



INTERIOR BOARD OF INDIAN APPEALS

Charles Cooper v. Acting Southern Plains Regional Director, Bureau of Indian Affairs

43 IBIA 118 (06/16/2006)



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

CHARLES COOPER,	:	Order Dismissing Appeal
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 05-3-A
ACTING SOUTHERN PLAINS	:	
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee.	:	June 16, 2006

Charles Cooper (Appellant) filed this appeal to challenge a July 27, 2004 decision of the Acting Southern Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director’s decision affirmed the BIA Pawnee Agency Superintendent’s decision to cancel Farming and Grazing lease numbers 0-09554-01-05, 0-09608-02-06, 0-09689-02-06, 0-09718-02-06, 0-09719-02-06, and 0-09749-03-07, for non-payment of rent for the year 2004. 1/ The leases are for Indian trust or restricted allotments in Noble County, Oklahoma.

On June 1, 2005, the Board of Indian Appeals (Board) stayed these proceedings, after being notified that Appellant had filed for bankruptcy. The Board’s stay was based on the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a), which provides that a bankruptcy filing automatically operates as a stay of judicial, administrative, or other action or proceeding against the debtor. These appeal proceedings are not “against the debtor,” but instead were initiated by the debtor to challenge the Regional Director’s decision. Nevertheless, the Regional Director’s decision — the effect of which has been separately stayed during the appeal, see 25 C.F.R. § 2.6 — was against Appellant, and therefore the Board considered a stay of these proceedings to be appropriate, at least as a matter of prudence and until further information could be obtained regarding the bankruptcy proceedings.

1/ It appears that Lease No. 0-09554-01-05 expired by its own terms on December 31, 2005.

On June 1, 2005, September 15, 2005, November 29, 2005, and March 7, 2006, the Board requested status reports from Appellant or his bankruptcy counsel, in order to determine whether the bankruptcy proceedings are still pending and whether the stay in this appeal may or should be lifted. Neither Appellant nor his counsel has ever responded to the Board's requests for information. 2/

On May 16, 2006, the Board requested that Appellant file a statement, on or before June 2, 2006, stating whether he wishes to proceed with this appeal. The Board's order stated that Appellant's "[f]ailure to comply with this order may result in summary dismissal of this appeal." May 16, 2006 Order at 3. In the same order, the Board invited statements or briefs from Appellant, Appellant's bankruptcy counsel, the United States Trustee for the Western District of Oklahoma, and any other interested parties, to address whether Appellant's pending bankruptcy proceedings present any legal impediment to the Board lifting the stay in these proceedings and deciding or dismissing the appeal.

The Board has received no responses to its May 16, 2006 order.

The Board concludes that whether or not the Bankruptcy Code automatic stay provision would preclude issuance of a decision on the merits of this appeal, it does not preclude the Board from lifting our internal stay and dismissing Appellant's appeal for failure to prosecute. Appellant initiated this appeal, and if he does not wish to pursue it the Board finds no reason to retain jurisdiction. Because Appellant has failed to respond to any of the Board's request for status reports, and has shown no interest in continuing these proceedings, the Board concludes that dismissal is appropriate.

2/ On February 27, 2006 and May 15, 2006, the Board received motions from the Regional Director for the Board to make "a determination that the lease that is the subject of this appeal has been abandoned by Appellant." The Board denies the Regional Director's motions. First, it is not clear that such a determination would fall within the scope of Appellant's appeal to the Board. Second, even if it did, in the absence of affirmative evidence that the leases subject to this appeal are not part of the bankruptcy estate, the Board is unwilling to make such a determination. The Regional Director's motions asking the Board to make an "abandonment" determination are based on no such affirmative evidence; they only state that counsel for the Regional Director is "unaware" of whether Appellant has affirmed the leases in the bankruptcy proceedings or included them in a bankruptcy plan. In April 2005, however, counsel for the Regional Director submitted to the Board an April 4, 2005 letter from Appellant's bankruptcy counsel, which "confirm[ed] that [Appellant] wishes to retain his leases with BIA."

This dismissal completes the proceedings before the Department regarding review of the Regional Director's action on the subject leases. However, particularly in the absence of any information concerning the status of the bankruptcy proceedings, the Board expresses no view on whether the Bankruptcy Code's automatic stay provision independently precludes BIA from taking any action to implement the Regional Director's decision. As a precaution, however, the Board directs that BIA shall take no further action regarding the leases or the properties covered by the leases without consulting the Office of the Solicitor.

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 dismisses this appeal for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge