INTERIOR BOARD OF INDIAN APPEALS

Nelvette Siemion, d/b/a White Buffalo Ranch v. Rocky Mountain Regional Director, Bureau of Indian Affairs

49 IBIA 194 (05/04/2009)

Denying motion for reconsideration of:
48 IBIA 249

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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NELVETTE SIEMION, d/b/a WHITE BUFFALO RANCH, Appellant,	)	Order Denying Reconsideration
v.	)	Docket No. IBIA 08-134-1
ROCKY MOUNTAIN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	May 4, 2009

On February 5, 2009, the Board of Indian Appeals (Board) affirmed the July 30, 2008, decision of the Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which he rejected a challenge by Nelvette Siemion, d/b/a White Buffalo Ranch (Appellant), to several leases of Tribal trust lands awarded by the Crow Tribe (Tribe) to persons other than Appellant. 48 IBIA 249. The Board concluded that Appellant's remedy lay with the Tribe, and also rejected Appellant's collateral procedural challenges to the bidding process, concluding that they provided no authority for BIA to "reverse" a decision made by the Tribe in selecting lessees for Tribal lands. On March 11, 2009, the Board received a Petition to Reconsider (Petition) from Appellant in which she raises three new arguments that were not previously raised before the Regional Director or the Board. We find that these new arguments present no circumstances warranting our consideration and, therefore, deny reconsideration.

Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. 43 C.F.R. § 4.315; *Logan v. Northwest Regional Director,* 48 IBIA 77 (2008); *Jacobs v. Great Plains Regional Director*, 43 IBIA 272 (2006). Except in extraordinary circumstances, the Board has a well established practice of not considering arguments raised for the first time in a petition for reconsideration. *See Gardner v. Acting Western Regional Director*, 46 IBIA 105 (2007).

Appellant argues that one of the successful bidders for leases on which Appellant also bid was ineligible to bid because he is a Federal employee and there is no conflict-of-interest waiver in the record authorizing him to bid. *See* 5 C.F.R. § 3501.103(c) and (e). Second,

Appellant argues that the Board's decision is inconsistent with its decisions in *First Mesa Consolidated Villages v. Phoenix Area Director*, 26 IBIA 18 (1994), and *Quinault Indian Nation v. Portland Area Director*, 33 IBIA 6 (1998). Appellant argues that *First Mesa* and *Quinault Indian Nation* support her claim that BIA is required to enforce Tribal and Federal law as applied to leases of Indian trust lands. Finally, Appellant argues that she has no Tribal remedy available to her and, therefore, she must pursue her remedy against BIA. If Appellant intended the Board to consider these additional arguments, she could and should have raised them in the first instance before the Regional Director and, if she remained dissatisfied with his response, then before the Board in her notice of appeal or opening brief. She failed to do so, and we see no reason to depart from our practice of declining to consider arguments presented for the first time in a petition for reconsideration. None of Appellant's new arguments present extraordinary circumstances meriting our further consideration of her Petition.[1]

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 Board denies reconsideration of 48 IBIA 249.[2]

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

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[1] Because Appellant's first argument — alleging that a Federal employee obtained leases of Tribal lands without obtaining a conflict-of-interest waiver — raises a specter of impropriety, we briefly address it simply to note that the affidavit submitted by Appellant is insufficient to demonstrate that any impropriety occurred. Moreover, because Appellant did not raise this issue before BIA, the Regional Director never had an opportunity to investigate it. Indeed, as we noted in our decision, Appellant "pointedly [did] not challenge the Tribe's choice of lessees." 48 IBIA at 254.

[2] Our decision at 48 IBIA 249 also decided a second appeal filed by Appellant regarding the Regional Director's decision to charge her with trespass and damages therefor. Docket No. IBIA 09-14-A. The Board rejected Appellant's second appeal as untimely. No reconsideration of that portion of our decision was sought by Appellant.