

Oneida Tribal Judicial System

Onλyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

**Matthew J. Denny Sr.,
DH Cash Management Services,
Petitioner**

Docket No: 12-TC-023

v.

Date: March 5, 2012

**Chad Fuss,
Assistant GM-Finance,
Respondent**

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Jean M. Webster, and Leland Wigg-Ninham, presiding.

Background

This case involves a complaint from a vendor involved in the bidding process for a new Cash Service Project. Originally Petitioner filed a complaint on December 23, 2011 seeking a preliminary injunction halting the awarding of the project to another vendor. Petitioner alleged that Respondent improperly denied consideration of Petitioner's bid for services and in violation of the Tribe's Indian Preference Policy. We dismissed his original complaint without prejudice and allowed for Mr. Denny to follow the Chapter 57 process. Mr. Denny has returned. We find that the Indian Preference Department is the only entity to bring forth this type of complaint and, therefore Mr. Denny's claim is denied.

On January 23, 2012 the OTJS Trial Court issued its decision to dismiss without prejudice because Oneida Preference Law states all complaints must be filed with Oneida Preference Department. Then the Indian Preference Department investigates and if a violation is shown, it

will file the complaint with the OTJS. Furthermore, it makes sense as an investigation by the Indian Preference Department will determine whether there is merit in the complaint to go further in the process.

Petitioner states on February 3, 2012 he filed a complaint with Oneida Indian Preference Department as stated in the Court's opinion. On February 20, 2012 the Oneida Indian Preference Department stated they support the Casino's vendor selection process; that only those vendors who were able to meet the requirements in the Prequalification for a Request for Proposal (RFQ) were allowed to bid for the project. The Oneida Indian Preference Department found DH Cash Management Services did not meet the requirements listed in the RFQ and therefore were properly denied the right to bid for the project. The Oneida Indian Preference Department findings do not support DH Cash Management Services, LLC at this time.

On February 28, 2012 the Trial Court held a deliberation to decide if this case meets the criteria in Rule 31 (E-1) which states:

A party seeking a Preliminary Injunction must establish and the Court must find: (a). A likelihood of success on the merits; (b) That it has no adequate remedy at law; and (c). That it will suffer irreparable harm if the injunction is not issued.

The Court decided Petitioner did not meet the criteria to accept his complaint and therefore, we deny his motion and notice for preliminary injunction and temporary restraining order.

Petitioner provided evidence that shows, according to the RFP, Petitioner failed to meet the minimum eligibility requirements; 1) Experience – must have at least three years of continuous experience within the last five years, Petitioner asked for a waiver. 2) Financial – must have the experience listed above with annual gross revenues of not less than one hundred thousand dollars, Petitioner asked for a waiver. Once a vendor passes this point they are able to submit their bid proposal. Petitioner asked for a waiver because he did not meet the minimum eligibility requirements.

The Indian Preference Law is specific as it defines who can file a complaint in §57.14, Violations of This Law:

57.14-1. Complaints of Violation. Any individual aggrieved by what he/she believes to be a violation of this law, or of any regulation or policy issued pursuant to this law, may file a complaint with the Indian Preference Department. The complaint must be in writing and provide such information as is necessary to enable the Indian Preference Department to carry out an investigation.

Once the party files a complaint then the Oneida Indian Preference Department conducts an investigation. Its investigation concluded Petitioner failed to meet the minimum eligibility requirements in the RFP to advance to the bidding process. The Indian Preference Department is the agency to bring a suit against the violator. As is shown in §57.14-3 and §57.14.4:

57.14-3. Determination of Violation and Filing of a Complaint. The Indian Preference Department may file a complaint with the Oneida Appeals Commission for an original hearing if the Department reasonably believes that there is sufficient evidence of a genuine and material issue of non-compliance with this law or the regulations or policies issued pursuant to this law, and (1) an attempt to resolve the alleged non-compliance has failed through informal resolution, arbitration, or dispute or termination provisions, or (2) a party has refused to participate in an informal resolution process, or to cooperate in good faith.

57.14-4. Injunction. The Indian Preference Department may, after consulting with the tribal contracting party and attempting resolution, request an injunction from the Appeals Commission suspending the terms of the contract during the pendency of the litigation and preventing further payment to the contractors.

While Petitioner may feel he was wrongly deprived the right to bid, Respondent developed a criteria for all vendors prior to submitting their bids and Petitioner is not eligible. The law is clear under Chapter 57 and the Oneida Indian Preference Department has investigated and elected not to file suit. Nevertheless, as an aside, the issue here begs the question: how will Oneida vendors ever get a chance to bid if they don't get a chance to get the experience? DH Cash Management Services, LLC is willing to work under a probation period.

At this time, the law is specific; is there likelihood that Petitioner would succeed or receive the bid given the history of this case? No, not under the current procedures. Furthermore, Petitioner's remedies are those found under Chapter 57.

Decision

This matter is dismissed with prejudice.