

WASSILIE ROBERTS  
GOODNEWS RIVER LODGE, INC.

IBLA 99-229

Decided July 11, 2000

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-52703 (Parcel D).

Appeal dismissed.

1. Alaska: Native Allotments--Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance-- Board of Land Appeals--Rules of Practice: Appeals: Jurisdiction

The Board will dismiss an appeal from a BLM decision rendered pursuant to the Stipulated Procedures for Implementation of Order approved by the Federal district court in Aguilar v. United States, No. A76-271 (D. Alaska Feb. 9, 1983), as a decision rendered pursuant to those stipulations is final for the Department of the Interior.

2. Alaska: Native Allotments--Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance-- Board of Land Appeals--Rules of Practice: Appeals: Jurisdiction

The issue of passage of title would be properly before the Board on the appeal by a Native of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, that issue cannot be raised in an appeal to this Board from a determination rendered pursuant to the Aguilar proceedings.

APPEARANCES: John W. Hendrickson, Esq., Anchorage, Alaska, for appellants; Regina L. Sleater, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Wassilie Roberts, a Native allotment applicant, and Goodnews River Lodge, Inc. (Goodnews) have appealed a May 12, 1998, decision issued

by the Alaska State Office, Bureau of Land Management (BLM), adopting a December 10, 1997, recommended decision by a BLM Hearing Officer, following a 6-day hearing. The May 1998 decision, which stated that it was final for the Department, rejected amended Native allotment application AA-52703, to the extent that Roberts sought 39.96 acres of land in sec. 18, T. 12 S., R. 72 W., Seward Meridian, Alaska, described in his amended application as "Parcel D." 1/

Roberts filed Native allotment application AA-52703 pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), some time before December 18, 1971. 2/ His application was for four parcels along the Goodnews River, including Parcel D, which was initially described as being in unsurveyed secs. 29 and 30, T. 11 S., R. 72 W., Seward Meridian, Alaska. 3/ His application stated that he had used and occupied the parcels since prior to 1956. When the BLM field examiner examined the land on July 3, 1986, Roberts, who accompanied the examiner, identified the land he claimed. The land sought by Roberts, which was described as Parcel D, was actually found to be in unsurveyed sec. 18, T. 12 S., R. 72 W., Seward Meridian, Alaska, which is about 3 miles downstream from the location described in the application. The land Roberts identified was subsequently surveyed in U.S. Survey No. 10424, Alaska, which was officially filed on October 23, 1989. Roberts accepted the surveyed location as the true location of his Native allotment claim.

Prior to the field examination and survey of Roberts' Native allotment claim, the land in both unsurveyed sec. 30, T. 11 S., R. 72 W., and unsurveyed sec. 18, T. 12 S., R. 72 W., Seward Meridian, Alaska, had been conveyed to others. The surface estate had been transferred to Kuitsarak, Inc. (Kuitsarak), a Native village corporation, on August 30, 1984, by Interim Conveyance. This conveyance was made in satisfaction of a November 13, 1974, selection application F-14862-A, filed pursuant to section 22(j) of ANCSA, as amended, 43 U.S.C. § 1621(j) (1994). 4/ Title

1/ Goodnews, the successor-in-interest to Alaska River Safaris Ltd., holds a 25-year lease to a 10-acre tract in Roberts' Parcel D.

2/ Repealed effective Dec. 18, 1971, subject to pending Native allotment applications, by section 18(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (1994).

3/ The document in the file is a reconstructed application filed with BLM on Oct. 27, 1983, pursuant to the settlement in Barr v. United States, No. A76-160 (D. Alaska). Roberts' application was deemed to have been originally filed on or before Dec. 18, 1971, but lost. Roberts also sought three other parcels (totaling approximately 120 acres) in secs. 23 and 24, T. 11 S., R. 76 W. (Parcel A), sec. 25, T. 16 S., R. 75 W. (Parcel B), and sec. 18, T. 8 S., R. 66 W. (Parcel C), Seward Meridian, Alaska. Certificates of allotment were issued by BLM for Parcels A and B (No. 50-92-0470) on July 24, 1992, and for Parcel C (No. 50-96-0617) on Aug. 14, 1996.

4/ On Mar. 22, 1990, Kuitsarak filed a protest pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(c) (1994), challenging Roberts' claim to the land in sec. 18. This protest made it necessary to adjudicate the claim pursuant to the 1906 Act, and it was not legislatively approved by ANILCA. See Bay View, Inc., 126 IBLA 281, 285-86 (1993).

to the subsurface estate was conveyed by Interim Conveyance to the Calista Corporation (Calista), a Native regional corporation, on August 30, 1984. This conveyance was also made pursuant to section 22(j) of ANCSA. Both Interim Conveyances contained language excluding Roberts' Native allotment claim, but the exclusion was of a claim to land situated in sec. 30. Both Interim Conveyances were also subject to "valid existing rights." 43 U.S.C. § 1621(j) (1) (1994). Patents were to be issued following a survey of the conveyed land.

BLM made an initial determination that Roberts was entitled to a Certificate of Allotment to the four parcels described in his Native allotment application. See Letter to Kuitsarak and Calista from Chief, Branch of Calista Adjudication, Alaska State Office, BLM, dated Feb. 8, 1990; Memorandum to Chief, Branch of Calista Adjudication, from Regional Solicitor, dated Nov. 28, 1990. However, it also recognized that the land in Parcel D was properly described as being in sec. 18, T. 12 S., R. 72 W., Seward Meridian, Alaska, and that tract had not been expressly excluded from the Interim Conveyances. As a result, BLM sent a letter to Kuitsarak and Calista asking them to exclude Parcel D by executing a voluntary "Title Affirmation." <sup>5/</sup> Calista complied on September 27, 1990, but Kuitsarak refused to execute the title affirmation.

In a subsequent review of the case file, BLM found insufficient evidence to support Roberts' entitlement to the land in Parcel D, and decided to commence an "Aguilar" proceeding (discussed in detail below) to reach a definitive conclusion regarding whether it should "reject th[e] application or refer the claim for settlement," which decision would be "final for the Department." (Letter to Roberts from Hearings Officer, Branch of Conveyance Coordination, Alaska State Office, BLM, dated Mar. 30, 1995, at 2; see Memorandum to Chief, Branch of Southwest Adjudication, Alaska State Office, BLM, from Regional Solicitor, dated Dec. 12, 1994 ("It is \* \* \* necessary to hold an Aguilar hearing if there is a question about the validity of Mr. Robert[s'] application for the parcel"); Memorandum to Deputy State Director, Conveyance Management, Alaska State Office, BLM, from Regional Solicitor, dated May 26, 1994, at 2.) The State Office's May 1998 decision was the culmination of BLM's Aguilar proceeding. Roberts and Goodnews appealed that decision.

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<sup>5/</sup> BLM acted pursuant to its June 1992 "The Aguilar and Title Recovery Handbook" (Handbook), which sets forth requirements for implementing the "Stipulated Procedures for Implementation of Order" (Stipulated Procedures), which had been approved by the Federal district court in Aguilar v. United States, No. A76-271 (D. Alaska Feb. 9, 1983) (discussed infra). The Handbook provides, at page 2:

"If an allotment was excluded from \* \* \* an Interim Conveyance, and as a result of survey the legal description of the allotment has shifted within the \* \* \* IC'd boundary, it is not necessary to follow the Aguilar process \* \* \* if the Native corporations affirm the \* \* \* IC'd boundary \* \* \* as excluding the allotment as surveyed."

On March 15, 1999, BLM filed a Motion to Dismiss appellants' appeal, arguing that the Board lacks subject matter jurisdiction to consider the appeal because the May 1998 decision had been issued pursuant to the Aguilar Stipulated Procedures, and it was therefore final for the Department. Roberts and Goodnews have filed briefs opposing BLM's motion to dismiss, arguing that the Stipulated Procedures are "not applicable" in the present case. (Opposition to Motion to Dismiss (Opposition) at 1.)

[1] An Interim Conveyance operates like a patent under 43 U.S.C. § 1621(j) (1994), and title to the affected land passes from the United States. Bay View, Inc., 126 IBLA at 286; Heirs of Linda Anelon, 101 IBLA 333, 336 (1988); Peter Andrews, Sr., 77 IBLA 316, 319 (1983). Thus, BLM and this Board have no jurisdiction to adjudicate the validity of a Native's entitlement to the land described in the Native's allotment application after the land has been conveyed by an Interim Conveyance. United States v. Hobson, 142 IBLA 7, 9 (1997); Bay View, Inc., 126 IBLA at 286-87; Heirs of Linda Anelon, 101 IBLA at 336; Peter Andrews, Sr., 77 IBLA at 319.

In Aguilar v. United States, 474 F. Supp. 840, 847 (D. Alaska 1979), the court held that when land has been conveyed out of Federal ownership, the Department's fiduciary obligation to Alaska Natives creates a duty to "adjudicate" a Native allotment application and when the Department finds that the Native is entitled to an allotment under the 1906 Act, it has a duty to initiate proceedings to recover title to the land described in the application. Procedures to permit the Department to fulfill its fiduciary duty, formally titled "Stipulated Procedures for Implementation of Order," were adopted by the parties, and were approved by the court on February 9, 1983. Paragraph 6 of the Stipulated Procedures provides, in relevant part:

If the BLM concludes that the applicant has failed to provide sufficient proof of entitlement [to a Native allotment], the BLM will conduct a hearing. The applicant will be notified of the hearing date and the reasons for the proposed rejection. The hearing will be informal with a designated BLM decision-maker as the presiding officer. \* \* \* Based on evidence presented at the hearing or contained in the case file, the BLM presiding officer will make a decision to reject or refer the claim to the Solicitor's Office, which decision shall be final for the Department.

(Order, Aguilar v. United States, No. A76-271 (D. Alaska Feb. 9, 1983), at 3-4 (emphasis added).)

Under Paragraph 6 of the Aguilar Stipulated Procedures, when the Department's adjudication of the Native applicant's rights under the 1906 Act is undertaken by BLM after the land has been conveyed out of Federal ownership, the BLM officer's decision is final for the Department. United States v. Hobson, 142 IBLA at 9-10. The State Office's May 1998 decision, which was issued pursuant to the Aguilar Stipulated Procedures, is, therefore, a final decision for the Department, under the Aguilar Stipulated

Procedures. The Board has no subject matter jurisdiction over an appeal from the State Office's May 1998 Aguilar decision, and it must be dismissed.

[2] We note that the first time that the Appellants raised the issue of whether the Interim Conveyances had conveyed the land sought by Roberts to a third party was in their appeal to this Board. <sup>6/</sup> They argue that Roberts' Native allotment claim was specifically excluded from the Interim Conveyances and that title to the land remains in the United States for his benefit. The issue of passage of title would be properly before the Board on the appeal of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, a decision on that issue is not before us. <sup>7/</sup> Appellants are seeking review of an Aguilar determination. The Aguilar procedures are predicated on the fact that the land sought by the Native has been conveyed to a third party. The argument raised by appellants that Roberts' Native allotment claim for Parcel D was "specifically excluded" in the two Interim Conveyances conveying the land to Kuitsarak and Calista and that title to the land never passed to those Native corporations, which was raised for the first time in opposition to BLM's motion to dismiss this appeal, does not change the fact that this is an appeal from a determination rendered pursuant to the Aguilar proceedings.

We have, however, on occasion deemed it appropriate to discuss the outcome of an appeal had we considered it on its merits. See, e.g., Mark Thomsen, 148 IBLA 263 (1999); John H. Blackwood, 89 IBLA 379 (1985). Thus, assuming the issue of passage of title were before us, we would rule that title had passed to Kuitsarak and Calista.

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<sup>6/</sup> Appellants also contend that the Aguilar Stipulated Procedures are not applicable because Roberts "is not claiming land that was conveyed to the State of Alaska and he has not asked that a State of Alaska patent be canceled." (Opposition at 2; but see Memorandum in Support of Request to Vacate June 16 Hearing and for Certification of Parcel D, dated June 5, 1995, at 10-11 ("Aguilar proceedings \* \* \* are only appropriate \* \* \* where the land claimed by the [Native] applicant has been conveyed to a third party." (Emphasis added.)))

When negotiated, the Aguilar Stipulated Procedures did not apply to land conveyed to a party other than the State of Alaska. However, the Department has extended the Aguilar Stipulated Procedures to adjudication of Native allotment applications when the land sought by the Native applicant has been conveyed to a third party. The courts have greeted this decision with seeming approval, acknowledging that the Aguilar ruling that a Native allotment preference right, once vested, takes precedence over intervening competing applications is "not limited to [Alaska] Statehood Act land selection claims." State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315, 1319 (D. Alaska 1985), aff'd sub nom., Etalook v. Exxon Pipeline Co., 831 F.2d 1440 (9th Cir. 1987).

<sup>7/</sup> Considering the nature of our ruling regarding the effect of the Interim Conveyances, we choose not to address when this question could be raised with BLM, other than to say that it cannot be raised on appeal from an Aguilar decision.

The Interim Conveyance conveying the surface estate to Kuitsarak contains the following language:

Kuitsarak Inc. is entitled to a conveyance \* \* \* of the surface estate in the following-described lands:

Seward Meridian, Alaska (Unsurveyed)

\* \* \* \* \*

T. 11 S., R. 72 W.

\* \* \* \* \*

Sec. 30, excluding Native allotment F-18543 and Native allotment litigation AA-52703 Parcel D.

\* \* \* \* \*

T. 12 S., R. 72 W.

\* \* \* \* \*

Sec. 18[.]

(Interim Conveyance No. 885, dated Aug. 30, 1984, at 1-2.) The Interim Conveyance conveying the subsurface estate to Calista is the same in all material respects.

As can be seen, there is a specific exclusion of the land in sec. 30, T. 11 S., R. 72 W., Seward Meridian, Alaska, which was subject to "Native allotment F-18543 and Native allotment litigation AA-52703 Parcel D." As noted above, Parcel D of Native allotment application AA-52703 is the subject of this appeal. However, subsequent to the Interim Conveyances, Roberts identified the land he sought as being in sec. 18, T. 12 S., R. 72 W., Seward Meridian, Alaska, rather than in sec. 30. The land he identified in sec. 18 was subsequently surveyed, and Roberts accepted the surveyed location as the true location of his Native allotment claim. The land described in Roberts' application when the Interim Conveyances took place was excluded from the Interim Conveyances. However, when Roberts subsequently amended his application to describe lands in sec. 18, rather than sec. 30, he amended his application to describe land that had been conveyed to Kuitsarak and Calista. Roberts' Native allotment claim to land in sec. 18 was not expressly excluded from the Interim Conveyances. The exclusion was of land in sec. 30 further described in Native allotment application No. AA-52703, Parcel D. It was not an exception of the land described in Roberts' application, without regard to where that land may be. Roberts' Native allotment claim to land in sec. 18 was not expressly excluded from the Interim Conveyances. See Bay View, Inc., 126 IBLA at 283, 285, 287; State of Alaska v. Thorson, 83 IBLA 237, 247-49, 91 I.D. 331, 337-38 (1984). Aguilar procedures were properly invoked.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal by appellants from the State Office's May 1998 decision is dismissed.

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R.W. Mullen  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge