INTERIOR BOARD OF INDIAN APPEALS

First Interstate Bank, Lander, Wyoming v. Rocky Mountain Regional Director, Bureau of Indian Affairs

60 IBIA 313 (05/14/2015)

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

FIRST INTERSTATE BANK, LANDER, WYOMING, Appellant,	)	Order Dismissing Appeal
v.	)	
	)	Docket No. IBIA 13-014
ROCKY MOUNTAIN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	May 14, 2015

First Interstate Bank, Lander, Wyoming (Appellant) appealed to the Board of Indian Appeals (Board) from a September 17, 2012, decision (Decision) by the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), declining to approve the terms of a loan and collateral for a mortgage for Jason and Laura Lozier (Loziers) for the purchase of 50.35 acres of trust land. The Board dismisses the appeal because Appellant has not demonstrated that it has standing to bring the appeal.

When the Board scheduled briefing on the merits of the appeal, it solicited briefing on Appellant's standing to bring this appeal. Order Setting Briefing Schedule and Soliciting Briefing on Standing, Nov. 6, 2012 (Order), at 2. In doing so, the Board noted that the Loziers had not filed an appeal to challenge the Decision. *Id*. The Board also cautioned that it appeared that any right or interest that Appellant may possess in the transaction was derived from and dependent upon the Loziers' interest in completing the transaction under the proposed terms. *Id*. (citing *Fleury v. Alaska Regional Director*, 54 IBIA 83, 84 (2011)). Because it was not apparent on what basis Appellant would have standing to challenge the Regional Director's disapproval of a transaction to which the Loziers may no longer consent,[1] the Board solicited briefing on the issue. *Id*.

To bring an appeal to the Board, an appellant must show that it has standing to bring the appeal. *Williams v. Northwest Regional Director*, 59 IBIA 218, 226 (2014). The

[1] The Board noted that the administrative record contained evidence suggesting that the Loziers were satisfied with the disapproval of the transaction. Order at 2 n.1 (citing Email from Satepeahtaw-Bailey to Blumhardt, Sept. 26, 2012 (Administrative Record Tab D)).

Board has construed its regulations as incorporating the judicial elements of standing articulated by the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director*, 58 IBIA 278, 292 (2014). To establish standing, an appellant must first show that it has suffered an invasion of a legally protected interest that is concrete, particularized, and actual or imminent. *Williams*, 59 IBIA at 226. The injury complained of must not be hypothetical or conjectural. *Id*. Importantly, an appellant must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of others. *Thompson v. Great Plains Regional Director*, 58 IBIA 240, 241 (2014); *see Friends of Our Pyramid Lake Reservation v. Western Regional Director*, 55 IBIA 272, 273-75 (2012); *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 213 (2012).

Appellant cannot assert the interests of the Loziers, or seek relief on their behalf, nor can it stake its own claim on the Loziers' interests. And as we have said, it is unclear what independent right or interest of Appellant's has been adversely affected by the disapproval of the terms of a mortgage for the Loziers. *Fleury*, 54 IBIA at 84 (appellant lacked standing to independently pursue appeal because any right or interest it had in transaction was "purely derivative"); *see also Marvin v. Acting Sacramento Area Director*, 32 IBIA 64, 65 (1998) (in deciding whether to approve mortgage, BIA's trust responsibility is to the owner of the trust land). Appellant did not file an opening brief and did not respond to the Board's order to address its standing to bring the appeal. Accordingly, Appellant has failed to carry its burden of establishing standing. *Thompson*, 58 IBIA at 242; *Wood v. Northwest Regional Director*, 58 IBIA 216, 217 (2014); *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Acting Southern Plains Regional Director*, 56 IBIA 267, 267-68 (2013).

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 demonstrate standing.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge