



INTERIOR BOARD OF INDIAN APPEALS

Jude Stensgar v. Northwest Regional Director, Bureau of Indian Affairs

37 IBIA 132 (02/06/2002)

Reconsideration denied:
37 IBIA 220



United States Department of the Interior

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

JUDE STENSGAR,
Appellant

v.

NORTHWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 01-98-A
:
:
: February 6, 2002

This is an appeal from a February 21, 2001, decision of the Northwest Regional Director, Bureau of Indian Affairs, declining to grant retroactive approval to a sale of trust land within Colville Allotment 101 1492-B. The land is owned by Ethel Bakke. Appellant Jude Stensgar is the would-be purchaser.

On February 18, 1994, Bakke executed a quitclaim deed for the property and entered into a land purchase agreement with Appellant. The agreement stated:

[Appellant], buyer, hereby agrees to buy from Ethel Bakke, seller, 2.4625 acres more or less, * * *. Both buyer and seller understand that the land is currently part of the estate of Rose Kinney. In Rose Kinney's will, Ethel Bakke is the sole devisee of this land. The land is in trust and the probate of the * * * land will be handled by the Bureau of Indian Affairs. Buyer agrees to give seller \$2,000.00 now and \$1,000.00 when and if Ethel Bakke is given sole title to the land through the probate. Should Ethel Bakke not receive sole title to the land through the probate, or if the transfer of the title to [Appellant] is not allowed by the BIA or other arm of the United States government, then the \$2,000.00 given now shall be considered to be a no interest loan to be repaid within two years of the date of the closing of the BIA probate.

Appellant completed his payments to Bakke on February 16, 1996. Apparently, however, neither Appellant nor Bakke sought approval of the sale by BIA until August 1999, when Appellant took the agreement and quitclaim deed to the Colville Agency, asking whether they could be approved.

The Superintendent wrote to Appellant on August 26, 1999, stating:

These documents were executed prior to the closing date of June 1, 1996, for the estate of Rose Mary Edwards Kinney and in accordance with the Last Will and Testament, Ethel Bakke received Colville Tract No. 101-1492-B, **SUBJECT** to the life estate of Darrell Kinney; therefore, she does not have the authority to sell without concurrence of the lifehold interest.

The documents are invalid and we are unable to approve your proposed purchase from Ethel Bakke.

On November 30, 1999, Bakke wrote to the Superintendent, requesting his assistance in selling the land. On January 12, 2000, she completed a formal application for sale. BIA prepared an appraisal and sent it to Bakke on March 30, 2000.

On June 7, 2000, the Superintendent wrote to Bakke, asking how she wished to proceed and stating:

In order to proceed with the sale, we need to know if you intend to sell only 2.50 acres to [Appellant] or the entire 4.93 acres. If it is your desire to sell only 2.50 acres of unimproved land, a survey of the area will be necessary due to the central location of the improvements.

Bakke responded on June 21, 2000, stating that she had decided not to sell the land to Appellant. She explained:

There is no way to provide the 2.5 acres of unimproved property that [Appellant] wished to purchase. He does not wish to purchase the improved property at this time. The appraised value of the property with improvements is more than he wishes to pay. When [Appellant] and I first discussed this transaction I was unaware of the legal process and confess that I relied totally upon [a tribal employee] and [Appellant] to know what to do. * * * I am prepared to send [Appellant] the \$3,000.00 as soon as possible.

On July 7, 2000, the Superintendent wrote to Bakke, with a copy to Appellant, stating that BIA considered Bakke's application for sale withdrawn and further stating that, because BIA had not approved Bakke's agreement with Appellant, the return of funds paid by Appellant was a matter between her and Appellant.

Appellant then requested that the Superintendent forward the file to the Northwest Regional Director for a determination as to the validity of Appellant's 1994 agreement with

Bakke. On September 25, 2000, the Superintendent forwarded the file to the Regional Director, stating: "Please advise as to the validity of the purported transaction."

The Acting Regional Director responded on November 14, 2000. Following a discussion of the matter, she stated:

[T]he transaction, as it exists, is not valid. You may want to consider whether you want to retroactively validate the 1994 sale, but you would need to obtain an appraisal as of that date and determine whether the compensation paid for Ms. Bakke's remainderman interest was adequate. It also needs to be made clear that [Appellant] is only receiving the remainderman's interest subject to the life estate of Darrel Kinney.

Acting Regional Director's Nov. 14, 2000, Memorandum at 2-3.

On December 6, 2000, the Superintendent wrote to Appellant, stating that the transaction was not valid and that he did not intend to approve it retroactively. He attached a copy of the Regional Director's memorandum.

Appellant appealed to the Regional Director, who affirmed the Superintendent's decision on February 21, 2001. On February 23, 2001, Bakke sent Appellant a cashier's check for \$3,200. In the accompanying letter, she informed Appellant that she was giving him \$200 for interest even though their agreement stated that no interest would be owed if Appellant's payment were returned.

Appellant appealed to the Board. In his notice of appeal, he discussed the history of the matter and explained his belief that BIA had delayed processing the sale and had given various reasons for not approving it. ^{1/} He did not file a brief.

It is apparent from the record that Appellant believes BIA had some obligation to approve the sale for Appellant's benefit. However, where a sale of Indian trust land is concerned, BIA's trust duty is to the owner of that land, not a prospective purchaser—even where the prospective purchaser is Indian. Gullickson v. Aberdeen Area Director, 24 IBIA 247 (1993).

Once Bakke changed her mind about selling her land to Appellant, it was entirely reasonable for the Superintendent to decline to consider retroactive approval of the sale. Indeed, it would almost certainly have been a breach of trust for him to have approved the sale over Bakke's objection.

^{1/} Also in his notice of appeal, Appellant stated that he had refused to accept a certified letter sent to him by Bakke because he believed it contained a check from her.

Appellant has failed to show error in the Regional Director's 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, the Regional Director's February 21, 2001, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge