

Oneida Appeals Commission

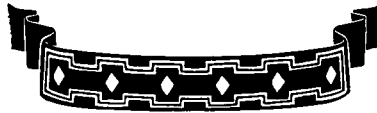
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Trial Court

Bradley W. Graham,

Petitioner

Docket No. 03-TC-314

vs.

Oneida Environmental Resource Board,

Respondent

Date: August 20, 2003

Motion To Dismiss

The Respondents have submitted a Motion To Dismiss, to the Oneida Appeals Commission Trial Court, Judicial Officers Leland Wigg-Ninham, Linda Cornelius and Winnifred Thomas presiding.

I Background

A pre-trial hearing was held on August 14, 2003, to determine if the Petitioner is entitled to a stipend/compensation from the Oneida Environmental Resource Board in regard to training he attended on February 27-28, 2003. The petitioner is further seeking punitive damages in the amount of \$2,500.00. The Respondents made a motion to dismiss on grounds that the Petitioner failed to state a claim upon which relief can be granted.

II Issues

Is the Petitioner entitled to a stipend/compensation from the Oneida Environmental Resource Board for the Judicial Development Series he attended on February 27-28, 2003?

Is the Motion To Dismiss by the Respondent appropriate?

III Analysis

Is the Petitioner entitled to a stipend/compensation from the Oneida Environmental Resource Board for the Judicial Development Series he attended on February 27-28, 2003?

The Petitioner failed to prove to this court the Judicial Development Series he attended on February 27-28, 2003 was approved by the Oneida Environmental Resource Board. The Oneida Environmental Resource Board submitted meeting minutes, dated March 20, 2003 which disapproved the Petitioner's request for a stipend.

In addition, the Respondent proved to this court through documentation that the Petitioner's request was denied because any training that is outside the scope of the Oneida Environmental Resource Training Plan must be pre-approved by the board before the training takes place, not after. The Petitioner's training was not pre-approved and the request for stipends was untimely. In addition, the Respondent proved to this court that the Judicial Development Series on February 27-28, 2003, is not required for Oneida Environmental Resource Board members Under Section 1-5 D., Membership¹.

Is the Motion To Dismiss by the Respondent appropriate?

Under the Oneida Appeals Commission Judicial Code of Rules of Civil Procedure; *Rule 14, A. 1:*

A party may move the trial court to dismiss the parties claim and the trial court shall do so with, or without prejudice as is just and proper given the stage of the proceedings.

¹ All ERB members shall, within ninety (90) days of appointment to the ERB are required to participate in the training as follows: (1.) Environmental Law, (2.) Grievance, Hearing and Appeals, (3.) Professional Ethics, (4.) In addition, all ERB members are required to review and accumulate a minimum of eight (8) hours annually in the above courses. (5.) ERB members shall be required to be familiar with Robert's Rules of Order. (6.) The ERB may, in its discretion, extend the time allowed for completion of any and all required training of a member for good cause shown.

The Respondents Motion To Dismiss is appropriate because the Petitioner failed to prove a claim upon which relief can be granted. The Petitioner cannot establish a claim because he cannot show that the training was approved by the Environmental Resources Board prior to the training. Nor was it required in the Respondent's training plan or Environmental Resources Board's by-laws. The Petitioner's requests for stipends and punitive damages are denied.

IV Decision

The motion to dismiss is granted with prejudice.