



INTERIOR BOARD OF INDIAN APPEALS

Todd Hall, Edward S. Danks, Jr., and Fort Berthold Land and Livestock Association
and its Members v. Great Plains Regional Director, Bureau of Indian Affairs

46 IBIA 124 (12/07/2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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TODD HALL, EDWARD S. DANKS, JR.,)	Order Dismissing Appeals
and FORT BERTHOLD LAND AND)	
LIVESTOCK ASSOCIATION AND)	
ITS MEMBERS,)	
Appellants,)	
v.)	Docket Nos. IBIA 06-118-A
GREAT PLAINS REGIONAL)	07-2-A
DIRECTOR, BUREAU)	07-18-A
OF INDIAN AFFAIRS,)	
Appellee.)	December 7, 2007

Todd Hall, Edward S. Danks, Jr., and the Fort Berthold Land and Livestock Association and its members (FBLA) (collectively Appellants) appealed to the Board of Indian Appeals (Board) from an August 3, 2006, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), adjusting the grazing rental rate to \$9.17 an Animal Unit Month (AUM) for individually-owned Indian lands on the Fort Berthold Reservation for the 2007 grazing season. Without objection from Appellants, the Board imposed an appeal bond. We now dismiss these appeals based on Appellants' failure to comply with our order to post the bond.

By motion dated November 2, 2006, the Regional Director requested that the Board impose an appeal bond on Appellants to protect the interests of Indian landowners affected by this appeal, pursuant to 43 C.F.R. § 4.332(d).¹ The Board allowed Appellants to address the Regional Director's request in their opening brief(s). Order, Nov. 7, 2006. None of the Appellants filed an opening brief, and none responded or otherwise objected to the Regional Director's request for an appeal bond or to the amount requested. On May 14, 2007, the Board granted the Regional Director's request for the imposition of an appeal bond. The Board declined to impose the amount of the bond requested by the

¹ Subsection 4.332(d) authorizes the Board to require "an appropriate bond" at any time during the pendency of an appeal "to protect the interest of an Indian, Indian tribe, or other parties involved."

Regional Director and instead requested additional information from the Regional Director necessary to determine the appeal bond amount, allowing Appellants an opportunity to respond.

On July 5, 2007, the Board received the requested additional information from the Regional Director. The Regional Director proposed that, pursuant to the Board's order imposing an appeal bond, the appeal bond amount should be set at \$3,857.73, based on his calculation of two years' worth of interest on the balance of rent owed if the rate adjustment decision is upheld (\$3,222.04) plus BIA's estimate of potentially uncollectible amounts (\$635.69). Appellants filed no objections to the bond amount proposed by the Regional Director.

By order dated September 14, 2007, the Board ordered Appellants to submit the Regional Director an appeal bond in the amount of \$3,857.73, within 30 days of receipt of the order. Order Setting Appeal Bond, at 2. The Board advised Appellants that failure to comply with the order to submit an appeal bond could result in dismissal of the appeals without further notice. *Id.*

The Board sent the Order Setting Appeal Bond by certified mail to Hall, Danks, and FBLLA.² On September 24, 2007, the Board received the certified mail return green card from Hall, indicating that he had received the order on September 21. On October 9, 2007, the Board's orders that had been sent to Danks and FBLLA were returned as "unclaimed." On October 11, 2007, the Board sent the orders to Danks and FBLLA by regular mail, neither of which has been returned.

On November 26, 2007, the Board received a motion to dismiss from the Regional Director. The Regional Director advised the Board that he had not received payment of the appeal bond, and supported his motion with a declaration to that effect. As of the date of the Regional Director's declaration, more than two months had passed since Hall received the Board's order, and since Danks apparently refused to claim the copies sent to him and to FBLLA.³ In addition, allowing 4 business days for delivery, more than 50 days have now passed since Danks and FBLLA presumably accepted receipt of the Board's order by regular mail.

² As directed by former counsel for FBLLA, mail to FBLLA was sent c/o Danks.

³ In its Order Setting Appeal Bond, the Board specifically ordered that Appellants were jointly and severally liable for payment of the bond.

Upon consideration of Appellants' failure to respond to the Board's orders concerning an appeal bond, the evidence that Appellants have failed to respond to or comply with the Board's Order Setting Appeal Bond Amount, and the Regional Director's motion, the Board grants the motion to dismiss.

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 these appeals from the Regional Director's August 3, 2006, decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge