



INTERIOR BOARD OF INDIAN APPEALS

Edith Lajeunesse Johnson and Lillian L. Bakus and Leo N. Lajeunesse
v. Rocky Mountain Regional Director, Bureau of Indian Affairs

38 IBIA 64 (08/13/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

EDITH LAJEUNESSE JOHNSON,	:	Order Affirming Decision
Appellant	:	
	:	
and	:	
	:	
LILLIAN L. BAKUS and LEO N.	:	
LAJEUNESSE,	:	
Appellants	:	Docket Nos. IBIA 01-62-A
	:	IBIA 01-73-A
v.	:	
	:	
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	August 13, 2002

Appellants Edith Lajeunesse Johnson (Docket No. IBIA 01-62-A) and Lillian L. Bakus and Leo N. Lajeunesse (Docket No. IBIA 01-73-A) 1/ seek review of a January 5, 2001, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the leasing of Wind River Tract No. 1834-A to Martha Rocha. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

1/ The notice of appeal filed in Docket No. IBIA 01-62-A had signature blanks for Ellen Lejeunesse Giles, Leo Lajeunesse, Sr., Violet Lajeunesse, Lillian Lajeunesse Bakus, and Edith Lajeunesse. However, the notice was signed only by Edith. Nothing in the notice of appeal showed that Edith had been granted authority to represent anyone else. Therefore, Edith is considered to be the only appellant in this appeal.

The notice of appeal filed in Docket No. IBIA 01-73-A was filed by counsel who stated that she represented Lillian and Leo. These two individuals are considered to be the appellants in this appeal.

Appellants filed a joint opening brief/statement of reasons, which was signed by Ellen, Leo, Violet, Lillian, and Edith. The signing of this filing does not make Ellen or Violet appellants in these appeals. Rather, it can only be considered an attempt to file untimely appeals. See 43 C.F.R. § 4.332(a). The Board finds that Ellen and Violet are not appellants here.

These appeals involve Wind River Tract No. 1834-A, which is in fractionated ownership. In early 1995, Martha applied for a homesite lease on the tract. At that time, the United States held an undivided 2857/20000 interest in the tract in trust for Ellen and an undivided 5714/20000 interest in trust for Martha. BIA had previously issued a fee patent for an undivided 11429/20000 interest in the tract to Rachel Willets Lajeunesse. It appears that the owners of the 11429/20000 fee interest in 1995 were Leo, Edith, and Lillian. 2/ It appears that all of these individuals are members of the Eastern Shoshone Tribe.

Martha requested that her homesite lease cover 5.625 acres of the tract, which corresponded with her undivided interest. She also requested a lease term of 25 years and the waiver of annual rental during the term of the lease. Ellen, as the only other trust owner in the tract, signed the lease, indicating her approval of these provisions.

On October 12, 1995, BIA issued Homesite Lease No. 2747H to Martha. The lease contained the acreage, term, and waiver of rental which Martha had requested. The lease specifically stated that it covered only the undivided 8571/20000 trust interest in the tract owned by Martha and Ellen.

In November 1998, Ellen asked BIA to cancel the lease because Martha had died. Each of the fee interest owners supported Ellen's request. The owners contended that, because Martha lived in Massachusetts, the lease was to have been for a "vacation" home for her personally, and was not to run to any other person.

The Regional Director responded to Ellen's request by letter of September 29, 1999. 3/ He stated that Ellen had not raised any grounds for cancellation of the lease, because her request was based on Martha's death, rather than on a violation of the lease. Although without citing the paragraph, he noted that the lease specifically provided that it extended to Martha's heirs. See Paragraph 11 of the Lease, Upon Whom Binding: "It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, successors, executors, and administrators of the parties of this lease."

2/ BIA is not responsible for maintaining records relating to interests in an allotment that have passed out of trust status. Therefore, both the Regional Director and the Board must rely on Appellants' statements as to fee ownership of interests in the tract. According to representations in this appeal, Violet now also owns a fee interest in the tract.

3/ The Regional Director's title at the time this letter was written was Billings Area Director. In order to avoid confusion, the Board uses only the title Regional Director in this decision.

The Regional Director suggested that partitionment might be a solution to the longstanding problems involving this tract. ^{4/}

By letter dated July 22, 2000, Ellen, Leo, Edith, and Lillian wrote to the Regional Director, again seeking cancellation of the homesite lease. In this letter, they alleged violations of the lease. The Regional Director issued the January 5, 2001, decision presently under review in response to this letter. He found that there were no violations of the lease for which cancellation was appropriate.

Present Appellants appealed to the Board. They filed an opening brief/statement of reasons. David Rocha, Martha's surviving spouse, filed an answer brief.

Noting the date of Martha's death, the Board sought information from the Hearings Division of the Office of Hearings and Appeals as to whether probate of Martha's estate had been concluded. It learned that a decision in the estate was entered on October 19, 2001, by Indian Probate Judge Kathleen H. Switzer. A document purported to be Martha's Last Will and Testament was introduced at the hearing in Martha's estate. Judge Switzer approved Martha's will despite challenges to it. Under the will, all of Martha's trust property passed to her non-Indian surviving spouse, David. Therefore, Martha's undivided 5714/20000 trust interest in the tract is now owned by David. ^{5/} In addition, it appears that David is Martha's heir within the meaning of Paragraph 11 of the lease.

After receiving this information, the Board asked the parties whether the probate of Martha's estate had any effect on their positions in these appeals. The responses from the parties indicate that the probate of Martha's estate has not altered their positions.

The decision that is at issue in these appeals is the Regional Director's January 5, 2001, determination that there were no violations of Lease No. 2747H that justified lease cancellation. Appellants filed a joint opening brief/statement of reasons. That brief states in pertinent part:

^{4/} The record shows that partitionment of the allotment had been considered prior to the present controversy. It appears that, at one time, a tentative partitionment agreement was reached, but never implemented.

^{5/} Nothing before the Board shows whether David has been issued a fee patent for his undivided interest. If he has not, this is merely a ministerial act awaiting BIA action. Because David is non-Indian, the United States has no authority to hold land in trust status for him, and the interest passed out of trust by operation of law. Wayka v. Anadarko Area Director, 31 IBIA 314, 317 n.2 (1997); Estate of Dana A. Knight, 9 IBIA 82 (1981).

We, the undersigned, feel that the decision by the [BIA] in issuing a homesite lease to Martha Rocha, is illegal because not all landowners agreed to the homesite lease. The [BIA] acted only for the trust owners when over 50% of the land is fee-owned. How can the [BIA] determine what portion of the land is trust and which portion is fee? As of this date this land has not been partitioned. For over a decade this matter has been ongoing. By issuing a homesite on the undivided portion of the land and allowing this homesite to be fenced, the [BIA] is saying that they know what portion is trust and which portion is fee. Because the [BIA] allowed a fence to be put up, we as the major land owners are being restricted from using the land.

We, as members of the Eastern Shoshone Tribe, feel that the [BIA] has violated our rights in making any decisions pertaining to our land.

Appellants' argument on appeal is a challenge to the initial granting of the homesite lease to Martha on the grounds that all of the owners did not consent to the lease. As noted above, Ellen agreed to the lease. The lease stated that it covered only the trust interests in the tract that were owned by Ellen and Martha. BIA did not lease the fee interests in the tract because it has no authority to lease fee interests. This is true even when the fee interests are in an Indian allotment and even when the fee owners are Indian. Furthermore, BIA has no trust responsibility in regard to fee interests.

Both when Lease No. 2747H was initially approved and now, the fee owners are responsible for protecting their own interests. They should have negotiated with Martha to lease their interests in the tract to her. Nothing before the Board indicates whether the fee owners were aware of this fact or, if so, whether they took any action to assert their rights. It appears that the persons who were fee owners in 1995 were Martha's siblings, or at least her relatives. It is possible that they were not as concerned about protecting their interests when the lease was approved as they are now that Martha's lease and interest in the tract have been inherited by David. However, the lease never covered the fee interests in the tract. Unfortunately, the Department of the Interior is not the forum in which the fee owners can assert their rights, because the Department has no authority over their fee interests. The proper forum is either a tribal or state court with appropriate jurisdiction.

As to the Regional Director's January 5, 2001, decision, Appellants bore the burden of proving error in that decision. In this appeal, they have not even alleged error in the Regional Director's decision. The Board has consistently held that an appellant who makes no allegation of error, let alone any arguments in support of such an allegation, has not carried his burden of proof. See, e.g., Dick v. Northwest Regional Director, 37 IBIA 279, 280 (2002), and cases cited there. Appellants have not carried their burden of proof here.

