

Oneida Appeals Commission

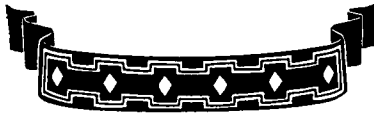
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Trial Court

Dan Hawk,

Petitioner

Docket No. 03-TC-332

v.

Wisconsin Office of Commissioner of Insurance,

Oneida Environmental Department,

Respondents

Date: November 10, 2003

Final Decision

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Mary Adams, Janice McLester, and Leland Wigg-Ninham, presiding.

I Background

The Petitioner, Dan Hawk, filed a complaint against the Respondents, Wisconsin Office of Commissioner of Insurance (OCI) and the Oneida Environmental Department (OED). The claim against OED is for preventing a land development project to proceed. The Petitioner alleges that the Respondent, OED, owes him original losses of \$36,180.78, plus \$121.05 per day as of March 13, 2000. The Petitioner has included OCI in an attempt to offset an order from OCI to repay Oneida Farms over \$22,000.00 with premiums. Additionally, OCI revoked the Petitioner's insurance license and ordered a \$10,000.00 forfeiture.

The Petitioner claims that he planned to build a mini-mall on leased tribal land. The Petitioner claims several prospective tenant contracts were negotiated. The Petitioner alleges that a

suspicious pipe was found on leased tribal land in November of 1999, which caused the development of the mini-mall to cease. The Petitioner alleges that the Oneida Environmental Department is responsible for the loss of revenue due to their call to cease development. The Petitioner alleges the Oneida Environmental Department owes \$121.05 per day (as of March 13, 2000), plus original losses of \$36,180.78 in penalties, interest and other charges as deemed appropriate by the Oneida Appeals Commission. The Petitioner requests that the Oneida Appeals Commission determine the money owed by the Respondent, Oneida Environmental Department, and have that amount applied to the Oneida Nation Farms (approximately \$22,000.00) debt.

A hearing was held on October 9, 2003. The Petitioner requested fifteen (15) days to respond to both of the Respondents' Motion to Dismiss briefs. This was granted and the court reconvened on October 30, 2003.

II Issues

A hearing was held on October 30, 2003 at 1:30 pm to address the following issues:

- (1) The Motions to Dismiss, to include Tribal Sovereignty, State Sovereignty; and
- (2) Why is the Wisconsin Office of Commissioner of Insurance an appropriate party to the case.

III Analysis

The case, In the Matter of Daniel D. Hawk, case No. 02-C28156 (6/11/03), involving the Office of the Commissioner of Insurance (OCI), was adjudicated in the State of Wisconsin court system. As a result of the hearing, the Respondent, Daniel D. Hawk, was ordered to pay the sum of \$22,585.37 to the Oneida Nation Farms for crop insurance, along with other charges. The Petitioner in this case, claims the Oneida Environmental Department owes him a greater debt. The Petitioner, Daniel D. Hawk, requests payment from the Oneida Environmental Department prior to his payment to the Oneida Nation Farms.

The Respondent, OCI, claims the Oneida Appeals Commission lacks subject-matter over the

Petitioner's claims against OCI, and that the Oneida Appeals Commission lacks personal jurisdiction over OCI. Respondent, OCI, claims the Petitioner held a state issued insurance agent license. Respondent, OCI, claims that as a government agency of the State of Wisconsin, under article IV, §27 of the Wisconsin Constitution, OCI possesses sovereign immunity from suit. The Respondent claims the Oneida Appeals Commission lacks subject matter over state officials for performing their duties under state law. Wisconsin has authority to regulate its license holders. The court affirms the state's sovereign immunity in conducting its actions. Therefore, Commissioner of Insurance is hereby dismissed as a party to this case.

The Respondent, Oneida Environmental Department, claim they issued a Finding of No Significant Impact (FONSI) on June 4, 1999, and that the pipe did not change the status of the FONSI. The Respondent denies that they ordered construction or demolition to cease as a result of the pipe found on November 2, 1999. In addition, the Oneida Environmental Department asserts sovereign immunity.

The Motion to Dismiss due to tribal sovereign immunity is granted. The Oneida Environmental Department, as an entity of the Oneida Tribe, is covered under the Tribe's sovereign immunity from suit. The Petitioner failed to provide documentation that shows the Oneida Environmental Department expressly waived its sovereign immunity, without such waiver the Petitioner can not sue the Tribe. The Petitioner fails to provide a law, ordinance or policy that was violated by the Oneida Environmental Department or that the Oneida Environmental Department acted outside its scope of duties. The Oneida Environmental Department is found immune from suit. Although the court can sympathize with the Petitioner's frustrated attempts to develop his mini-mall project on tribal lease land, that does not change the Petitioner's obligation to satisfy his debt to the Oneida Nation Farms and other fines and penalties.

IV Decision

The Petitioner was licensed through the state of Wisconsin. The Petitioner's case was adjudicated in the state of Wisconsin and therefore must remain in the state of Wisconsin. The

Oneida Environmental Department is covered under the Tribe's sovereign immunity clause. It is for the reasons stated above, that this case is hereby dismissed.