

Oneida Appeals Commission

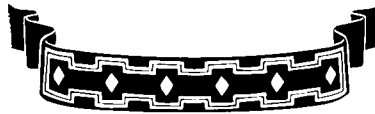
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Trial Court

Amelia Cornelius,
Petitioner

Docket No. 05-TC-136

vs.

Oneida Business Committee
Respondent

Date: November 21, 2005

Motion to Dismiss

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers Janice L. McLester, Anita Barber and Gerald Cornelius, presiding.

I Background

On September 30, 2005, Petitioner, Amelia Cornelius, filed a Statement of Relief against the Respondent, Oneida Business Committee, stemming from the January 23, 2001 Appellate Court decision, *Docket No. 00-AC-013, Amelia Cornelius vs. Oneida Gaming Commission*. In it's decision, the Appellate Court reversed the Oneida Gaming Commission's suspension of Ms. Cornelius' Primary Management License and a reinstatement of Ms. Cornelius' Primary Management License. Ms. Cornelius did include requested remedies of reinstatement with back pay, although no arguments were presented on these remedies. The appropriate party to respond to the issue of reinstatement, the Oneida Business Committee, was not named as a party to this case. The decision also indicated that Ms. Cornelius "is eligible to negotiate a settlement with the Oneida Business Committee, but this court will not order reinstatement at this time." Ms.

Cornelius is requesting confirmation of back pay based on her three year Oneida Nation Gaming General Manager Employment Agreement effective April 30, 1999.

On October 5, 2005, Ms. Cornelius entered an Amendment to Original Complaint to include failure of investigation and due process in the suspension of her gaming license and her Employment Agreement, and requests that her position or status be restored as of October 1, 1999, the date the Oneida Tribal Chair terminated her Employment Agreement, and reinstatement of a comparable status as of that date for purposes of negotiating a settlement with the Oneida Business Committee.

On October 28, 2005, Respondent, Oneida Business Committee, entered a Motion to Dismiss stating they are protected by sovereign immunity from the claims presented by Ms. Cornelius. In addition, their position is that Ms. Cornelius has failed to establish a right to relief and has failed to prove a claim.

II Issues

Is Respondent's Motion to Dismiss proper?

III Analysis

Is Respondent's Motion to Dismiss proper?

Yes, the Motion to Dismiss is proper. Ms. Cornelius has failed to "establish a right to relief" based on Oneida Appeals Commission Rules of Civil Procedure, Rule 14, Dismissal of Actions. Rule 14(B)(4) states: *"Involuntary Dismissal: A party against whom a claim has been made may move the trial court to dismiss the claim of the adverse party upon any of the following grounds, to include but not limited to: 4) Failure of the adverse party to establish a right to relief based on the facts and law presented."*

Ms. Cornelius' Primary Management Gaming License was suspended on September 20, 1999. Based on this suspension and compliance with Ms. Cornelius' Employment Agreement, the Oneida Business Committee terminated her Employment Agreement on October 1, 1999. Ms. Cornelius had initially challenged this termination through the Oneida Personnel Commission. However at the hearing of December 6, 1999, Ms. Cornelius acknowledged the termination of her Employment Agreement was in order based on the suspension of her Primary Gaming License and requested that her case be dismissed. Ms. Cornelius did not appeal the Oneida Personnel Commission dismissal and is now well beyond the time lines outlined in the grievance process.

Oneida Appeals Commission, Appellate Court decision of October 22, 2001 dismissed Ms. Cornelius' Motion to Implead the Oneida Business Committee to negotiate a settlement, stating she had no standing. The Oneida Business Committee had no involvement with the Oneida Gaming Commission's suspension of Ms. Cornelius' Primary Gaming License, nor was the Oneida Business Committee a party in this matter. On May 7, 2002, the Oneida Appeals Commission Appellate Court again reaffirmed this decision on a Motion for Reconsideration.

IV Decision

Respondent's Motion for Dismissal is granted. This case is dismissed with prejudice.