



INTERIOR BOARD OF INDIAN APPEALS

Lisa DeNobrega v. Acting Northwest Regional Director,
Bureau of Indian Affairs

40 IBIA 233 (02/07/2005)



United States Department of the Interior

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

LISA DeNOBREGA, : Order Affirming Decision
Appellant, :
 :
v. :
 : Docket No. IBIA 05-18-A
ACTING NORTHWEST REGIONAL :
DIRECTOR, BUREAU OF INDIAN :
AFFAIRS, :
Appellee. : February 7, 2005

Appellant Lisa DeNobrega appealed from an October 6, 2004, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director), which found that a home site lease to Appellant on Colville Allotments 101-105-E and 101-3205-A was not valid, and that Appellant was not otherwise entitled to reside on the property. We affirm.

Appellant and Francis D. Picard, Sr., now deceased, were living together on the subject property, and are the parents of a minor dependent child. Mr. Picard (Decedent) owned a 1/2 interest in the property. Following Decedent's death on April 11, 2004, Appellant requested a home site lease, in order to remain on the property. On April 28, 2004, the Superintendent of the Colville Agency executed a lease to Appellant, purportedly on behalf of five living co-owners who, jointly, hold the other 1/2 interest in the property, and on behalf of the estate of Decedent, which is in probate. The five living co-owners are the adult children or step-children of Decedent. Citing an earlier version of 25 C.F.R. § 162.601(a)(5), the lease recites that the Superintendent was executing the lease on behalf of and "per attached consent" of four of the living co-owners. Citing an earlier version of 25 C.F.R. § 162.601(a)(4), the lease notes that the fifth living co-owner had not consented, but the Superintendent executed the lease on her behalf based on that section's language allowing the Secretary to grant a lease on behalf of heirs or devisees to land who have not been able to agree upon a lease during the three-month period following the date on which a lease may be entered into.

The Regional Director found that the Superintendent's approval of the lease was not valid because the Superintendent did not have authority to approve the lease when he did. First, the Regional Director noted that the purported four "consents" were not attached. Second, the Regional Director found that the Superintendent had executed the lease on behalf of the fifth living co-owner without allowing the regulatory three month time period to expire.

The Regional Director also rejected Appellant's argument that she and her daughter should be allowed to reside on the property because her daughter may have rights as an heir of Decedent, although her daughter apparently is not named in Decedent's will and the estate is still in probate. The Regional Director concluded that an individual's status as a likely heir does not give that individual a right to use a decedent's property (i.e., without a valid lease).

Appellant's notice of appeal raises no arguments why the Regional Director erred in concluding that the home site lease was not valid and that her daughter's status as a potential heir of Decedent did not give her a right to reside on the property without a lease. Although the Board's notice of docketing advised Appellant that she bore the burden of proving error in the Regional Director's decision, Appellant elected not to file an opening brief, but instead to rely on the administrative record and her notice of appeal.

Upon review of Appellant's notice of appeal and the administrative record, the Board concludes that Appellant has failed to satisfy her burden to prove error in the Regional Director's decision. The administrative record supports the Regional Director's conclusion that the Superintendent's execution of the lease on behalf of the Indian owners of the property was not valid. In particular, the record supports the Regional Director's finding that none of the living co-owners of the property had consented to the lease, and that the Superintendent's purported approval on behalf of the acknowledged non-consenting co-owner was done before the time period in the regulatory provision upon which the Superintendent relied had elapsed.

In addition, the Board finds no basis to reverse the Regional Director's conclusion that Appellant's daughter's status as a potential heir to Decedent's estate does not give Appellant or her daughter a right to use the property without a lease. See 25 C.F.R. § 162.104 (When is a lease needed to authorize possession of Indian Land?).

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 Board affirms the Regional Director's October 6, 2004, decision.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge