



INTERIOR BOARD OF INDIAN APPEALS

American Land Development Corp. v. Acting Phoenix Area Director,  
Bureau of Indian Affairs

26 IBIA 197 (08/18/1994)

Related Board case:

25 IBIA 120

Reconsideration denied, 25 IBIA 197

Appeal dismissed, *American Land Development Corp. v. Babbitt*,  
No. CV-S-94-00616-LDG (D. Nev.)

Dismissal affirmed, 133 F.3d 925 (Table) (9th Cir. 1998)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

AMERICAN LAND DEVELOPMENT	:	Order Affirming Decision
CORP. ,	:	
	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 94-31-A
	:	
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 18, 1994

This is an appeal from an October 27, 1993, letter of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director, BIA), concerning calculation of damages in connection with the cancellation of a lease between appellant and the Fort Mojave Indian Tribe. Appellant earlier appealed the Area Director's June 28, 1993, decision cancelling the lease. That appeal was dismissed as untimely. American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, recon. denied, 25 IBIA 197 (1994).

On October 19, 1993, while its appeal of the Area Director's June 28, 1993, decision was pending before the Board, appellant delivered to the Area Director a document entitled "Request for Clarification of Area Director's Decision." Appellant's request stated:

[I]t has become apparent that the determination of damages of approximately \$30,000.00 by the Area Director [in the June 28, 1993, decision] is not specific enough as to the actual amount awarded or the method of determination. Because the Area Director made the original determination of damages and he is, necessarily, the only individual familiar with the damage issue and, thus, appropriate forum to clarify the award of damages [sic]. Absent that clarification, Appellant is unable to address that aspect of the matter. To hold the damage issue in abeyance is clearly not in the interest of administrative economy or of any party. Therefore, Appellant would request that the Area Director simply set forth the calculation methodology in an amended decision and specify the exact damages he has awarded. Such a course of action will allow for a much more timely handling of this matter "in toto" and thus be of benefit to all concerned irrespective of the ultimate outcome.

(Appellant's Request for clarification at 2). 1/

---

1/ Appellant did not send the Board a copy of this request. The Board first became aware of it on Nov. 1, 1993, when it received a copy from the Area Director, together with a copy of the Area Director's Oct. 27, 1993, response.

The Area Director responded on October 27, 1993, stating:

In our June 28, 1993, decision letter, we advised as follows:

“ . . . we believe that [appellant's] rent obligations were mitigated and that damages should be measured only by that portion of the first year's rental which accrued prior to the return of the tendered check. Under the lease interpretation most favorable to the tribe, damages based on the rental rate for a 1200.06-acre lease site (less the amount of the advance rental payment, and including interest accruing at the specified rate between October 16, 1991, and April 8, 1992) would total approximately \$30,000.”

Assuming that the annual rent due for the entire first lease year went unpaid for 171 days, and that the prime rate on April 8, 1992, was 6.5%, the total amount of damages due would equal \$29,759. The relevant calculations are shown below:

Annual Rent	\$120,006
- Prepaid Rent	<u>\$ 30,450</u>
Unpaid Annual Rent	\$ 89,556
x April 1992 Prime + 3%	<u>.095</u>
Annual Interest	\$ 8,508
x Pro Rata Rate (171/365)	<u>.4685</u>
Interest Due	\$ 3,986

Annual Rent	\$120,006
x Pro Rata Rate (171/365)	<u>.4685</u>
Pro Rata Rent	\$ 56,223
- Prepaid Rent	<u>\$ 30,450</u>
Rent Due	\$ 25,773
+ Interest Due	<u>\$ 3,986</u>
Total Due	\$ 29,759

This letter constitutes a clarification (but not an amendment) of our June 28, 1993, decision. If you choose to file a limited appeal of our calculation of damages, a notice of appeal must be mailed to the Interior Board of Indian Appeals \* \* \*. (Emphasis in original).

(Area Director's Oct. 27, 1993, Letter at 1-2).

Appellant's notice of appeal from this letter was received by the Board on November 29, 1993. In the pre-docketing notice issued the same day, the Board noted that there was a question concerning the authority of the Area Director to issue the October 27, 1993, letter while appellant's appeal from the June 28, 1993, decision was pending before the Board. See, e.g., Hammerberg v. Acting Portland Area Director, 24 IBIA 78 (1993).

On January 12, 1994, the Board dismissed appellant's appeal from the June 28, 1993, decision. On the same date, it issued an order for the administrative record in this appeal, stating that it had concluded that

“no purpose would be served by compelling the Area Director to issue another decision concerning damages.” 2/

The administrative record was received on February 7, 1994; a notice of docketing was issued; and briefs were filed by appellant and the Area Director.

Appellant seeks in this appeal to reopen the matters decided in the Area Director's June 28, 1993, decision. However, as a consequence of appellant's failure to file a timely appeal, that decision is now final for the Department of the Interior. 25 CFR 2.6(b). Matters decided finally for the Department in the June 28, 1993, decision are not properly before the Board in this appeal.

The only "decision" rendered in the Area Director's October 27, 1993, letter was the exact calculation of damages. The damages had been estimated in the June 28, 1993, decision at \$30,000. The October 27, 1993, letter provided an exact total of \$29,759 and included the calculations used to arrive at that total. This information was precisely what appellant sought in its October 19, 1993, request to the Area Director. Appellant now concedes: "The BIA's calculation of damages in the October 27, 1993 decision appears to be methodologically correct" (Appellant's Opening Brief at 13).

Appellant has failed to show error in the Area Director's calculation of damages. Therefore, pursuant to the authority delegated to the Board of Indian, Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 27, 1993, decision is affirmed.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

---

2/ Under Hammerberg and other Board cases, the Board could have vacated the Area Director's Oct. 27, 1993, letter on the grounds that the Area Director lacked jurisdiction to issue it. However, the Board recognized that, if the Area Director's Oct. 27 decision were vacated, it would only have to be reissued, leading in all probability to a new appeal. Accordingly, once the Board dismissed appellant's appeal from the June 28 decision, making it clear that that decision was final for the Department, the Board concluded that there was no point in forcing the parties to engage in another round of decision-and-appeal, merely to end up in the same place.