
Appellate Court

Linda Dallas - Appellant

Docket No. 03-AC-015

vs.

Oneida Gaming Commission - Respondent

and

Rochelle Powless - Appellant

Docket No. 03-AC-016

vs.

Oneida Gaming Commission - Respondent

June 20, 2003

Decision

This case has come before the Oneida Appeals Commission Appellate court, Judicial Officers Leland Wigg-Ninham, Janice McLester, Winnifred Thomas, Mark Waukau, and Stanley R. Webster presiding.

I Background

Appellants Dallas and Powless are appealing an April 3, 2003 decision by the Oneida Gaming Commission to remove the Appellants as Commissioners from the Oneida Gaming Commission. Motions of Opposition to the Removal Resolution submitted by the Respondent were submitted separately and hearings scheduled for the Appellants at separate times. The hearing for Appellant Dallas occurred on June 19, 2003. In attendance was Appellant Powless. In addition, both Appellants are represented by the same counsel.

II Issues

Was there a removal hearing conducted in accordance with Article IV of the Oneida Removal Law and the Oneida Gaming Commission's Internal Policies and Procedures For Hearings?

III Analysis

This Appellate Court asked each party if there was a hearing conducted in regard to this matter. Each party responded that there was not a hearing conducted.

The purpose of the Internal Complaint Procedure of the Oneida Gaming Commission is to "provide the Oneida Gaming Commissioners the opportunity to file concerns and complaints in an orderly manner, which offers appropriate due process" The options afforded to Commissioners who have a concern or complaint is to have a hearing or participate in a mediation process. Both parties to the case stipulated no hearing took place in this matter.

The Oneida Appeals Commission - Appellate Court has the authority to remand any matter and order a new trial/hearing on any issue brought before it which is an appeal from a judgment or order. (Rules of Appellate Procedure - Rule 19(A)(2)). In these cases, there was no hearing decision to appeal, therefore this appellate court will not assert jurisdiction over the matter at this

time.

The Oneida Nation Removal Law requires that a removal hearing be conducted by a subcommittee of the Oneida Appeals Commission (#BC-1-30-96-B, Article VI, Removal, 4-1). The Oneida Gaming Commission did not follow the necessary procedure of an original hearing body as required by Oneida law and the Respondent's internal policies. The Oneida Gaming Commission also did not allow the petitioner due process. However, remanding the case to the Respondent would create a conflict of interest since the Oneida Gaming Commission has already concluded that the Appellant's actions warrant removal. Therefore, due to the unique circumstances of this case, it will be transferred to an Oneida Appeals Commission trial court.

Appellant Powless was present, with counsel, and has presented essentially identical arguments in brief. In addition, the appellate court in this case is identical to the one assigned to Appellant Powless's case. The question of joinder was raised and discussed and all parties agreed to join the matters at the trial level.

IV Decision

Because a hearing was not conducted in the removal of either Appellant, this case is being ordered to the Oneida Appeals Commission trial court for a hearing to be scheduled within 30 days of June 19, 2003. This case will also be assigned a new Docket Number by the Clerk of Courts and if necessary, the Clerk will notify the parties of any scheduling changes. The appellate cases for both Appellants are hereby dismissed upon transfer of jurisdiction to the trial court level.