



## INTERIOR BOARD OF INDIAN APPEALS

Mont Faulkner v. Acting Northwest Regional Director, Bureau of Indian Affairs

39 IBIA 62 (06/04/2003)

This decision has been redacted under 5 U.S.C. § 552(b)(6) by removing a reference to a homesite lease number.



## United States Department of the Interior

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

MONT FAULKNER,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 02-92-A
ACTING NORTHWEST REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	June 4, 2003

Appellant Mont Faulkner seeks review of a March 6, 2002, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the cancellation of Homesite Lease No. \* (the lease), covering a 4.5-acre tract of land held in trust by the United States for the Shoshone-Bannock Tribes of the Fort Hall Reservation (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Regional Director's decision.

The tract at issue here is part of approximately 978 acres which the United States purchased from Appellant's grandparents under the Indian Reorganization Act land purchase program. On November 8, 1938, Appellant's grandparents conveyed the property to the United States in trust for the Tribe. Appellant's grandfather, who was a Tribal member, received an exchange assignment of the 978 acres under the terms of the deed and of a Grant of Exchange Assignment of Tribal Land executed by Tribal authorities on November 9, 1938.

Appellant's grandfather died in 1953. On August 12, 1954, the Tribe's Business Council assigned the tract to Appellant's non-Indian grandmother for her lifetime, with the tract going to the Tribe upon her death. Appellant's grandmother died in November 1986. In December 1986, the Tribe advertised the property for lease. Appellant applied for a homesite lease covering a 4.5-acre portion of the property in January 1987. For reasons that are not entirely clear, the lease was not approved until June 14, 1990. At that time, the Superintendent, Fort Hall Agency, BIA (Superintendent), approved the lease for homesite and corral purposes. The lease had a term of 25 years beginning on January 1, 1987, and ending on December 31, 2012, and included special "Homesite Provisions," in addition to BIA's standard printed lease provisions.

On September 25, 2001, the Tribe's Business Council enacted a resolution cancelling Appellant's lease. Citing Homesite Provision 20, the resolution stated that Appellant had subleased the tract without the Tribe's approval. <sup>1/</sup>

On October 31, 2001, the Superintendent notified Appellant that his lease was being cancelled for violation of Homesite Provisions 17, 18, and 19, all of which deal with assignments of the lease. Appellant appealed to the Regional Director, who affirmed the cancellation on March 6, 2002. Appellant then appealed to the Board. Both Appellant and the Regional Director filed briefs on appeal.

Appellant has not, before either the Regional Director or the Board, challenged the Tribe's conclusion that he was in violation of his lease. Neither has he challenged Homesite Provision 20 or the procedure the Tribe or the Superintendent followed in cancelling the lease. Under these circumstances, the Board would ordinarily affirm the Regional Director's decision on the grounds that Appellant has failed to carry his burden of proving error in the decision.

In this appeal, however, Appellant takes one step backwards and challenges the lease itself, arguing that the Tribe lacked authority to lease the property, and BIA lacked authority to approve a lease. Appellant asserts that his grandfather's heirs have the right to use the property, apparently indefinitely, under the 1938 exchange assignment. He contends that when the Tribe assigned the property to his grandmother in 1954 only for her lifetime and stated that the tract would return to the Tribe upon her death, it improperly eliminated a reassignment preference right for his grandfather's heirs. Appellant argues that, in doing this, the Tribe violated the

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<sup>1/</sup> Homesite Provision 20 states:

"Remedies of Lessor for Unauthorized Assignment of Sublease: Notwithstanding any contrary provision in 25 CFR 162.14 (or later amendment thereto), it is understood and agreed that any assignment or sublease of this lease, except an assignment under paragraph 16 herein [sic; this paragraph number is incorrect, but it is not clear what paragraph should be referenced], without the prior written consent of the lessor shall constitute a breach of the lease entitling the lessor, at its option, to cancel and terminate the lease upon ten days written notice to the lessee. If the lessor exercises its option to cancel and terminate the lease in accordance herewith, the lessee agrees to pay to lessor, as liquidated damages, an amount equal to twice the annual rental fee fixed hereunder for the year in which cancellation or termination occurs."

1938 deed, the 1938 exchange assignment, and its Constitution--in particular, Article VIII, section 8. 2/

Appellant's arguments are an attempt to convert a lease cancellation into an attack on a 50-year old Tribal action in regard to a land assignment. There is no evidence in the record, and Appellant has not alleged, that his grandmother was coerced in 1954 into taking an action that she did not understand or intend. Neither does the record show, nor Appellant allege, that his grandmother objected to the Tribe's actions at that time. In addition, everything before the Board indicates that Appellant himself willingly entered into a lease with the Tribe in 1990.

Under the Tribe's Constitution, the management of tribal land assignments is reserved to the Tribe, with no provision for BIA involvement. Constitution, Article VIII, sections 4-10, 13; Estate of Edward Q. Boyer, 38 IBIA 146, 148 (2002). Further, unlike leases of tribal land, tribal land assignments are not subject to BIA approval under Federal law. 3/ The land assignment issue Appellant attempts to raise here must be brought to the appropriate Tribal forum

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2/ Article VIII, section 8, provides:

*"Inheritance of exchange assignments.* — Upon the death of the holder of any exchange assignments, such interests shall be reassigned by the business council to his heirs, or devisees, subject to the following conditions:

“(a) Such land may not be reassigned to any heir or devisee who is not a member of the Shoshone-Bannock Tribes, except that a life assignment may be made to the surviving widower or widow of the holder of an assignment.

“(b) Such lands may not be reassigned to any heir or devisee who already holds more than an economic unit of grazing land or other land or interest in lands of equal value, to be determined from time to time by the business council.

“(c) Such lands may not be subdivided among heirs or devisees into units too small for convenient management. No area of grazing land shall be subdivided into units smaller than 160 acres, and no area of agriculture land shall be subdivided into units smaller than 10 acres, except that land used for buildings or other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the business council shall issue to such heirs or devisees interests in tribal land or property of the same value as the assignment of the decedent.

“(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment in accordance with the provisions of section 4 of this article [concerning standard assignments].”

3/ See Candelaria v. Sacramento Area Director, 27 IBIA 137, 140 (1995), for a general discussion of tribal land assignments.

under Tribal law. 4/ However, the question in this appeal remains whether or not Appellant's lease was properly cancelled.

The Board thus returns to the beginning of this decision and finds that Appellant has failed to show that either the Tribe or BIA erred in cancelling his lease. 5/

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 March 6, 2002, decision is affirmed.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Kathleen R. Supernaw  
Acting Administrative Judge

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4/ Frances F. Petell and Thelma Faulkner Smith, who support Appellant in this appeal, are Appellant's aunts, being daughters of Appellant's grandparents. They state that, in January 2002, they applied to the Tribe for exchange assignments of the tract and, as of April 2002, had received no response. The Board does not know if any action has been taken on these applications while this case was awaiting decision.

Other than these statements, Appellant has presented no evidence that he or any other of his grandfather's heirs have ever attempted to raise this complaint in a Tribal forum. Thus, even if this issue were properly before the Board in the context of this appeal, which it is not, the Board would still not address it because Appellant has failed to show that he has exhausted his tribal remedies. See, e.g., Hunter v. Acting Navajo Area Director, 34 IBIA 13 (1999), and cases cited there.

5/ Appellant argues that BIA has a trust responsibility to enforce the rights of his grandfather's heirs against the Tribe. The Board disagrees. BIA's trust responsibility is to the owner of trust property. See, e.g., McNeil v. Billings Area Director, 33 IBIA 210, 213 (1999); Noriega v. Acting Anadarko Area Director, 27 IBIA 157, 158 (1995), and cases cited there. The owner of the trust property is the Tribe, and BIA's trust responsibility is therefore to the Tribe.