

Oneida Tribal Judicial System

Onʌyote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

**ONEIDA TRIBAL JUDICIAL SYSTEM
TRIAL COURT**

**Native Alliance Corp.,
Petitioner**

v.

**Oneida Retail, Oneida Purchasing, and
Oneida Indian Preference,
Respondents**

Docket No: 08-TC-117

Date: February 25, 2009

Decision

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

I Background

This is a complaint involving a contract dispute.

On September 2, 2008 Petitioner, Native Alliance Corporation LLP, Mike Peltier, Vice President Sales and Marketing, filed a complaint against Respondents, Oneida Retail – Michelle King, Area Manager; Oneida Purchasing Department – Thomas J. Walenski Director; Oneida Indian Preference Department – Marjorie Stevens Director; for alleged violations of the Oneida Indian Preference Law, purchasing laws and policies of the Oneida Tribe, and other laws of the Oneida Tribe.

On September 30, 2008 a pre-trial hearing was held. The parties agreed to a 45 day stay to enter into Peacemaking. The court granted the party's agreement to stay this case for forty-five (45)

days to allow possible negotiations. The court issued its briefing order if Peacemaking fails in the following list:

Respondent's Motion to Dismiss brief is due by January 8, 2009.

Petitioner's opposition brief is due by January 29, 2009.

A motion's hearing is scheduled for February 10, 2009 at 9:00 am.

At the February 10, 2009 motion's hearing Respondents' motion to dismiss contained several issues.

II Issues

1. Petitioner's complaint is untimely filed.
2. Petitioner failed to state a claim upon which relief may be granted.
3. Petitioner is not qualified under the Tribe's Indian Preference law.

1. Petitioner's complaint is untimely filed.

Respondents assert they received Petitioner's bid around July 31, 2007 and a decision was made to accept another vendor. Respondents contend Petitioner's bid was denied because it violates the Oneida Indian Preference Law. According to 57.6-2, in order to qualify as an Indian owned business, the broker has to provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business. Respondents point out Petitioner received a certification as an Indian-owned business until they submitted their bid for this project and their bid was denied in accordance with 57.6-3, agents for a non-Indian-owned business, will not be given certification as an Indian-owned business.

Respondents agree a denial notice was sent to Petitioner from the Oneida Indian Preference Department on or about May 19, 2008 and Petitioner did not argue their position. Furthermore, Petitioner had 30 days after receiving that denial notice to appeal in accordance with Chapter 57.4-16. Respondents assert Petitioner filed his appeal on September 2, 2008, nearly four months later. Respondents agree in their memo (5/19/08) they directed Petitioner if he disagrees with their decision to appeal it.

Petitioner claims they are a registered Oneida Tribal Vendor and a Certified Indian Preference Company. Petitioner argues they submitted competitive bids in the 2007-2010 Request for Proposals worth an estimated \$75,000,000.00. Petitioner asserts they are entitled a 5% discount but was instead given five (5) extra points. Petitioner contends he submitted his Amended Complaint and Request for Remedies on May 15, 2008, to the Indian Preference Office. Petitioner claims that they do not agree with the Oneida Indian Preference Director's decision and thereby appealed that decision here in accordance with the Tribe's Administrative Procedures Act that provides him the opportunity to file his claim without timelines.

Court's findings

Timelines in a law or rule generally set a maximum time period when certain actions can be brought or rights enforced. Once that time has lapsed generally no legal action can be brought. Petitioner was mailed a memo dated May 19, 2008 from Marjorie Stevens, Oneida Indian Preference Director, informing Mr. Peltier that his bid was denied and she gave the reasons for her decision. Petitioner did not deny receiving that memo. According to Chapter 57.4-16;

“If a certification has been denied or withdrawn, an Indian-owned business or a qualified Indian trades worker may appeal the decision to the Commission in writing within 30 days of receiving the notice of denial, or withdrawal of certification, stating with specificity why the Indian –owned business or qualified Indian trades worker is in compliance with the Indian preference laws...”

The Tribe's Administrative Procedures Act 1.10-1. Contested Cases, provides a forum for dispute when an aggrieved individual is contesting a decision from an agency. Petitioner is contesting a decision from the Oneida Indian Preference Department. Petitioner's request for a hearing is before this court and one issue before this court is timeliness. According to the Oneida Indian Preference law, Petitioner's appeal is untimely. As state above, Petitioner filed his complaint on May 15, 2008 with the Oneida Indian Preference Department; Oneida Indian Preference Department answered his complaint on May 19, 2009; then Petitioner files his appeal here on September 2, 2009. Therefore, Petitioner's complaint must be dismissed. The court need not decide the remaining issues as this matter is disposed of based on the untimely filing.