

Editor's note; Pagination error in original corrected.

CHARLES H. DORMAN ET AL., APPELLANTS
ROBERT L. MEYER, ROGER H. RAMSEY, APPELLEES

IBLA 83-945

Decided February 28, 1984

Appeal from decision of the Peninsula Resource Area Manager, Anchorage, Alaska, Bureau of Land Management, approving reassignments of grazing leases A-015024 and A-031348.

Vacated and remanded.

1. Grazing Leases: Assignments or Transfers

Where there is a private dispute involving the validity or effect of a grazing lease assignment, it is improper for the Bureau of Land Management to take action on a request for assignment approval until final resolution of the private dispute and receipt of notice of the result of the final determination.

2. Administrative Procedure: Administrative Review -- Appeals -- Rules of Practice: Appeals: Generally

If an assignment is approved by BLM after BLM has received notice that a private dispute exists as to the validity or effect of the assignment, but before resolution of the private dispute, fairness dictates that the assignment be vacated to restore status quo pending resolution of the dispute.

APPEARANCES: Melvin E. Stephens II, Esq., Kodiak, Alaska, for appellants; Sally Kucko, Esq., Anchorage, Alaska, for appellees.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles H. and Joanne E. Dorman and Donna F. and Earl A. Smith, Jr., (appellants) appeal from a letter decision of the Peninsula Resource Area Manager, Alaska, Bureau of Land Management (BLM), dated July 22, 1983, which approved reassignment of grazing leases A-015024 (9,540 acres) and A-031348 (35,557 acres) from appellants to Robert L. Meyer and Roger H. Ramsey, appellees herein. The two leases, which embrace a total of 45,097 acres on Kodiak Island, Alaska, were initially issued in 1971. Both leases were assigned to appellees on June 20, 1974.

On August 9, 1979, appellants and appellees entered into a "Contract for Sale and Assignment" (Contract). The Contract provided for the sale of certain equipment, rights, and livestock and the transfer of the grazing leases from appellees to appellants. In return, appellants were to make installment payments to appellees on or before certain dates. Condition 2 of the Contract provided, in part: "Buyers [appellants] shall execute B.L.M. 'Application for Assignment of a Grazing Lease and Request for Approval' documents back to Sellers [appellees] for both leases and same shall be held by First National Bank of Anchorage pending receipt of Buyers' last payment as above provided." The record discloses that appellants executed applications for assignment of the grazing leases, naming appellees as assignees, on August 9 and 11, 1979. These documents were then placed in escrow at the First National Bank of Anchorage.

In furtherance of the assignments to appellants contemplated in the Contract, appellees executed applications for assignment of a grazing lease and request for approval forms (Form ASO-4000-1) naming appellants as the assignees. These forms were then executed by appellants and filed with BLM. The assignment of the leases was approved by BLM and new leases with effective date January 1, 1980, were issued to appellants.

An audit of the escrow account established pursuant to the Contract was conducted by the escrow bank on October 8, 1981. As a result, the bank issued a notice to appellees that "[the] account has been audited and found to be delinquent. A payment in full was due on Feb. 1st, 1980 of \$85,000.00." Upon its audit, the bank delivered the applications for assignment to appellees.

On the same day, October 8, 1981, a letter was sent to appellants by the Area Manager, BLM, asking for clarification of the contractual relationship between appellants and appellees. That letter stated, in part:

We have received phone requests from Mr. Roger Ramsey and Mr. Robert Meyer to reassign the grazing leases A-015024 and A-031348 to them because of contractual default. Now we receive a letter from you telling us of your future plans. We would like to have some clarification of the situation.

In response to this letter appellants stated their belief that the amount considered to be in default was not due and owing by reason of breach of contract on the part of appellees. It appears that appellants believed that offsets were due by reason of the failure on the part of appellees to perform certain conditions of the contract regarding sale and delivery of equipment and livestock.

A November 6, 1982, file memorandum indicates that on that date appellees notified BLM of their position in the dispute. The memorandum notes that appellees had filed suit against appellants and that appellees considered appellants to be in default. Appellees were advised to notify BLM of the name of the attorney who was to be handling the matter for them. On November 22, 1982, appellees' attorney filed with BLM the applications for

reassignment of the leases from appellants. The stated reason for reassignment was that the Contract contained provisions for reassignment upon default by the Buyers. 1/

On July 22, 1983, the Area Manager issued a decision approving the assignment back to appellees. The concluding paragraph of the Area Manager's decision states:

Based on the request for reassignment of the subject leases and the fact that the contract for sale, the lease assignments, and the reassignments were entered into in good faith, the reassignments of grazing leases A-015024 and A-031348 from Charles Dorman and Earl Smith to Robert Meyer and Roger Ramsey are approved, subject to all conditions of the leases.

On August 11, 1983, appellants filed a breach of contract suit against appellees in the Third Judicial District, Superior Court of Alaska. By letter of the same date they advised BLM of their strong objections to its approval of the reassignments to appellees. Appellants' formal notice of appeal of the Area Manager's decision was filed with BLM on August 23, 1983.

In their statement of reasons appellants assert that when they took possession of the leases they discovered several breaches of contract, for which they withheld the \$85,000 payment due on February 1, 1980. Appellants contend that the assignment documents are invalid because they were executed in August 1979, but not filed with the authorized officer until November 1982, in contravention of 43 CFR 4220.7(c); that the documents are defective because

1/ Condition 8 of the Contract provided:

"8. After closing of this agreement and disbursement of the first two payments, the realtor hereunder shall establish an escrow account at the First National Bank of Anchorage, in Anchorage, Alaska, for purposes of retaining an original copy of this contract, the Bill of Sale as to personal property, the Brand Assignment, and the 'Application for Assignment of a Grazing Lease and Request for Approval'. Said escrow agent shall hold such documents until receipt of the sum of \$85,000.00 from Buyers, or until February 1, 1980, whichever occurs the sooner. Upon receipt of said sum, escrow agent is specifically authorized to deliver unto Buyers each and every of the documents retained in his possession to consummate this transaction. Time is of the essence of this agreement, and in the event Buyer shall fail to deposit the remaining balance of said funds as prescribed hereinabove, said escrow agent is directed to notify the Sellers, forthwith, of such default, and, upon demand, to return each and every of the documents retained in his possession unto Sellers. In the event of such default by Buyers, Sellers shall have the option of seeking to specifically enforce this agreement, or of returning unto Buyers the sum of \$90,000.00, and retaining the initial payment sum of \$10,000.00 earnest money as damages in consideration of Sellers' taking the premises off the market and for their actual out of pocket expenses. Escrow fees shall be paid jointly by the parties and in the manner prescribed by escrow agent."

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they were not signed by the parties' wives; that in approving the reassignments the Area Manager improperly involved BLM in a private contract dispute between the parties; and that appellants were deprived of due process because they were not notified prior to approval of the reassignments. Appellants request that, pending resolution of the lawsuit, the leases be "treated as held exclusively and without restriction by the appellants."

Appellees charge that appellants defaulted by failing to pay \$85,000 on February 1, 1980. They contend that the existence of any breach of contract is properly a subject for the court, but that determination of entitlement to grazing leases is a matter for BLM and review by the Board, and that the Area Manager properly approved the assignments, notwithstanding the lapse of time between the execution and filing of the proposed assignment. ^{2/} They request that the Board uphold the assignments.

[1, 2] The Department has historically declined to adjudicate private disputes involving the validity or effect of a lease assignment and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. E.g., Fimple Enterprises, Inc., 70 IBLA 180 (1983); William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981). The record in this case clearly indicates that BLM was aware of the existence of a private dispute between the parties and litigation regarding the alleged breach of the Contract for Sale and Assignment. The proper course of action on the part of BLM was to decline to disturb the existing conditions until resolution of the private dispute, ^{3/} and BLM's approval of the reassignment to appellees was contrary to Departmental policy. Fairness dictates that we now restore the status quo by vacating the reassignment to the appellees pending resolution of the dispute. Fimple Enterprises, Inc., supra.

^{2/} 43 CFR 4220.7(c) provides in pertinent part: "Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution." As indicated in the text above, appellants contend that the 90-day period is mandatory and assignments cannot be approved thereafter. This is not the case. With respect to a belatedly filed request for approval of a grazing lease assignment, the Department has discretion under the regulation to either grant approval of the request or to deny approval on the basis of the untimely filing where, for instance, there are intervening assignees or other adverse interests involved. See James V. O'Kane, 19 IBLA 171, 174-75 (1975).

^{3/} We note that such a result would be consistent with the recommendation given by the Assistant Regional Solicitor in his memorandum to the Area Manager, dated Apr. 29, 1983. First, he recommended that BLM inquire whether appellants would object to issuance of the reassignments. There is no evidence that this was done. Second, he stated that, if they did, BLM should issue a decision suspending action on the requests for approval for 6 months "for the purpose of giving all parties an opportunity to resolve their dispute over the validity of the assignments by initiating action in court or entering into a private settlement" (Memorandum at 7).

Upon remand BLM should withhold further action on the applications for assignment until final resolution of the private dispute and receipt of notice of the results of the final determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Peninsula Resource Area Manager is vacated and the case is remanded to BLM.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

Bruce R. Harris
Administrative Judge

