

Oneida Tribal Judicial System

Onʌyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

Trial Court

Owen Somers,
Petitioner

Docket No. 07-TC-127

v.

Date: August 3, 2007

Oneida Gaming Commission,
Respondent

Decision

This case is now before the Oneida Tribal Judicial System, Trial Court. Judicial Officers: Mary Adams, Robert Christjohn and Gerald Cornelius, presiding.

I History

On September 11, 2006, Petitioner, Owen Somers, filed an application for a gaming license with the Oneida Gaming Commission. To date no final decision has been rendered on his application and the Respondent asserts the investigative portion of the application process is still not completed.

On July 13, 2007, Petitioner, impatient with the lack of a final decision, filed a petition against Respondent, Oneida Gaming Commission, alleging Respondent refused to issue him a gaming license in accordance with Oneida Gaming License Policies, Rule 2, Section 2.00 (g).

On July 31, 2007, Respondent filed a Motion to Dismiss or for Summary Judgment based on the

assertion that Petitioner's Complaint for failure to establish a right to relief and failure to prove¹ a claim. Respondent argues the trial court lacks jurisdiction for two reasons: 1) No final licensing decision has been rendered and therefore the Appeals Commission lacks jurisdiction under Sec 21.10-11(a) and; 2) Actions contesting Gaming Commission decisions are appeals and therefore should be heard by the Appellate Court rather than the Trial Court.

II Issue

Does the Trial Court have jurisdiction over Petitioner's claim?

III Analysis

The motion to dismiss is granted. The Court agrees with Respondent that no final action has been rendered on Petitioner's application and therefore the Trial Court lacks jurisdiction over the matter. The requirement for "final action" is found in Sec. 21.10-11 of the Oneida Nation Gaming Ordinance. Because this matter may be the subject of future appellate or original action, the Court dismisses the matter without prejudice.

Respondent provided evidence in a form of an affidavit indicating an investigation is currently in the process.

Although the Court dismisses Petitioner's action, we would like to comment about the facts and circumstances of this case. Respondent and Petitioner agree that Petitioner filed his application for a gaming license over 10 months ago. Respondent and Petitioner agree no final decision has been rendered. The Court accepts in good faith the Gaming Commission's assertions that the investigation is still active and ongoing. We are not aware of any explicit requirement in the Oneida Nation Gaming Ordinance or other tribal law that the Gaming Commission's decision be issued within a certain amount of time.

¹ Although Respondent uses the phrase "failure to prove a claim" we suspect Respondent means "failure to state a claim" as no Petitioner is expected to prove a claim with simply a Petition.

However, there must be a limit on how long an applicant must wait. At some point, endless or unreasonable delay becomes the equivalent of a denial. We encourage the Gaming Commission to act carefully and diligently, but also quickly and efficiently so that Petitioner can have an answer and then act accordingly.

IV Decision

Respondent's Motion to Dismiss is granted. This matter is dismissed without prejudice.