



INTERIOR BOARD OF INDIAN APPEALS

Michael Mitchell v. Acting Northwest Regional Director, Bureau of Indian Affairs

58 IBIA 246 (05/02/2014)



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

MICHAEL MITCHELL,)	Order Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 13-037
ACTING NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	May 2, 2014

Michael Mitchell (Appellant) appealed to the Board of Indian Appeals (Board) from an October 15, 2012, decision (Decision) of the Acting Northwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), affirming the cancellation of Appellant's lease No. 123 2085880126HS, covering lots 90 and 91 of Block 1 of the Hermosa Point Summer Home Sites on the Tulalip Reservation. The Regional Director affirmed the March 9, 2012, decision of BIA's Puget Sound Agency Superintendent to cancel Appellant's lease based on his failure to pay annual rent, due on June 1, 2011. By the time of the Regional Director's decision, Appellant also had not paid the rent due on June 1, 2012. As an initial matter, the Board ordered Appellant to post a bond in the amount of the rent deemed by BIA to be past due. On April 4, 2013, the Board received from the Regional Director a copy of an "Assignment of Savings Account" executed by Appellant and, purportedly, by a representative of Appellant's credit union in the amount of \$14,400.

On March 7, 2014, the Board received a request from the Regional Director for immediate dismissal of Appellant's appeal. According to the Regional Director, Appellant abandoned the leased premises, and a landowner removed a squatter from the residence. Regional Director's Request to Dismiss Appeal at 1. In addition, the Regional Director asserted that Appellant's Assignment of Savings Account was fraudulent, and the Regional Director provided evidence to support that assertion. *Id.* at 2 (citing Letter from Darigold Federal Credit Union to BIA, Jan. 24, 2014, Attach. 2 thereto).

In response to the request for immediate dismissal, on March 11, 2014, the Board issued an Order Making Decision Effective Immediately and Order for Appellant to Show Cause (OSC). That order placed the Decision into immediate effect, pursuant to 25 C.F.R. § 2.6(a) and 43 C.F.R. § 4.314(a), on the grounds of public safety, protection of trust

resources, or other public exigency. For considerations of due process, the Board did not immediately dismiss the appeal. But due to Appellant's apparent abandonment of the leased premises (and evidently his appeal), and the alleged fraud in Appellant's posting of the appeal bond, the Board ordered Appellant to show cause why his appeal should not be dismissed for failure to prosecute or for failure to comply with the Board's order imposing the appeal bond.

The Board set a deadline of March 25, 2014, for Appellant to comply with the Board's OSC and advised Appellant that if he failed to respond to the OSC, his appeal might be dismissed without further notice.

Appellant did not respond to the OSC. 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 dismisses this appeal for failure to prosecute.

I concur:

 // original signed
Thomas A. Blaser
Administrative Judge

 //original signed
Steven K. Linscheid
Chief Administrative Judge