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**Appellate Court**

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Ed Delgado,

Appellant

Docket No. 03-AC-030

vs.

Oneida Election Board,

Respondent

Date: March 3, 2004

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**Remand Order**

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This case has come before the Oneida Appeals Commission, Appellate Court. Judicial Officers, Mary Adams, Anthony Benson, Pearl House, Gary Metoxen and Stanley R. Webster presiding.

**I. Background**

The Appellant, Ed Delgado, is appealing a decision by the Oneida Appeals Commission Trial Court, dated November 5, 2003. The Appellant had sought an order which would permit him to take an elected seat on the Oneida Appeals Commission. There are eleven positions on the Appeals Commission. All eleven positions were up for election in July of 2003. The Appellant was ranked twelve in terms of votes received. After the July election, and before taking an oath of office or assuming duties as an Appeals Commissioner, Gary Jordan, who had been elected in July, declined to accept his seat. The Appellant filed a complaint, seeking to prevent a special election to fill this open seat and which would declare the seat his, as the runner up in the regular election.

The Trial Court ruled in favor of the Respondent, finding that Mr. Jordan's action resulted in a vacancy in the Appeals Commission, requiring a special election to fill the open seat. That special election is scheduled to occur on March 6, 2004.

The Trial Court found that past practice of the Appeals Commission as a body, and the Election Board as monitor of elections, has been to hold a special election when, after the Final Report for any given election has been submitted and certified, someone certified as the winner in the election then does not take office.

**II. Issues**

Did the Trial Court erroneously conclude that a vacancy exists within the Appeals Commission, requiring a special election to fill that vacancy?

**III. Analysis**

After a review of the positions of the parties, it is the decision of this Court to remand this case to the Trial Court. There were several issues raised by the parties in this case. One was the definition of "vacancy" under the terms of the Comprehensive Policy on Boards, Committees, and Commissions. Also considered were definitions of "vacancy" under Black's Law

Dictionary, and the Oneida Election Law.

Transcripts of the hearing before the Trial Court show that special focus was paid to the past practice of the Respondent, as well as the Appeals Commission's past actions when someone elected to the Appeals Commission does not take office. However, while the Trial Court decision rests upon the past practices, it makes no mention of the Comprehensive Policy. It is impossible for this Court to determine whether the Trial Court found that the Comprehensive Policy applies in this case, why or why not it applies, and how it applies if it does.

The Appellant argues that this failure is reversible error. This Court disagrees. The Trial Court decision does rest upon principles argued by the parties, but the decision does not distinguish or apply relevant laws and issues raised by the parties. This Court cannot effectively determine that the Trial Court's analysis of the Comprehensive Policy is erroneous because there is no such analysis present. The decision rests on other grounds, but does not explain why these grounds take priority over the text of some other Oneida law, namely this Comprehensive Policy.

The existing laws do not clearly cover this type of factual scenario, and while the Trial Court relies upon past practices, it does not establish how past practices which have never been challenged, as they are now, should be followed or applied in the context of existing laws that are relevant to the case at hand. An order for a remand is appropriate when the Appellate Court considers the decision of the Trial Court to be incomplete in some vital way. Such is the case here. The decision of the Trial Court may not be clearly erroneous, but it is not possible to reach that conclusion at this time because the Trial Court has not analyzed all applicable laws.

#### **IV. Decision**

This case is remanded to the Trial Court to consider the application of the Comprehensive Policy on Boards, Committees and Commissions to the factual circumstances of this case. The Trial Court should reconsider its decision and give detailed analysis as to how, if at all, the Comprehensive Policy applies.

## **Dissenting Opinion**

Judicial Officers Mary Adams and Pearl House respectfully dissent from the majority opinion. The facts of this case are well established. The Appellant received the twelfth highest number of votes in an election for which there were eleven open seats. After the election results were certified, but before the eleven elected officials took their oaths of office, one person declined his seat. In every past instance in which this has happened for the Appeals Commission, the Appeals Commission has requested and received a special election to fill the now open seat.

While it may seem incomplete to the majority, we find that the Trial Court's decision rests upon a solid legal foundation. The Appellant's arguments do not establish the findings of the Trial Court were erroneous. The majority decision rests upon the Trial Court's failure to analyze the Comprehensive Policy on Boards, Committees and Commissions. However, it is highly unlikely that a remand to analyze that law will result in a different conclusion.

The Trial Court reviewed past practices of the Appeals Commission and the Election Board in similar circumstances. These past practices are not shown to violate any existing Oneida laws. The existing laws do not mandate that a runner up be given an open seat under these circumstances, so it is reasonable to rely upon past practices in similar circumstances. As the Respondent correctly points out in its Brief, the Comprehensive Policy definition of "vacancy" does not encompass every way in which a vacancy might occur. The definition does not include death as a reason for a vacancy, yet death would obviously create such a situation. The Appellant's reliance upon the Comprehensive Policy is therefore unpersuasive. No body of law can envision and address every possible situation that may arise. That is why we follow principles of reasonable conduct under similar circumstances. The actions of the Trial Court in this case were reasonable.

Finally, as a practical matter, there is already a special election scheduled to fill this open position on the Appeals Commission. The Appellant is a candidate for this election and has every opportunity to win the very position on the Appeals Commission that he now seeks through this judicial forum. A remand back to the Trial Court could result in even more litigation, either through an attempt to stay the pending election, or to contest the results if the Appellant is not the winner on March 6, 2004. A remand is unlikely to change the final decision of the Trial Court and will only serve to further complicate a matter that has been settled through reasonable application of existing rules and facts.