

# ***Oneida Tribal Judicial System***

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## **APPELLATE COURT**

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Isaiah Skenandore,  
Appellant

Docket No. 13-AC-004

vs.

Division of Land Management  
and/or Land Commission,  
Respondent

Date: June 28, 2013

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, Lois Powless, Jennifer Webster, Stanley R. Webster and James Van Stippen (Pro Tem) presiding.

### **I. Background**

On March 12, 2013, Appellant, Isaiah Skenandore, filed an appeal of the February 11, 2013 Oneida Land Commission Pre-Trial Decision in Case No. 2013-LCCV-001 which granted Respondents Division of Land Management's and/or Land Commission's Motion to Dismiss. Mr. Skenandore is alleging the decision is a violation of constitutional provisions. We remand the decision of the Oneida Land Commission for further proceedings consistent with this decision.

### *A. Jurisdiction*

This case comes to us as an appeal of an original hearing body, the Oneida Land Commission. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Oneida Administrative Procedures Act, Sec. 1.8-1: Appellate Review of Agency or Commission Action.

### *B. Factual Background*

Isaiah Skenandore is an Oneida tribal member who purchased and now owns a 3.5 acre farm on Culbertson Road on the Oneida Reservation. Adjacent to Mr. Skenandore's property is a larger parcel of 114 acres which the Oneida Tribe purchased shortly after Mr. Skenandore purchased his property. Mr. Skenandore learned of the purchase and was interested in leasing some of the land from the Tribe and boarding horses. Mr. Skenandore has stated that he will operate his property as a hobby farm and stable.

Mr. Skenandore expected a posting for bids to lease the 114-acre property. Mr. Skenandore learned that the Tribe planned to lease the property to Oneida Nation Farms without posting for bids. Mr. Skenandore contacted the Oneida Nation Farms Director who agreed with Mr. Skenandore's proposal that he lease 17 acres while 97 acres would be leased by Oneida Nation Farms.

Despite Oneida Nation Farms' agreement, the Oneida Land Commission refused to approve the plan, stating that Oneida Nation Farms would rent all of it or none of it. Mr. Skenandore offered to lease the land at \$150 per acre. Oneida Nation Farm rent is \$100 per acre.

When the Land Commission denied Mr. Skenandore's request to lease the 17 acres, this litigation ensued.

### *C. Procedural Background*

On December 13, 2012, Respondent, Division of Land Management issued a summons to Appellant Skenandore for a Pre-Hearing on February 11, 2013 for the purpose of determining any “issues that must be resolved through a trial.”

On February 11, 2013 the Oneida Land Commission ruled:

- Appellant (Skenandore) failed to establish a “causal link” between the actions of the Division of Land Management and the alleged harm Appellant sustained.
- No tribal law that mandates the Respondent lease a portion of land to individual tribal members.
- Tribal sovereignty was not waived to allow suit.
- Respondent did not violate any Oneida Law.

On March 12, 2013, Appellant, Isaiah Skenandore, filed an appeal of Oneida Land Commission’s, February 11, 2013, Pretrial decision in Case No. 213-LCCV-001 which granted Respondent’s Motion to Dismiss.

The Appeal was accepted in accordance with Rules of Appellate Procedure, Rule 5(A) Appeal – How Granted:

As a Matter of Right: A final judgment or final order of any original hearing body or the trial court of the OTJS may be appealed to the OTJS appellate court in accordance with the APA, unless otherwise expressly provided by Oneida law...

On March 13, 2013 the Oneida Tribal Judicial System, Appellate Initial Review panel of Judicial Officers Janice L. McLester, Judicial Officer Lois Powless and Judicial Officer Stanley R. Webster met to answer the threshold questions regarding the jurisdiction of the case and the procedural and material sufficiency of the Notice of Appeal. In accordance with the Oneida Nation Administrative Procedures Act Section 1.8-1 and the Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 9, the Initial Review body shall accept an appeal when an Appellant alleges with sufficient clarity that the original hearing body decision contains one or

more of the following elements:

1. A violation of constitutional provisions.
2. The decision is outside the scope of the authority or otherwise unlawful.
3. The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.
4. The decision is arbitrary and/or capricious.
5. There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, which if the error had not occurred, would have altered the final decision.
6. There is a presentation or introduction of new evidence that was not available at the hearing level, which, if available, may have altered the final decision.

The Appellate Review panel accepted this case for review under (1) A violation of constitutional provisions. An exchange of briefs was completed for review on April 29, 2013.

On April 29, 2013, Appellant Skenandore filed a Motion to Stay the enforcement on the leasing of 17 acres of land he requested to lease, until appellate review completes its final adjudication in regard to the 17 acres of land under appeal.

On May 8, 2013, Respondent filed a response to the motion in accordance with Rules of Appellate Procedure, Rule 11(A)(3): Response to the motion is due within ten (10) days of the receipt of the motion, at which time the appellate court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion. Respondent argued Mr. Skenandore did not appeal an enforcement decision and therefore cannot seek a stay.

On May 21, 2013 the Oneida Tribal Judicial System, Appellate body, deliberated on the merits of the appeal and motion and granted the Motion to Stay, in accordance with the Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 17(B) Relief Pending Appeal: Stay Upon Appeal: *A party may move the appellate court of the OTJS for a stay of enforcement of the lower hearing body order or judgment pending the final adjudication of the appeal...*

On June 20, 2013 a second deliberation was conducted with the Appellate Review body. The Appellate Review body also found the original hearing body of the Oneida Land Commission failed to provide in their decision "Findings of Facts and Conclusions of Law." This exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, which if the error had not occurred, would have altered the final decision.

(Rules of Appellate Procedure, Rule 9(5))

The Appellate Review body determined Respondent, Oneida Land Commission and/or Division of Land Management failed to answer Appellant's questions as presented at the February 11, 2013 Pretrial hearing and failed to follow procedure in accordance with the Administrative Procedures Act, Section 1.7-1(c)(2) Contested Cases, Procedures and Rules, Finding and Conclusions.

We now file our decision to remand to the original hearing body of the Oneida Land Commission for further review in accordance with Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 19, Reversal Affirmance or Modification (A) Powers of Appellate Court:

Upon appeal from a judgment or order from an original hearing body decision, the appellate court of the Oneida Tribal Judicial System may:

- (2) Remand the matter to the trial court or original hearing body and order a new trial/hearing on any or all issues presented; the order returning a case shall contain specific instructions for the trial court or original hearing body.

## **II. Issues**

**Was the Oneida Land Commission in violation of Appellant, Isaiah Skenandore's constitutional provisions?**

**Was there exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?**

### **III. Analysis**

**Was the Oneida Land Commission in violation of Appellant Isaiah Skenandore's constitutional rights?**

Yes. The record is insufficient to rule on the merits of Mr. Skenandore's claim. The February 11, 2013 hearing was labeled as a Pretrial Hearing, which the Land Commission described as a hearing to predispose motions, identify witness and evidence, set up schedules and clarify any issues. It is unclear if the Land Commission utilizes their Pretrial hearings normally to make a final adjudication on their cases and routinely accepts the prewritten decision provided by the Division of Land Management as presented at the time of the Pretrial hearing as their own.

Article VI-Bill of Rights of the Oneida Constitution "All members of the tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe. All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assemble, association and due process of law, as guaranteed by the Constitution of the United States."

The Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-01:

§ 1302. *Constitutional Rights: No Indian tribe in exercising powers of self-government shall:*

(a) In general

No Indian tribe in exercising powers of self-government shall-

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

The Oneida Administrative Procedures Act supports that all members are provided a right to be heard. Section 1.1-1 “The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.” Due process of law is heavily dependent on an individual’s right to be heard.

This right was denied Mr. Skenandore by failing to have a hearing that would have allowed him to present witness’s, testimony and evidence. At the conclusion of the pretrial hearing, Mr. Skenandore submitted questions in document form to the Land Commission panel with a request for their answer. No response was given in their formulated decision which was verbally put into the record by Attorney Rebecca Webster at the time of the pretrial hearing.

While the grounds for remand are procedural, we comment briefly on the merits as guidance for the Oneida Land Commission when they re-consider this case on remand.

Appellant Skenandore asserts the Oneida Land Commission’s decision is incorrect as a matter of law. He cites two sources of law as support. First Mr. Skenandore cites to the Oneida constitution which states: “All members of the Tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe.” Art. VI, Oneida Const. This language is so general, it is difficult to know how to apply it in practice. Is the leasing of land an economic resource or activity?

The second law cited by Mr. Skenandore is the Real Property Law. Section 67.11-2 which states: “Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs.” Mr. Skenandore acknowledges that Oneida Nation Farms is a tribal program. He points to the word “and” as support for the assertion that tribal members should also receive preference in leasing. Mr. Skenandore envisions a scenario where both he and Oneida Nation Farms lease separate portions of the parcel at issue.

This issue requires an application of law to facts, sometimes termed a conclusion of law. The significance of the Land Commission's procedural failure is that they failed to explain why they believe Mr. Skenandore is wrong. Administrative Procedures Act, Section 1.7-1(c)(20) requires the Land Commission to make findings of fact and conclusions of law. It failed to provide any reasoning in its decision, by failing to provide a finding of fact or conclusion of law (the application of law to facts).

The Land Commission, Pretrial Hearing body failed to provide findings of facts and conclusions of law, by failing to answer Mr. Skenandore's allegations. They relied on the Division of Land Management, Standard Operating Procedures, 67.2-3-10, Distribution of Tribal Agricultural Leases, which appears to require that all agricultural lands are first offered to the Oneida Farm for lease. Another important legal question is whether this SOP provision is consistent with the Real Property Ordinance.

We are not ruling on whether the decision was right or wrong, only that the Land Commission failed to provide any findings of facts or conclusions of law. Such a decision will likely answer the Appellant's questions of whether this was a violation of his constitutional rights and if there was a violation of Section 67.11-2 of the Real Property Law in the Land Commission's denial of preference being given to Oneida tribal citizens in the leasing of land.

The decision entered by the Land Commission was brought forward by Attorney Becky Webster at the time of the pretrial hearing, read into the record, and utilized verbatim by the Pretrial Hearing. In granting the Division of Land Management's Motion to Dismiss, the Land Commission denied a formal hearing on the merits of the case presented by Mr. Skenandore.

**Was there exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would**



**have altered the final decision?**

The Oneida Land Commission failed to provide findings of fact and conclusions of law as required by Section 1.7-1(c)(20) of the Administrative Procedures Act, as enacted by the General Tribal Council. We find this to be a procedural irregularity which contributed to the final decision. Explaining a ruling forces the decision maker to examine the facts and rules in a way that doesn't always occur if that step is skipped. Over the years we have remanded cases for failure to provide findings of fact in the administrative decision. See e.g. *Metoxen v. Oneida Retail Enterprises*, No. 96-EP-0011 (4/8/97); *Kestell v. Oneida Human Resource Dept.*, No. 00-AC-024 (4/4/2001); *Oneida HRD-Benefits v. Franco*, No. 05-AC-004 (7/13/2005).

We recognize that this matter was decided on a Motion to Dismiss by the Division of Land Management. We do not read the requirement for findings of fact to mean that a full evidentiary hearing must be held. In the context of a Motion to Dismiss, it would be sufficient to find the facts as alleged by the non-moving party. This would satisfy Section 1.7-1(c)(20)'s requirement for findings of fact. If the Land Commission wishes to hold a more in depth evidentiary hearing, this would be permissible as well.

Mr. Skenandore's allegation of a violation of his constitutional provisions has not been fully explored nor answered. Mr. Skenandore's allegation of a violation of the Real Property Law, Section 67.11-2 "preference given to Oneida tribal citizens and programs" has not been fully answered.

The Appellate body cannot make a determination due to the insufficiency of the Land Commission's decision.

#### IV. Decision

The Land Commission decision of February 11, 2013 is remanded<sup>1</sup> for further proceedings consistent with this decision.

The Land Commission is to review the decision of February 11, 2013 and provide findings of fact and conclusions of law as required by Administrative Procedures Act, Section 1.7-1(c)(20). We expect the decision will address the allegations of violation of constitutional provisions and violation of Real Property Law, Section 67-11-2. Specifically the Division of Land Management, Standard Operating Procedure 67.2.3-10 appears to require that all agricultural lands are first offered to the Oneida Farm for lease.

- Is this consistent with 67.11-2 of the Real Property Law?
- Is this consistent with Article VI of the constitution requiring equal opportunities for tribal members to participate in the economic resources and activities of the tribe?
- Section 67.11-2 – Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs. Was the land in question in trust?
- Is the Division of Land Management, Standard Operating Procedures, 67.2-3-10, Distribution of Tribal Agricultural Leases, which appears to require that all agricultural lands are first offered to programs consistent with the Real Property Ordinance?

The Appellate Court orders the Land Commission to schedule a hearing within twenty (20) business days from receipt of this decision, at which time the Stay will be lifted. The decision of the Land Commission will follow procedures of the Oneida Administrative Procedures, Section 1.7-1(c)(20) Contested Cases:

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<sup>1</sup> In accordance with Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 19 Reversal Affirmance or Modification:

- (A) Powers of the Appellate Court: Upon appeal from a judgment or order from an original hearing body decision, the appellate court of the Oneida Tribal Judicial System may:
- (1) Reverse, affirm, or modify the judgment or order as to any or all parties;
  - (2) Remand the matter to the trial court or original hearing body and order a new trial/hearing on any or all issues presented; the order returning a case shall contain specific instructions for the trial court or original hearing body.

Findings and Conclusions. Every decision and order rendered by an agency in a contested case shall be in writing in the record and shall include the findings of fact and conclusions of law. The finding of fact shall consist of a concise statement of each fact found upon each contested issue of fact.

It is so ordered.