construing the MHOA as a sublease, the Board

held that, where a valid sublease of trust land has been made, the parties to the main lease may not defeat the rights of the sublessee by a voluntary cancellation to which the sublessee has not consented.

In this case, only one of the parties to the lease seeks termination, while the other opposes it. As in Comanche Housing Authority, the "sublessee," i.e., Corriveau, opposes termination. Based on the analysis in Comanche Housing Authority, the Board rejects Appellant's first argument. If Corriveau has a valid MHOA, Appellant does not have the right to terminate the lease over Corriveau's objection.

Next, Appellant contends that he is not barred by laches from seeking termination of the lease. Corriveau disagrees, contending that Appellant is barred by an Oklahoma statute of limitations and by the doctrine of laches from seeking to terminate the lease. 10/

Oklahoma state law is not applicable to this matter. Rather, Federal law governs here, because the dispute concerns rights in Indian trust lands. Corriveau does not identify any Federal statutory or common law which places specific time limits on an Indian landowner seeking to terminate a lease of his land or which makes laches a bar to such an effort. Thus, Corriveau fails to show that there is any time-based impediment to Appellant's termination request.

Appellant next contends that his right to due process was violated by the Housing Authority in that it never terminated his MHOA or formally evicted him from the property. This argument calls attention to the lack of documentation in the administrative record concerning the actions taken by the Housing Authority in connection with the termination, if any, of Appellant's MHOA. The last document in the record relating to this matter is the Housing Authority's November 22, 1976, letter stating that it would "take the necessary legal actions to repossess [Appellant's] home" unless Appellant's past due balance was paid by December 15, 1976.

Representatives of the Housing Authority attended the Superintendent's September 5, 1997, hearing but did not present any documentation concerning the termination of Appellant's MHOA. Further, although the Housing Authority was made aware at the hearing that documentation of Appellant's eviction was an issue, Tr. at 43, it did not respond to the Superintendent's invitation to the hearing attendees to submit "supporting documents or evidence,

10/ Corriveau contends: "[Appellant] has laid behind a log waiting. Waiting for the house to be paid off to receive the fruits of [the Corriveaus'] labor." Corriveau's Answer Brief at 7.

Appellant contends that he initially sought return of his property through the Housing Authority but gave up after being told by the Housing Authority that he could not challenge the Corriveaus' MHOA.

whatever they want considered in this matter." Tr. at 44. See also Tr. at 2. 11/ The Housing Authority opposed termination of the lease. Documentation showing that Appellant's MHOA had been terminated would have supported its position. Thus, if such documentation had existed in its files, the Housing Authority presumably would have submitted it to the Superintendent.

Certain correspondence in the administrative record also suggests that there is no documentation of the termination of Appellant's MHOA in Housing Authority files. Appellant's representative wrote to the Housing Authority on February 25, 1997, asking for, inter alia, a copy of the eviction notice sent to Appellant by the Housing Authority. On March 11, 1997, the Housing Authority wrote to Appellant's representative, stating: "Enclosed is the information which is on file concerning the situation between [Appellant] and the Authority during the time in question (1970's)." The Housing Authority's letter discussed and enclosed copies of three documents, 12/ not including an eviction notice.

The Housing Authority has not participated in appellate proceedings concerning this matter, either before the Area Director or before the Board, although it has been served with all appeal documents.

[1] Between March 9, 1976, and December 6, 1979, 13/ and thus at all times relevant here, HUD regulations concerning the termination of MHOAs provided:

Notice of Termination of MHO Agreement by the IHA [Housing Authority]: Right of Homebuyer to Respond. Termination of the MHO Agreement by the IHA for any reason shall be by written Notice of Termination. Such notice shall state (1) the reason for termination; (2) that the Homebuyer may respond to the IHA in writing or in person, within a specified reasonable period of time regarding the reason for termination; (3) that in such response he may be represented or accompanied by a person of his choice, including a representative of the tribal government; (4) that the IHA will advise the tribal

11/ The Housing Authority did, however, respond to four questions posed by the Superintendent to the hearing attendees, Tr. at 41, concerning their positions on the matter in dispute. See Housing Authority's Sept. 22, 1997, letter to the Superintendent.

12/ These were the three documents discussed above, i.e., the Aug. 23, 1976, document concerning Appellant's past due payments, the Housing Authority's Nov. 10, 1976, letter to Appellant, and its Nov. 22, 1976, letter to Appellant.

13/ See 41 Fed. Reg. 10152, 10154 (Mar. 9, 1976); 44 Fed. Reg. 64204 (Nov. 6, 1979).

government concerning the termination; (5) that if, within 30 days after the date of receipt of the Notice of Termination, the Homebuyer presents to the IHA evidence or assurances satisfactory to the IHA that he will cure the breach and continue to carry out his MHO obligations, the IHA may rescind or extend the Notice of Termination; and (6) that unless there is such rescision or extension, the lease term and MHO Agreement shall terminate on the 30th day after the date of receipt of the Notice of Termination. The IHA may, with HUD approval, modify the provisions of the Notice of Termination relating to the procedures for presentation and consideration of the Homebuyer's response. In all cases the IHA's procedures for the termination of an MHO Agreement shall afford a fair and reasonable opportunity to have the Homebuyer's response heard and considered by the IHA. Such procedures shall comply with the Indian Civil Rights Act [(ICRA)].

24 C.F.R. § 805.424(b) (1976). ^{14/} Even in the absence of this explicit regulation, Appellant was entitled to notice under the due process provision of the ICRA, 25 U.S.C. § 1302(8).

There is no evidence in the record that Appellant received the notice required by the HUD regulation and the ICRA. Moreover, no party has refuted Appellant's allegation that he did not receive notice. Under these circumstances, the Board concludes that Appellant did not receive notice. The Board further concludes that, if Appellant's MHOA was terminated at all, it was terminated in violation of the HUD regulation and in violation of Appellant's right to due process.

In the absence of any evidence that Appellant's MHOA was validly terminated, the Board must conclude that the Corriveau MHOA was invalidly issued, as were the subsequent documents which were dependent upon it, *i.e.*, the December 30, 1992, bill of sale, and the February 18, 1993, lease assignment.

Because the Corriveau documents are invalid, they are not an impediment to cancellation of the lease. However, in view of the fact that one of the parties to the lease (the Housing Authority) has objected to termination, the Board does not hold that BIA must cancel the lease

^{14/} Comparable provisions (*see, e.g.*, 24 C.F.R. § 950.446(b) (1997)) were included in HUD regulations until 1998, when HUD removed the regulations for its Mutual Help Homeownership Opportunity Program and established a new housing program under the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101. *See* 63 Fed. Reg. 12334 (Mar. 12, 1998).

at this time. Rather, it remands the matter to the Area Director for further proceedings. During these further proceedings, the Housing Authority should be given an opportunity to state its position as to termination of the lease in view of the Board's holding in this decision. 15/

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 March 3, 1998, decision is vacated, and this matter is remanded to him for further proceedings. 16/

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge

15/ While it seems unlikely that evidence to support termination of Appellant's MHOA could now be found, given the apparent state of the Housing Authority file on the matter, it is conceivable that the Housing Authority may wish to pursue termination of Appellant's MHOA at this time. If so, it should ensure that it affords Appellant notice and opportunity for a hearing.

16/ Appellant makes a number of other arguments, which the Board does not reach.