

Oneida Tribal Judicial System

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Trial Court

**Oneida Housing Authority,
Petitioner**

v.

**Kathleen Stevens,
Respondent**

Docket: 10-TC-027

Date: November 10, 2010

DECISION

This case is now before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Leland Wigg-Ninham, Sandra Skenadore and Stanley R. Webster presiding.

I Background

This case arises out of the Oneida Housing Authority (OHA) seeking to recover alleged overpayments of travel and per diem reimbursements Respondent Kathleen Stevens received in her role as a member of the Oneida Housing Authority Board. The alleged overpayments came to light as a result of eleven audits conducted by the Oneida Internal Audit Department, the Office of Inspector General of the Department of Housing and Urban Development and by RSM McGladrey Inc. Those audits uncovered improper expenditures in the form of stipends, per diem and meal/incidental expenses paid to OHA Board members. On July 18, 2007, the Oneida Business Committee adopted emergency amendments to the Oneida Housing Ordinance which dissolved the Oneida Housing Authority Board of Commissioners and assigned the Oneida General Manager oversight of the OHA Program¹.

1 Resolution #BC-18-07-A, Adoption of Emergency Amendments to the Oneida Housing Ordinance.

On November 6, 2009 the Petitioner, Oneida Housing Authority, filed a complaint against the Respondent, Kathleen Stevens, seeking recovery of the overpayments received by Respondent.

On April 6, 2010 a Pre-Trial Hearing was held and appearing for the OHA was Attorney Brian Stevens. Respondent did not appear, but filed a Motion for a thirty (30) day extension due to trying to locate an advocate to assist her. The Motion for Extension was read into the record. The Petitioner did not oppose the Motion for Extension. The trial was rescheduled for July 26-27, 2010 at 9:00 a.m.

On July 26-27, 2010, a hearing was held and Appearing for the Petitioner was Attorney Brian Stevens. Appearing for the Respondent was Kathleen Stevens.

Petitioner's Argument

The Petitioner alleges that as a result of audits conducted by Oneida Accounting personnel during Respondent's role as an Oneida Housing Board Member, October 2005 through 2007, the Respondent was improperly overpaid for travel expenses, made personal charges on company credit cards, and collected overpayment of unallowable travel and hotel per diems in the amount of \$2,335.39 which was not reconciled.

Furthermore, Petitioner alleges the Respondent is responsible for reimbursement to the Oneida Housing Authority for these travel expenses, credit card charges, per diem, hotel expenses, and car rental expenses which occurred while she was an Oneida Housing Authority Board Member.

Respondent's Argument

The Respondent does not agree with the accounting records submitted by the Petitioner. Respondent claims that she was told by an Oneida Housing Authority Staff person that she did not have to keep her receipts for her travel, hotel and per diem. Finally, the Respondent claims she is not responsible for the charges on the Oneida Housing Authority credit cards.

II Findings of Fact

- 1.) The Respondent was a member of the Oneida Housing Authority Board between 2005 and 2007. The total amount of money overpaid to and incurred by the Respondent between 2005 and 2007 is \$9,456.72 of which \$7,121.33 has been repaid.
- 2.) As an Oneida Housing Authority Board member between 2005 and 2007 the Respondent oversaw the administration of housing programs for tenants and members of the tribe who met certain income guidelines.
- 3.) As a result of the alleged OHA Board members' inappropriate use of travel and per diem expenses, the Oneida Tribe of Indians initiated audit reviews of the OHA Board members' travel expenses and conduct during the time the Respondent was an OHA Board member.
- 4.) When the audits were completed, there was a finding of mismanagement and inappropriate use of funds by the OHA Board, which included the Respondent.
- 5.) Between 2005 and 2007 the Respondent wrongly received \$9,456.72 of travel and per diem funds issued to her as an OHA Board member for personal expenses not related to her service on the OHA Board. The Respondent has repaid \$7,121.33.
- 6.) Respondent incurred \$821.85 for trainings in Wisconsin for which Petitioner is seeking complete reimbursement.
- 7.) It is common knowledge that the Oneida Tribe permits reimbursement for in-state job-related trainings and travel.

The Petitioner submitted a binder which the court marked as Exhibit One (#1) which contains a Summary of accounts receivable, hotel transaction listing, GSA per diem hotel rate table, and a meal and expense per diem table outline involving the Respondent's travel and expenses incurred during Respondent's tenure as an Oneida Housing Authority Board Member from July 2005 to March 2007. The court incorporates Exhibit #1 by reference into these Findings of Fact.

III Conclusions of Law

Do the current and amended OHA lodging/hotel, travel, per-diem, car rental, meal and credit card expense policies and procedures apply to the Oneida Housing Authority Board?

Yes, the 2001 revised OHA Personnel Policies and Procedures and the 2004 Amended OHA Board of Commissioners Travel Policy both apply to the OHAB. Both of these Travel Policies were approved by the OHAB at a regular OHA Board Meeting on May 1, 2001 and October 5, 2004 respectively.

Is the Respondent obligated to reimburse the Oneida Housing Authority for travel and credit card expenses incurred by her while traveling as an OHA Board member from 2004 through 2007?

Yes, according to the Oneida Housing Authority Board of Commissioners Travel Policy in the form of an amended Resolution adopted by the OHA Board on October 5, 2004, and the June 15, 2006 OHA Board of Commissioners Travel Policy, it is clear that there was a need to establish procedures that govern travel and travel reimbursement that are fair, yet assure that the members of the OHA Board are accountable for the OHA Travel Funds. The travel audits conducted by the Oneida Tribe for the years 2005 through 2007, until the OHA Board was dissolved, clearly show the Respondent was not accountable and disregarded the Travel Policies that govern her travel expenses. As a member of the OHA Board between 2005 and 2007, the Respondent had a responsibility to the Oneida Housing Authority and the Oneida Tribe as expressed in her Oath of Office to protect the Oneida Tribe, constitution and assets of the Oneida Housing Authority.

After listening to testimony and researching evidence submitted by the Respondent and Petitioner, the Petitioner met the burden of proof by the preponderance of evidence in the form of audits and witness testimony that the Respondent wrongfully received overpayment in her role as an OHA Board member and violated the OHA Travel Reimbursement Policy while serving as an OHA Board member from 2005 to 2007. The Respondent is obligated to reimburse the Oneida Housing Authority for overpayment of travel expenses, per diem and personal charges on OHA credit cards, while serving in her capacity as an OHA Board member between 2005 and 2007. Although the OHA Board approved the Travel Procedures on October 5, 2004, the Board adopted the Federal Hotel/Travel Standards and therefore the Respondent owes the OHA all travel expenses in excess of the Federal Standard.

Was the Respondent provided Due Process?

Yes, the Respondent was presented with the Petitioner's allegations through Certified Mail from the Oneida Tribal Judicial System and a Pre-Trial Hearing was conducted on November 17, 2009. A full hearing was held on July 26-27, 2010 wherein the Respondent was further allowed to present evidence, make arguments and refute the claim of the Petitioner, Oneida Housing Authority.

Can expenses incurred by the Respondent for Local Retreats and Training be recovered by the Petitioner?

No. Petitioner's claims against Respondent for local Retreats/Training expenses should not be allowed because these retreats/trainings were conducted in-state and facilitated by an internal facilitator. It is common knowledge that local Retreats and Trainings are an ongoing practice within the Oneida Nation. Therefore, those local Retreats and Trainings of July 7-9, 2006 and September 15-17, 2006 shall be allowed and the Federal hotel and per diem rates shall apply. These two trainings totaled \$821.85 which will be subtracted from the \$2,335.39 owed to the Petitioner leaving a balance of \$1,513.54 owed.

IV Analysis

This court finds while Respondent may not have had direct knowledge that the funds she received were in excess of the OHA travel regulation rates or otherwise improper, nevertheless, there is no dispute Respondent received the money and that it was in excess of the federal standard rates as applied to the expenditure of Oneida Housing Authority funds. The Petitioner proved the Respondent wrongfully received travel allowance funds during her service as an OHA Board member from 2005 through 2007.

V Decision

The court finds the Respondent owes the Oneida Housing Authority \$1,513.54. Judgment shall be entered accordingly. In accordance with the 1991 Oneida Administrative Procedures Act, this decision can be appealed.