DOUG SCHERLER,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 99-56-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 3, 1999

Appellant Doug Scherler seeks review of a March 15, 1999, decision issued by the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that there was no appealable BIA decision in regard to the cancellation of Appellant's Farming and Grazing Lease No. 45035. The lease was cancelled by the Kiowa, Comanche, and Apache Intertribal Land Use Committee (KCAILUC). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

In addition to the materials submitted by Appellant with his notice of appeal and statement of reasons, the Board has before it a copy of Appellant's lease and two letters to Appellant from the KCAILUC, dated May 15, 1998, and October 1, 1998. These materials were furnished to the Board by the Anadarko Agency, BIA, at the Board's request.

The lease between Appellant and the KCAILUC covered 1,452.50 acres of land, more or less, jointly owned in trust by the Kiowa, Comanche, and Apache Tribes of Oklahoma. The lease had a term running from January 1, 1995, through December 31, 1999, and was approved by the Superintendent, Anadarko Agency, BIA, on January 30, 1996.

As relevant to this appeal, the lease contained a Cancellation Clause, which provided:

> Land may be needed for future development and lessors request right to cancel with 30 days notice all or a portion of lease. If such cancellation occurs, lessee will be refunded by lessor the corresponding rental amount for the period (in months) that said lessee will not have the use of said land as originally agreed to by both parties in this lease. Lessee wil [sic] only be refunded for those remaining full months which they do not have use of the land, and such refunds shall not exceed the period or amount originally agreed to in this lease.

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By letter dated May 15, 1998, the KCAILUC notified Appellant that his lease was being cancelled in accordance with the Cancellation Clause, effective June 30, 1998. See also Letter of Oct. 1, 1998, from KCAILUC to Appellant.

The Area Director's decision responded to a February 1, 1999, appeal filed by Appellant from the May 15, 1998, letter from KCAILUC. The Area Director noted that the lease was cancelled by the KCAILUC under the Cancellation Clause without BIA involvement, and found that there did not appear to be any requirement that BIA determine that the lease had been breached before the KCAILUC could exercise the rights reserved in the Cancellation Clause. The Area Director held that there was no appealable BIA decision. Nevertheless, he properly informed Appellant that he could appeal to the Board.

Appellant does not challenge the Area Director's conclusion that there was no appealable BIA decision, but instead raises substantive challenges to the lease cancellation, contending that the lease was not properly cancelled for several reasons. With one possible exception, all of the reasons raised deal with actions taken by the KCAILUC and/or its Chairman. The possible exception is an allegation that "[w]ithout involvement of BIA in KCAILUC Chairman's unilateral cancellation of the lease, the BIA acknowledged the Chairman's 'apparent authority' to cancel the lease." Notice of Appeal at 3.

The lease which Appellant entered into contained a Cancellation Clause which allowed the KCAILUC to cancel the lease without BIA involvement. The Board concludes that BIA's lack of involvement constitutes a recognition of the agreement reached between Appellant and the KCAILUC, not a decision as to the authority of the Chairman of the KCAILUC.

Because BIA had no involvement with the cancellation of Appellant's lease, the Board agrees with the Area Director that there is no appealable BIA decision concerning the lease cancellation. Therefore, this Board lacks jurisdiction to hear Appellant's appeal. Appellant should raise his complaint in an appropriate tribal or judicial forum.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Anadarko Area Director's March 15, 1999, decision is docketed, but dismissed for lack of jurisdiction.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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