



INTERIOR BOARD OF INDIAN APPEALS

Antonio Roman v. Rocky Mountain Regional Director, Bureau of Indian Affairs

41 IBIA 70 (05/23/2005)



United States Department of the Interior

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

ANTONIO ROMAN,	:	Order Affirming Decision
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 04-82-A
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	May 23, 2005

Antonio Roman (Appellant), pro se, appeals from a February 19, 2004, decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), finding that Appellant’s lease (No. 4024), for Tracts C140, C141, C142, and C143 on the Wind River Reservation of the Shoshone and Arapahoe Tribes, had a two-year term, rather than a five-year term. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the Regional Director’s decision.

On October 22, 2001, BIA issued a notice inviting bids for agricultural leases on various tracts of trust land on the Wind River Reservation. The notice stated that the terms of the leases would be five years “unless otherwise specified in this bid advertisement.” Among the properties advertised were Tracts C140–C143, comprising 156.99 acres and consisting of tribal and allotted lands. A chart accompanying the bid advertisement lists Tracts C140–C143 as “Item 70*” and an annotation on the same page states that an asterick (*) “indicates 2 year leases only.”

Appellant was the high bidder for Tracts C140–143, and in April 2002, the BIA Wind River Agency Office typed up the lease for a term beginning January 1, 2002. Appellant signed the lease on August 1, 2002, and the Agency Superintendent approved it on September 25, 2002. On December 2, 2002, the Agency sent Appellant the blue copy from the carbonless triplicate of the approved and recorded lease. On Appellant’s blue copy, in the space for the number of years of the lease term, “TWO (2)” is typed over correction fluid, indicating that an alteration was made to the initial entry. Similarly, for the termination date of the lease, the year “2003,” is also typed over correction fluid. Photocopies of the lease in the administrative record submitted to the Board by the Regional Director show “TWO (2)” years typed in for

the term of the lease and “2003” for the year of termination, but also indicate that changes may have been made from what was originally typed on the form. No initials are next to the changes on any of the lease copies provided to the Board.

On November 18, 2003, the Agency issued a bid advertisement for a new lease for Tracts C140–C143. Appellant objected, and appealed to the Regional Director. In his appeal to the Regional Director, Appellant stated:

[T]he agreement I signed stated the term was 5 years beginning January 2002. I clarified this with the clerk, “Now this is for 5 years?” for which she answered “Yes”. After I signed the contract I gave it back to the clerk. The contract was then changed; correction fluid was used to white out the 5 years and in its place 2 years was typed and the year was also changed to 2003. This is not what I had originally signed.

I have kept my part of the contract as was originally signed, and was under the impression that I had signed a 5 year contract. Unbeknownst to me the contract came up for re-bid under the new modified 2 year term and was given to someone else. * * *

I feel that because I had originally signed a 5 year term and the contract was changed after I had signed it, and because I am in negotiations to buy this property, this lease should be retained with me. * * *

Nov. 23, 2003, Notice of Appeal.

In response, the Agency Superintendent submitted a memorandum to the Regional Director, which stated:

During the preparation of this lease a typographical error was made on the triplicate copy * * *. This error was corrected on the original. The correction was made using colored “white out” on the subsequent copies of the lease. At the time the error was corrected no signatures had been obtained. Ms. Samantha Big Knife recalls her mistake * * *. We have included a copy of the recorded original lease and our green copy which shows the correction in green “white-out”.

* * * [Appellant’s] copy [of the approved lease] was mailed to him on December 2, 2002. This copy would also show the correction made by our office in blue “white out”. We at no time attempted to trick [Appellant] into

signing a lease for which we would later change the term. We advertised a 2 year lease and approved a 2 year lease as allowed by the statute at the time. 1/

Jan. 23, 2004, Memorandum from Acting Superintendent to Regional Director.

On February 19, 2004, the Regional Director rejected Appellant's appeal, and upheld the Superintendent's decision to advertise for a new lease for Tracts C140-C143, based on a finding that Appellant's lease was for two years and had expired on December 31, 2003. The Regional Director found that the bid advertisement clearly indicated that the tracts were being advertised for a two-year lease. He also noted that the Agency had admitted making a change on the lease after it initially was typed, but that the Agency also contended that the change had been made before any signatures were obtained. The Regional Director found no evidence that the lease issued to Appellant was for a five-year period, and concluded that the change had been made before Appellant signed the lease.

On appeal to the Board, neither Appellant nor the Regional Director filed briefs. 2/

In his notice of appeal to the Board, Appellant contends that the terms of the lease were changed after he had signed it. He encloses with his notice of appeal his blue copy of the lease, showing the typed changes made over correction fluid. Appellant does not contend that the lease was altered after it had been approved by the Superintendent. Instead, he appears to contend that if the lease was altered from five to two years after he signed it, that fact would be sufficient to make it a five-year lease. We disagree.

Until the lease was approved by the Superintendent, it was not effective or enforceable. Cf. Jackson v. Portland Area Director, 35 IBIA 197, 200 (2000) (unapproved lease is void); Brooks v. Muskogee Area Director, 25 IBIA 31, 34 (1993), recon. denied, 25 IBIA 96 (1994) (same). Even if the Agency changed the term of the lease from five years to two years after Appellant signed the lease form, that would not mean that he has an enforceable five-year lease. At most, under such circumstances, the Superintendent's approval of the lease for a two-year term would mean that the lease was limited to that term. 3/

1/ It appears that the Agency was relying on a version of the regulations that was no longer in effect, and based on those outdated regulations, believed that the tracts could be leased for no more than a two-year term.

2/ After the briefing period had closed, the Regional Director submitted a request for expedited consideration. The Board grants the Regional Director's request.

3/ We need not address the scope of BIA's discretion, cf. Brooks, 25 IBIA at 35, to approve a lease for a term other than what has been agreed to by all the parties. In the present case, in addition to exercising his approval authority, the Superintendent also signed the lease as a party,

(continued...)

As described above, Appellant's own copy of the approved lease contained the changes typed over correction fluid to make it a two-year lease. When Appellant received his copy of the recorded lease in December 2002, he was on notice that the lease, as approved, was for a two-year term. At that time, if he believed the lease had been improperly altered after he signed it, and improperly approved as only a two-year lease, he should have objected to the Agency. Yet Appellant did not raise an objection until November 2003, when the tracts were advertised for a new lease.

In his appeal to the Regional Director, Appellant contended that he had "kept [his] part of the contract as was originally signed." He has not, however, produced any copies of an unaltered five-year lease containing his signature, nor — and more importantly — has he produced any evidence that would suggest that the lease recited a five-year term at the time it was approved by the Superintendent.

The Board concludes that Appellant has not met his burden to prove that the Regional Director's decision was in error.

However, the Board disapproves of the procedure employed by the Agency in this case. If the Agency believes it has made a mistake on a lease form, it should either prepare a new form or have all parties to the lease initial any changes or corrections.

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 February 19, 2004, decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge

3/(...continued)

on behalf of individual Indian landowners and estates. There is no evidence in the record that the Superintendent, in either capacity, agreed to anything other than a two-year term for the lease.