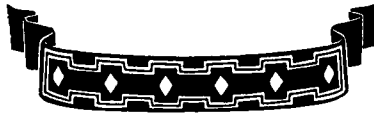


Oneida Appeals Commission

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Trial Court

Cheryle A. Schommer,
Petitioner

Docket No. 03-TC-322

vs.

Oneida Gaming Commission,
Respondent

November 24, 2003

Decision

This case has come before the Oneida Appeals Commission for hearing. Judicial Officers Stanley R. Webster, Mary Adams and Marjorie Stevens presiding

Background

Petitioner filed a complaint with the Oneida Appeals Commission trial court because the Oneida Gaming Commission refused to acknowledge Petitioner's motions for reconsideration filed on January 10, February 3, March 4, and April 17, 2003. Petitioner filed the motions for reconsideration based upon a final opinion rendered by the Oneida Appeals Commission dated May 10, 2001, which held in part that:

if the Menominee Tribal Court were to overturn the Menominee Gaming Commission, the Appellant has the opportunity to pursue this matter before the Gaming Commission.

The Menominee Tribal Court has overturned the Menominee Gaming Commission's decision. Petitioner pursued her case with the Oneida Gaming Commission, but has received no response

from the Oneida Gaming Commission. Petitioner has filed this complaint with the trial court, seeking an order for reinstatement of her gaming license and to otherwise settle procedural questions in this matter.

Respondent moved to dismiss on the argument that the appellate court conclusively affirmed the final decision of the Gaming Commission on May 10, 2001, and that the Oneida Gaming Commission cannot revisit its final decision. Respondent claims there is no mechanism under Oneida law to revisit the appellate court's final decision of May 10, 2001. Respondent further argues that if Ms. Schommer believes she is entitled to a new license, or that she should be employed by the casino, she has a right to apply for a license after applying for a job with the Casino.

Petitioner and Respondent had fifteen days to brief the issue of jurisdiction and whether this case belongs before the trial or appellate court. A hearing on issue of jurisdiction was scheduled and held on November 6, 2003 at 9:00 AM.

II Issue

Does the trial court have jurisdiction to hear a gaming license dispute in the first instance?

III Analysis

This case presents a question of first instance. In the origins of the case, this was the first time an appeal had been heard wherein the Oneida Gaming Commission had based its revocation of a license upon the findings of a Gaming Commission from another Tribe. The final decision in 2001 presented Petitioner an opportunity to raise the issue of whether her license should be reinstated in the event that the Menominee Trial Court reversed the decision of the Menominee Gaming Commission. That event has now occurred.

The appellate court in the original case did not hold that Petitioner is entitled to reinstatement of her gaming license, depending on the outcome of Petitioner's case in Menominee Court. The

appellate court held that the question of what to do in that event remains open. This was the first instance before the Appeals Commission of the Oneida Gaming Commission issuing a decision based upon the findings of another Tribe's gaming commission. The question of what to decide or how that decision would be affected by reversal with the other gaming commission was unresolved, and still needs to be answered.

The Oneida Appeals Commission, as the functioning judiciary of the Oneida Tribe, fulfills a role as a trial court and appellate court. As such, it has original jurisdiction over cases and controversies which do not have a designated hearing body. As an appellate court, the Appeals Commission has appellate jurisdiction over all original hearing bodies throughout the Tribe, including the Appeals Commission trial court.

The original hearing body for gaming license cases is the Oneida Gaming Commission. As a regulatory and licensing body, it has broad discretion and must consider a wide variety of issues and conduct when determining whether an applicant is eligible for a gaming license. The Gaming Commission served this function when the case first arose.

However, the Gaming Commission's position in this case is not persuasive to this court. The petitioner filed four separate letters seeking reconsideration with the respondent after the Menominee court reversed the ban against the petitioner in the Menominee casino. There is no record of any response to any of these letters. Regardless of the authority retained by the Gaming Commission, that authority does not include the power to ignore a petition.

According to the Oneida Administrative Procedures Act and the Oneida Comprehensive Gaming Ordinance, individuals who have lost their license for one reason or another can appeal the loss of their license before an administrative hearing body. In other words an individual has an opportunity to have their grievance redressed. Since gaming licenses are overseen by the Oneida Gaming Commission, the Oneida Gaming Commission is obligated to conduct a hearing where the loss of a gaming license has been or is being contested. The Oneida Gaming Commission is

not above the law, it must comply with the law. Here an individual is contesting the loss of a gaming license and is entitled to a fair and impartial hearing before the Oneida Gaming Commission hearing body. If the Oneida Gaming Commission finds it cannot provide a fair and impartial hearing of this matter, the Oneida Gaming Commission needs to put this on record and order a change of venue. But the Oneida Gaming Commission is an administrative body and as such, it must respond to contested cases involving gaming licenses. The Oneida Gaming Commission does not have the luxury to simply turn its head and ignore an individual's request for a hearing. It is an agency of the Oneida Government and the government is not allowed to step on the rights of individuals. As an agency of the government, the Oneida Gaming Commission is obliged to allow the individual an opportunity to have their grievance redressed in a fair and impartial manner.

The Gaming Commission has argued that it has provided this forum to the petitioner when the case began. In a sense, this is correct. But fulfilling that role in the original instance does not alleviate the responsibility to formally consider a request for a license. This is not a case, as argued by the respondent, that could open a flood gate of reconsideration requests. It is a specific set of circumstances that has not occurred before and is unlikely to occur in the future with any frequency. The Gaming Commission is not under any obligation to issue a gaming license to the petitioner. It is, however, under an obligation to respond in an impartial and appropriate manner to the petitioner's request.


If granted a return of her original license, the petitioner may seek a redress of possible back pay and reinstatement with the Personnel Commission. Other possible damages may be sought through the Oneida Appeals Commission trial court.

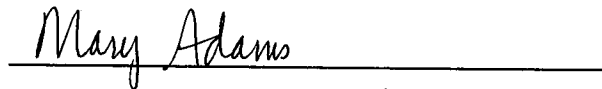
IV Decision

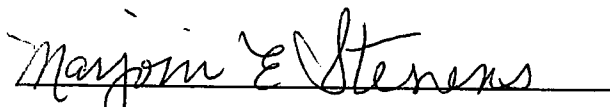
This matter is remanded to the Oneida Gaming Commission. The Gaming Commission must formally review the Petitioner's request in light of the decision by the Menominee Court to determine whether reinstatement of the Petitioner's gaming license is warranted.

If the Gaming Commission grants the Petitioner's reconsideration, the Petitioner may seek reinstatement, back pay, and/or other remedies through the Personnel Commission and the Appeals Commission trial court.

By the authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A of the General Tribal Council it is so held on this 24th day of November 2003, in the matter of Cheryle A. Schommer vs. Oneida Gaming Commission. Docket No. 03-TC-322.


Stanley R. Webster, Lead Judicial Officer


Mary Adams, Judicial Officer


Marjorie Stevens, Judicial Officer