



INTERIOR BOARD OF INDIAN APPEALS

Annette Lambert v. Rocky Mountain Regional Director, Bureau of Indian Affairs

43 IBIA 121 (06/19/2006)



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

ANNETTE LAMBERT,	:	Order Affirming Decision as Modified
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 03-6-A
ROCKY MOUNTAIN REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	June 19, 2006

This appeal concerns Fort Peck Business Lease No. 0592 (Lease No. 0592) between Annette Lambert (Appellant) as lessee and the Assiniboine and Sioux Tribes of the Fort Peck Reservation (Tribe) as lessor. Appellant appeals from an August 20, 2002 decision of the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), declaring Lease No. 0592 null and void. For the reasons discussed below, we affirm the Regional Director’s decision as modified herein.

Factual Background

On March 7, 1990, Appellant and the Tribe entered into a lease for a 7.5-acre tract of land, described as the N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T. 28 N., R. 53 E., located on the Fort Peck Reservation in Roosevelt County, Montana (Property). The Property is held in trust by the United States for the Tribe. The lease is titled “Business Lease No. 0592,” and states that the premises are to be used “only” for “Garden Area, Misc. Bldg. for farm animals.” The lease provides for a \$75 annual rental, to be paid by November 15 of each year, and has a term of 25 years, beginning on January 1, 1990, with an option to renew for an additional 25 years. The Chairman and Secretary of the Tribal Executive Board signed the lease on behalf of the Tribe. The Superintendent of the Fort Peck Agency (Superintendent) approved the lease on September 11, 1990. 1/

1/ Lease No. 0592 recites that the Superintendent approved the lease pursuant to “[a]uthority delegated by Secretarial Order No. 2508, as amended, 10 BIAM 3 and 7.”

On October 4, 1999, the Tribal Executive Board approved Tribal Resolution No. 2072-99-10, recommending that a homesite lease be granted to the Fort Peck Housing Authority (FPHA) for 2.5 acres of land described as the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T. 29 N., R. 53 E. The 2.5-acre parcel is located within the Property. On July 25, 2000, the Superintendent approved Lease No. 806 between the Tribe as lessor and FPHA as lessee for the 2.5-acre parcel.

On October 10, 2000, Appellant wrote to FPHA to report that she noticed a drilling rig on the Property. In response, the Tribal Executive Board voted to rescind the 2.5-acre homesite lease. On July 9, 2001, however, the Tribal Executive Board enacted Resolution 1977-2001-7, which purported to amend Lease No. 0592 to allow for the 2.5-acre homesite lease. That same day, the Tribe and FPHA executed Lease No. 806 a second time. Lease No. 806 was approved by the Superintendent at a date not disclosed in the record.

In 2001, Appellant, FPHA, the Superintendent, and the Regional Director exchanged a number of letters concerning the validity of Lease No. 806, and whether the Tribe had the authority to unilaterally amend the terms of Lease No. 0592. 2/ In the meantime, FPHA began constructing a residential unit on the 2.5 acres. By letters dated September 19, 2001, and October 1, 2001, Appellant requested that the Superintendent take action to halt the construction.

By letters dated September 26, 2001 and October 2, 2001, the Superintendent purported to administratively amend Appellant's lease by re-characterizing it as a homesite lease, and then demanded that Appellant show cause why Lease No. 0592 should not be cancelled for failure to comply with the Tribe's Land Management Policy for homesite leases. According to the Superintendent, this policy required Appellant to construct a dwelling on the Property the first year of the lease, and there was no evidence that she had constructed such a dwelling. 3/ Appellant responded to the Superintendent's show cause

2/ Appellant also filed a petition for a preliminary injunction and declaratory judgment in Tribal Court to prevent FPHA from constructing a house on the 2.5 acres. Appellant's petition was dismissed by the Tribal Court on August 7, 2001.

3/ Although Lease No. 0592 was styled as a "Business" lease, and did not authorize use of the Property for a home, the Superintendent relied on materials in the lease application and authorizing Tribal resolutions to conclude that the lease was "in actuality, a homesite, rather than a business lease." Sept. 26, 2001 Letter from Superintendent to Appellant at 1.

letters on October 5, 2001, stating that Lease No. 0592 was a business lease and that the Tribal Executive Board and Land Committee had recognized it as such.

On October 11, 2001, Appellant appealed to the Regional Director from the Superintendent's failure to act upon her September 19 and October 1 demand letters to halt construction on the 2.5-acre parcel. Also on October 11, 2001, the Superintendent wrote to Appellant to notify her that he had cancelled Lease No. 0592 for failure to comply with the Tribe's Land Management Policy for homesite leases. On November 6, 2001, Appellant appealed the cancellation of Lease No. 0592 to the Regional Director. The Regional Director consolidated the appeals.

On December 14, 2001, the Regional Director issued a decision overturning the Superintendent's cancellation of Lease No. 0592. The Regional Director determined that Appellant's lease was a business lease, not a homesite lease, that Lease No. 0592 was valid, and that the Superintendent had erred in approving Lease No. 806.

The Tribe, FPFA, and the Fort Peck Agency, BIA, appealed from the Regional Director's December 14, 2001 decision. On February 22, 2002, the Board received a request for remand from the Regional Director. By order dated March 4, 2002, the Board granted the Regional Director's motion, vacated the Regional Director's decision, and remanded the matter to him for decision. Fort Peck Housing Authority v. Rocky Mountain Regional Director, 37 IBIA 160 (2002).

The Regional Director then issued his decision of August 20, 2002, which is the subject of the present appeal. He concluded that the Superintendent lacked authority to approve Lease No. 0592 because, at the time of his approval, the delegation of authority from the Area Director to the Superintendent did not include authority to approve a business lease for a term that exceeded 10 years. The Regional Director relied on the July 19, 1988 delegation of authority from the Billings Area Director to the Superintendent, which authorized the Superintendent to act on "[a]ll those matters set forth in 25 C.F.R. Part 162 except (1) the approval of leases, other than homesite or residential, which provide for a duration in excess of 10 years, inclusive of any provisions for extensions or renewals thereof at the option of the lessee." Billings Area Addendum 10-3 to 10 BIAM (Bureau of Indian Affairs Manual) 3 at section 2.5 (July 19, 1988). The Regional Director determined that, "[w]hen the tenure of [Appellant]'s lease reached 10 years, it became voidable because of the Superintendent's failure to adhere to the Regional policy. At that time, the Area Director was the only individual who possessed the authority to approve leases in the Billings area for duration in excess of 10 years." Regional Director's Decision at 6. Accordingly, the Regional Director declared Lease No. 0592 null and void.

Appellant appealed to the Board. Appellant, the Tribe, and FPHA filed briefs.

On January 19, 2005, the Board issued an order staying proceedings and requiring parties to participate in an assessment conference to determine whether the matter could be resolved through alternative dispute resolution (ADR). The Board subsequently referred the appeal to the Department's Office of Collaborative Action and Dispute Resolution (CADR) to conduct an assessment conference. On May 11, 2006, the Board received by facsimile a memorandum from CADR reporting that the parties had been contacted concerning ADR, finding that ADR is not a viable option in this case, and returning the matter to the Board. On May 16, 2006, the Board lifted the stay.

Discussion

Appellant does not dispute the Regional Director's finding that Lease No. 0592 is a business lease, and indeed, Appellant has consistently asserted to BIA and to the Board that it is a business lease. Similarly, the Tribe does not take issue with the Regional Director's finding that Lease No. 0592 is a business lease. 4/

Furthermore, Appellant appears to concede that, under the terms of the July 19, 1988 delegation of authority, the Superintendent lacked authority to approve business leases with terms greater than 10 years. However, Appellant contends that she was not aware of the July 19, 1988 delegation of authority, that she should not be expected to "to comply with a law or policy that was never made known to [her]," and that expecting her to comply amounts to a denial of due process. Opening Brief at 4-5. Appellant asserts that she entered into the lease in good faith, and believed that Lease No. 0592 was a legitimate contract that would be honored by the Tribe and BIA. Appellant argues that she was never notified of the July 19, 1988 delegation of authority, it was used "after the fact, to justify and/or substantiate the Regional Director's decision," and the Superintendent's failure to comply with the delegation "is an internal Regional and Agency error." Id. at 4. For these

4/ FPHA argues that the Regional Director's decision should be affirmed. Somewhat counterintuitively, however, FPHA argues "in the alternative" that Appellant's lease was actually a homesite lease, and therefore the Superintendent's grounds for cancellation were correct. Because neither party to the lease challenges the Regional Director's finding that it was a business lease, and because nothing on the face of the lease shows a homesite purpose (or authorization to construct a home), we need not consider FPHA's "alternative" argument. See Scott v. Acting Albuquerque Area Director, 29 IBIA 61, 69-70 (1996) ("the Board recognizes the language of the lease itself as the most reliable evidence of the parties' intent").

reasons, according to Appellant, the Regional Director's decision to declare Lease No. 0592 invalid is not "justifiable" or "logical." Id.

Under 25 U.S.C. § 415, leases of trust or restricted land must be approved by the Secretary of the Interior or his authorized delegate to be valid. In implementing its trust responsibility for Indian resources, BIA may place limitations on the approval authority held by various officials. Scott, 29 IBIA at 69. The July 19, 1988 delegation of authority represents such a limitation. Appellant has not cited no authority, and we are aware of none, to support her assertions that she was entitled to notice of the July 19, 1988 delegation of authority, or that the failure to provide her with notice rendered the delegation of authority ineffective. The delegation did not (and could not) impose any "compliance" obligations on Appellant. It simply delegated internal approval authority for various types of leases. Thus, Appellant's lack of notice of the delegation did not amount to a denial of due process.

Moreover, anyone who deals with an agent of the government assumes the risk that the agent is acting within the bounds of his authority. See Sangre de Cristo Development Co. v. United States, 932 F.2d 891, 894 (10th Cir. 1991). It is well-established that the Federal Government is not bound by erroneous or ultra vires representations made by its employees and that such representations do not grant rights not authorized by law. See Smith v. Billings Area Director, 34 IBIA 114, 117 (1999); DuBray v. Acting Aberdeen Area Director, 30 IBIA 64, 67 (1996); D.G. & D. Logging, Inc. v. Billings Area Director, 20 IBIA 229, 235 (1991). Thus, the fact that the Superintendent approved Lease No. 0592, and that Appellant may have relied on his approval, did not make the lease valid if the Superintendent was not authorized to approve the lease.

Accordingly, the Regional Director was correct in concluding that the limitations in the July 19, 1988 delegation of authority from the Regional Director to the Superintendent were applicable in this case, and that the Superintendent lacked authority to approve Lease No. 0592 because its term exceeded 10 years.

However, the Regional Director erred in concluding that Lease No. 0592 was valid for 10 years, and, at that point, "became voidable." Regional Director's Decision at 6. The Board has held that a lease of Indian trust land, although purportedly approved by a BIA Superintendent, is void ab initio if, at the time of the purported approval, the Superintendent was not authorized to approve it. Scott, 29 IBIA at 71. In Scott, the Agency Superintendent approved a lease of Indian trust land for a term of 25 years, with an option to renew for an additional 25 years. However, the delegation of authority from the Area Director to the Superintendent did not authorize the Superintendent to approve leases with a term greater than 25 years. The appellant in Scott argued that the option to renew the lease could be severed, rendering the remainder of the lease valid and within the

Superintendent's approval authority. The Board rejected that argument, holding that an Indian lease with an invalid term cannot not be made valid by severing the invalid portion of the lease. Id. at 68.

Here, because the Superintendent lacked authority to approve business leases with terms greater than 10 years, Lease No. 0592 is void ab initio. ^{5/}

As part of her allegations that the Superintendent acted improperly and denied her due process, Appellant also asserts that she was not notified that FPHA intended to acquire a lease to construct a home within the Property or notified once FPHA's lease had been issued. She contends that the Superintendent approved Lease No. 806 even though he knew that it covered a parcel of land located within the Property.

The Regional Director agreed with Appellant that the Superintendent acted improperly in his treatment of Appellant with respect to Lease No. 806. That does not, however, affect our conclusion that Appellant's lease was void ab initio because it was never validly approved. Moreover, the conclusion that Appellant's lease was void arguably negates any potential due process interests or claim that Appellant might otherwise assert with respect to the approval of Lease No. 806. See Brooks v. Muskogee Area Director, 25 IBIA 31, 34 (1993), and cases cited therein (unapproved lease of trust or restricted property grants no rights to any party). Accordingly, we reject Appellant's due process arguments concerning the Superintendent's actions regarding Lease No. 806 as a basis for reversing the Regional Director's August 20, 2002 decision regarding Lease No. 0592.

Conclusion

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 Regional Director's August 20, 2002 decision is affirmed as modified herein.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge

^{5/} Appellant also argues that the Tribe lacked authority to unilaterally amend Lease No. 0592 to authorize Lease No. 806. Because we conclude that Appellant's lease was void ab initio, we need not address this argument.