

Oneida Tribal Judicial System

Onʌyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

**Looney and Lizzie Mouse,
Appellant**

Docket No. 13-AC-009

v.

**Division of Land Management,
Land Commission,
Respondent**

Date: November 19, 2013

DECISION

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 June 28, 2013, Appellants, Looney and Lizzie Mouse, filed Motion to Stay and appeal of the May 13, 2013, Oneida Land Commission Decision on Motion for Reconsideration in Case No. 2013-LCCV-002. This decision denied Appellants' Motion for Reconsideration of their original foreclosure decision of February 11, 2013. Appellants alleged the May 13, 2013 decision contained procedural irregularities in that the Land Commission erroneously based their decision on new information that was not included in the original foreclosure prior to the reconsideration hearing. We disagree and uphold the Land Commission decision of foreclosure and lift the Stay upon Appeal.

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

Appellant Lizzy Mouse is an Oneida tribal member who purchased a home on Ironwood Drive in Green Bay, Wisconsin through the Oneida Division of Land Management (DOLM). The Mouses entered into a mortgage and purchased the home in 2003. The underlying land is occupied pursuant to a lease with DOLM.

Between June, 2012 and January 2013 there were numerous violations of the mortgage and residential lease. It is uncontested that there were 14 police calls to the residence during that time span. Some of the calls were related to drug activity. The Oneida Zoning Department attempted to gain access to the premises due to a police report and pictures. The Mouses did not cooperate with the Zoning Department's efforts to enter the property.

C. Procedural History

On January 9, 2013, Respondents, DOLM filed a Foreclosure/Involuntary Lease Cancellation Complaint against the Mouses. The Complaint alleged failure to maintain and care for the home, and habitual police calls to the home involving drug activities, all in violation of their Residential Lease and the Oneida Zoning and Shoreland Protection Law.

On February 11, 2013 the Original Hearing body of the Oneida Land Commission held a pre-hearing and granted judgment to Respondents of Foreclosure and Lease Cancellation. The order stated the Mouses had until August 11, 2013 to vacate the premises.

On March 11, 2013 Appellants filed a Motion for Reconsideration based on new evidence.

On April 30, 2013 Respondents filed their response to the Motion for Reconsideration alleging the evidence submitted did not fit the definition of new evidence because it did not exist at the time of the original hearing of February 11, 2013.

On May 13, 2013 the Land Commission Original Hearing Body held a pre-hearing. The Mouses presented evidence related to the efforts they had made to cure the allegations that were presented in February. These efforts included: evicting their adult son from the premises; visiting all neighbors and issuing written and verbal apologies; no further police contacts (with the exception of one visit from the animal control officer); and cleaning up the property. Also presented at the reconsideration hearing was evidence from the DOLM regarding the Mouses' conduct since the original hearing in February including the fact that the residence had a visit from the animal control officer and that they had fallen behind in their payments. The Land Commission was not convinced it should overturn its original decision and denied the Motion for Reconsideration. The decision was mailed to the Mouses on June 5, 2013.

On June 28, 2013 Appellants filed an appeal and motion to stay with the Oneida Tribal Judicial System, Appellate Court, alleging procedural irregularities.

On July 10, 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.

The Initial Review panel 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... .

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 (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.* An exchange of briefs was completed for review on September 27, 2013.

Due to an extended delay in receiving the original hearing record from the DOLM, the Appellate Review body, which included Judicial Officers Janice L. McLester, Lois Powless, Jennifer Webster, Stanley R. Webster and Pro Tem James VanStippen deliberated on the merits on October 24, 2013.

We now affirm the Oneida Land Commission's decision.

II. Issues

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 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 Appellant's Lizzy and Looney Mouse filed their appeal based on a denied Motion for Reconsideration by the Oneida Land Commission. Within their motion they presented a number of procedural irregularities that occurred during foreclosure proceedings, along with "new evidence that was not available at the original hearing level." The Mouses main complaint is that the Board heard and considered additional information from the Respondent, DOLM, which was unfavorable to the Mouses.

As a preliminary matter, we agree with the DOLM that the evidence provided by the Mouses was not "new evidence" in the way that phrase is used in Appellate Rule 24. The evidence brought up by the Mouses was not in existence at the time of the original hearing. The Mouses essentially did not contest the claims by DOLM that they had violated the agreement, but rather sought to show that they had changed their ways. This by itself is enough to deny the Mouses' appeal as none of the evidence brought in by the Mouses met the requirement for reconsideration. However, the Board did not state that it disallowed the evidence in its decision on the reconsideration.

Even if the new evidence was allowed, we do not find the Mouses' arguments persuasive. We address Mouses' claims of procedural irregularities one at a time.

The Mouses claim the DOLM Board violated Secs. 1.7-1(a)(2) and 1.7-1(c)(20) of the Administrative Procedures Act because the final decision was not sent or delivered within 10 business days following the hearing. The reconsideration hearing was held on May 13, 2013. Ten business days (excluding Memorial Day) would ended on May 28, 2013. The decision was mailed on June 5, 2013, about five business days later. While this is technically a violation, given that the Mouses had until August 11, 2013 to vacate the property, this error was harmless and the Mouses have not alleged or shown any prejudice to their case as a result of the untimely delivery.

Next, the Mouses claim error under Sec. 1.7-1(c)(14) of the APA which permits affected parties to have the reason(s) for the final decision; the Mouses claim the final decision of February 11, 2013 does not contain reasons. We don't see a violation of this rule. The Final Decision recites the Mouses' violations of the residential lease. While the words, "the reasons for our decision are," do not appear, the average reader would have no problem understanding the reasons for the decision.

The Mouses also claim error because at the reconsideration hearing the DOLM brought up new evidence and alleged violations that were not included in the Notice that was received by Appellant prior to hearing and therefore, they did not have opportunity to review new alleged violations and to gather supporting documentation and/or prepare a response. We understand the due process concerns here, but the Mouses asked for a reconsideration hearing and themselves introduced significant amounts of new evidence which was not available at the time of the original hearing. The DOLM was certainly entitled to raise new concerns when the Mouses opened the door to all events that occurred between February and May. It is fair to both parties for all evidence to be available, whether favorable or unfavorable to the Mouses.

The Mouses claim the decision did not advise them of their right to appeal. The Mouses do not cite to any provision of the APA or other Oneida law which requires inclusion of information of

appeal rights. We note the Final Decision, issued in February clearly does contain information about appeal rights.

The next claim of error is that the Mouses' property was foreclosed because of violations totally unrelated to violations alleged by the DOLM. The Mouses believe they have satisfactorily remedied those problems by (a) evicting adult son from premises; (b) personally visiting all neighbors and issuing written and verbal apologies to each one, (c) no further police contacts since eviction of son except for animal control officer; and (d) cleaning up property. The problem with this argument is that the DOLM was not asking for the violations to be cured. They were asking for foreclosure and termination of the lease. The DOLM has apparently decided that the Mouses have had enough chances and that for the greater good and enjoyment of the neighborhood and the Oneida Tribe, the tribe can no longer stay in the agreement with the Mouses.

It is true that in its May 13, 2013 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. While this is arguably a procedural irregularity, we find it to be a harmless error in the context of a motion for reconsideration. The better practice in the future for the DOLM, and all administrative original hearing bodies, will be to include findings of fact and conclusions of law in all rulings. Doing so is an important exercise as it forces the decision maker to examine the facts and rules in a way that doesn't always occur if that step is skipped.

IV. Decision

The Land Commission decision of May 13, 2013 is affirmed. The Stay issued Upon Appeal is lifted.

It is so ordered.