

Oneida Tribal Judicial System

OnΛyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

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

Docket No: 11-TC-147

v.

Date: January 23, 2012

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

DECISION ON THE MOTION TO DISMISS

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. Petitioner filed a complaint on December 23, 2011 seeking a preliminary injunction halting the awarding of the project to another vendor. Petitioner alleges that Respondent improperly denied consideration of Petitioner's bid for services. Petitioner claims Respondent's decision is unreasonable and in violation of the Tribe's Indian Preference Policy.

On December 22, 2011 the Court held a deliberation and agreed to issue a temporary restraining order. Petitioner's filing lacks specific facts relating to a violation. The matter was set for a hearing on January 4, 2012 at 2:00 p.m.

On January 3, 2012 Respondent filed a Motion to Reschedule Hearing the hearing was rescheduled for January 17, 2012.

On January 17, 2012 Petitioner submitted a Motion for Continuance due to his spouse involved in an auto accident. The Court granted the Motion and rescheduled the hearing for January 31, 2012 at 10:00 a.m.

January 17, 2012 Respondent filed a Motion to Dismiss claiming that the case, *O-Tech Solutions v Oneida Bingo and Casino, et al.*, 10-AC-017, dealt with almost the identical facts and legal issues. Essentially that an aggrieved party must file a complaint with the Indian Preference Department to investigate, and if the department deems necessary, file a suit on Petitioner's behalf. Respondent asserts according to *O-Tech* this case must be dismissed because the Petitioner lacks standing to sue.

Analysis

The challenge in this matter is what should be done next. The lack of facts makes it difficult to know if Petitioner can sufficiently allege a violation. For example, did Respondent improperly deny consideration of Petitioner's bid for services causing a violation of the Tribe's Indian Preference Policy? The Indian Preference Ordinance contemplates that alleged violations, like Petitioner's, will first be subject to investigation by the Indian Preference Department; see Sec. 57.14 of the Indian Preference Law. This makes sense as an investigation by the Indian Preference Department will determine whether there is merit in the complaint to further the process.

Following *O-Tech*, the requirements of the law are clear under Sec. 57.14: an investigation by IPD must be conducted. According to the law, the Tribe is obligated to respond to a complaint if indeed Petitioner submitted a complaint to the department, which is why the Court included the Indian Preference Department as an interested party.

At this point, the Court is not aware if Mr. Denny filed his claim first with the Indian Preference Department. That is a required first step under Sec. 57.14. It does not appear this happened. Chapter 57 governs these types of claims. Mr. Denny must follow its procedure before filing for a TRO or any other relief. Respondent alleges this has not happened and we have no evidence to

the contrary. Therefore, the Court is dismissing this action without prejudice.

Decision

This matter is dismissed. Mr. Denny may file his claim with the Indian Preference Department as required under Sec. 57.14. Dismissal is without prejudice.