



INTERIOR BOARD OF INDIAN APPEALS

Avis Three Irons, et al. v. Acting Billings Area Director, Bureau of Indian Affairs

32 IBIA 55 (02/06/1998)



United States Department of the Interior

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

AVIS THREE IRONS ET AL.,	:	Order Affirming Decision
Appellants	:	
	:	
v.	:	Docket No. IBIA 97-98-A
	:	
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 6, 1998

Avis Three Irons et al. 1/ seek review of a December 30, 1996, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), approving a lease of Allotment No. 552-A (allotment) on the Crow Reservation. For the reasons discussed below, the Board affirms that decision.

Each of the Appellants owns a 1/9 interest in Allotment No. 552-A. On November 29, 1995, the Superintendent, Crow Agency, BIA (Superintendent), sent notices to each Appellant, informing them that they could negotiate a lease of the allotment. The notice stated: "In the event a satisfactory lease is not agreed upon and is not submitted in order for approval within 90 days from the date of this letter, a lease may be granted by the Crow Agency Superintendent for and on behalf of all the landowners." The notice was issued under 25 C.F.R. § 162.2, which provides:

(a) The Secretary may grant leases on individually owned land on behalf of * * * (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees.

1/ According to the typewritten names on the Notice of Appeal filed with the Board, the Appellants in this matter are Avis Three Irons, Lana Three Irons, Dean Three Irons, Rachel Three Irons, Daisy Three Irons, Keith Three Irons, Darla Three Irons, Wallace Three Irons, and Valarie Three Irons. The Notice of Appeal was actually signed, however, by only Avis, Lana, Dean, and Daisy. For purposes of issuing its pre-docketing notice in this appeal, the Board of Indian Appeals (Board) assumed that those individuals signing the Notice of Appeal were acting as representatives of those not signing. It gave those individuals not signing an opportunity to inform the Board if they did not want those signing to represent them. The Board did not receive any responses. Therefore, for purposes of this appeal, the Board assumes that the nine individuals named above are all Appellants.

None of the Appellants responded to these notices. Accordingly, BIA included the allotment on General Lease Advertisement No. 96-2. Inter alia, the lease advertisement stated: "All leases except irrigated farmland will be for a period not to exceed five (5) years. Irrigated farmland will be for a period of ten (10) years, subject to rental adjustment at the end of the first 5 years." Lease Advertisement at 4. 2/ The allotment is irrigated farmland.

Sealed bids for this lease advertisement were opened on June 6, 1996. The only bidder for the allotment was Henry Schneider, Jr., who bid the Tribally established minimum of \$50.00 per acre for irrigated allotted land. The Superintendent awarded a lease to Schneider on August 28, 1996.

By letter dated September 12, 1996, Dean Three Irons wrote to the Superintendent requesting that the lease to Schneider be cancelled. Dean stated: "We had been negotiating on this lease for the past 12 months to raise the lease rental. We agreed to lease on a 5 year basis not the 10 year that Mr. Schneider had on the form." He attached a copy of an unsigned February 14, 1996, letter from Avis Three Irons to The Lease Company, which appears to be a rental or management company which assisted Schneider. The February 14 letter stated that Schneider had offered to lease for ten years at \$42.50 per acre, and was unwilling to offer \$50.00 per acre for a 5-year lease. The February 14 letter ended with a statement that Appellants would attempt to find another lessee.

The Superintendent responded on October 3, 1996, stating that the allotment was advertised when none of the co-owners responded to the 90-day notices. He further stated that the lease met the required minimum bid, and the provisions of the lease advertisement.

Appellants wrote to the Superintendent on October 4, 1996. The letter contained the typewritten names of all co-owners, but was signed only by Avis and Dean. In addition to attaching another copy of the February 14 letter, Appellants also included a copy of one page of an undated letter from The Lease Company which stated that the letter included lease consent forms for a new 5-year lease. On the basis of these submissions, Appellants "request[ed] that BIA not approve this lease for ten years based on our response in compliance with the notice."

In a letter dated October 17, 1996, the Superintendent stated that the Agency had followed standard procedure in entering into the lease:

2/ These lease terms appear to be based on 25 C.F.R. § 162.8 and 162.8(c). Section 162.8 provides in pertinent part: "[U]nless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved." Section 162.8(c) provides: "Farming leases not granted for the purpose of growing specialized crops shall not exceed five years for dry-land farming or ten years for irrigable land."

Standard procedures on office leases is 90-Day Notices are mailed out one (1) year prior to the expiration of a lease. [3/] When we do not hear from any of the landowners or receive a negotiated lease in this office within the 90-Day deadline, which was the case in your situation, we placed this tract in our next General Lease Advertisement. * * *

The lease is subject to a rental adjustment commencing October 1, 2000. The lease rental should be increased at that time.

Appellants appealed this decision to the Area Director by a letter which again listed all of the co-owners, but was signed only by Avis and Dean. In a decision dated December 30, 1996, the Area Director accepted the February 14, 1996, letter as evidence that the co-owners were negotiating a lease, but found that the allotment was placed on the lease advertisement because the co-owners had not notified the Superintendent that they were negotiating a lease. Therefore, he upheld the Superintendent's decision not to cancel the lease.

Appellants appealed to the Board. No briefs were filed. 4/

On appeal, Appellants ask that the term of the lease awarded to Schneider be changed to 5 years, with annual rental negotiations. They contend: "We believe * * * this decision should be changed since a ten year lease at the minimum rate is not to our benefit as land owners."

Initially, it appears possible that Appellants do not completely understand the provisions of the lease. This is not a ten-year lease with a rent of \$50.00 per acre for each of those ten years. Rather, it is a ten-year lease with a rent of \$50.00 per acre for the first five years, with rental rate renegotiation for the remaining five years.

Appellants contend that they have documentation showing that they were negotiating with Schneider for a lease different from the lease he agreed to through the advertisement process. Presumably, this documentation is the February 14, 1996, letter. The 90-day notices from BIA were mailed in late November 1995. Nothing in the record shows that Appellants submitted the February 14, 1996, letter to BIA prior to mid-September 1996. Appellants do not contend that they notified BIA that they were attempting to negotiate a

3/ It appears that this standard procedure results from reading 25 C.F.R. § 162.2(a)(4), quoted in text supra, in conjunction with 25 C.F.R. § 162.5(e), which provides that "[n]o lease shall be entered into more than 12 months prior to the commencement of the term of the lease."

4/ Appellants failed to serve a copy of their Notice of Appeal on Schneider. The Board did not immediately notice this omission, and did not add Schneider to its distribution list. Schneider has been added to the distribution list for this decision. The Board has not stayed its consideration of this matter in order to allow Schneider an opportunity to respond because the decision is in his favor.

lease prior to mid-September 1996. If they were negotiating with Schneider, or anyone else, Appellants had a responsibility to so inform BIA. In the absence of such notification, BIA has a trust responsibility to attempt to ensure that trust lands generate income for their owners. When BIA did not receive information from Appellants in response to the 90-day notices, it exercised its trust responsibility to the landowners by listing the allotment in the next advertisement of lease availability. The BIA did not err in doing so.

Appellants also contend that BIA's "trust responsibility [is] to [them] as members of the Crow Tribe not to [Schneider]." The Board agrees. See, e.g., Adams v. Billings Area Director, 28 IBIA 20 (1995). However, as just discussed, BIA exercised its trust responsibility to Appellants by advertising the availability of the allotment for leasing.

Appellants argue that The Lease Company made them "a deceptive contractual offer" by stating that the offer was for a 5-year lease when the documentation presented showed an expiration date for the lease of September 30, 2006, which was ten years. This fact does not relate to the lease advertisement or any other decision made, or action taken, by BIA. Instead, it relates solely to Appellants' negotiations with Schneider. Appellants obviously were not deceived by the statement. If they were confused by it, they should have investigated further with the person with whom they were negotiating. In any case, however, this offer is not relevant to the question of whether BIA erred in advertising the availability of the allotment and leasing it to Schneider in accordance with the advertisement.

Appellants also contend that their February 14, 1996, letter "indicat[ed] that [they] were not willing to lease for ten years and the amount submitted to [them] was below the minimum rate and the minimum rate of \$50.00 per acre is not a high bid." Appellants appear here to be mixing several different matters.

As discussed above, Appellants were responsible for notifying BIA of any lease negotiations, including any limitations they were imposing in those negotiations, such as a limitation to a term of less than ten years. The BIA cannot be expected to act on information that Appellants withheld from it.

The "amount submitted to [them]" was apparently the \$42.50 per acre for ten years offered by Schneider during negotiations. Appellants rejected this offer, and BIA could not have accepted a bid at that rate because it was below the minimum rate of \$50.00 per acre set by the Tribe. The offer of \$42.50 per acre is not relevant to this appeal.

It appears that by stating that "\$50.00 per acre is not a high bid," Appellants are suggesting that they could or should have received more for the allotment, apparently through a negotiated lease. However, the only offer they mention receiving during negotiations was for a lower amount. Appellants have not suggested that they had any real prospect for leasing the allotment at a rate higher than \$50.00 per acre. It is pure speculation that Appellants could or should have received a higher amount for the

allotment. When Schneider was the only bidder during the bid process and offered \$50.00 per acre, BIA did not err in accepting Schneider's bid.

The Board concludes that Appellants have failed to show grounds for altering the lease.

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 Billings Area Director's December 30, 1996, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge