

Oneida Tribal Judicial System

Onayote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT

**Own R. Somers,
Petitioner**

v.

**Oneida Gaming Commission,
Respondent**

Docket No: 08-TC-014

Date: February 12, 2008

Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Gerald Cornelius, and Stanley R. Webster, presiding.

I Background

This case involves a petition to request new subpoenas be signed by the Hearing Officers presiding on the Oneida Gaming Commission, in anticipation the subpoenaed individuals will fail to honor the current subpoenas for Petitioner's upcoming gaming license hearing.

On February 11, 2008 Petitioner, Own R. Somers, filed a Motion for Stay and Writ of Mandamus against Respondent, Oneida Gaming Commission, seeking a continuance in a hearing scheduled for February 14, 2008. This case involves Petitioner's grievance hearing in the denial of his gaming license by Respondent in December 2007. Attorney Francine Skenandore of the Oneida Tribe's Law Office allegedly sent an email to at least some of the subpoenaed individuals implying the Gaming Commission did not have true subpoena authority over the individuals. Petitioner claims this is an incorrect statement of the law and perhaps more importantly, that it will discourage the individuals from appearing at the hearing. Petitioner is presumably counting

on these individuals to testify as witnesses and provide evidence to support his case. Petitioner is requesting this court to:

- 1). Order the Hearing Officers for the Gaming Commission to immediately sign the new subpoenas and the notice stating that the position of Attorney Skenandore is erroneous or
- 2) Issue a stay of the proceedings to allow for the Hearing Officers to provide their reasons for not signing said subpoenas and notices, for asserting the position that cannot compel the attendance of witnesses subpoenaed, and/or for refusing to invoke section 1.12-1, Administrative Procedures Act.

The court dismisses Petitioner's claim for several reasons:

1). The Oneida Gaming Commission is an original hearing body. Petitioner's claim is in the nature of an appeal. Therefore, this case is improperly filed. If Petitioner decides to pursue his claim then the proper court is the Appellate Court.

2). In addition, Petitioner's claim is premature. Petitioner's claim was filed on February 11, 2008, the same day a letter was sent by Petitioner's counsel to the Gaming Commission seeking the new subpoenas. The Gaming Commission has not had an opportunity to either sign or refuse to sign the subpoenas. Petitioner's filing states his "counsel believes" the Gaming Commissioners will not sign the new subpoenas. Courts generally do not rule on speculation, but rather on hard facts. Those facts are lacking at this time. Therefore, Petitioner's claim is premature.

II Decision

This case is dismissed without prejudice.