



INTERIOR BOARD OF INDIAN APPEALS

Martha Billings, d.b.a. Galena Commercial Co. v. Acting Juneau Area Director,  
Bureau of Indian Affairs

17 IBIA 158 (06/29/1989)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

MARTHA BILLINGS, d.b.a. GALENA COMMERCIAL CO.

v.

ACTING JUNEAU AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-25-A

Decided June 29, 1989

Appeal from a January 31, 1989, decision of the Acting Juneau Area Director, Bureau of Indian Affairs, denying an application for a grant under the Indian Business Development Program.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

To be eligible to receive a grant under the Indian Business Development Program, the applicant must not, in the opinion of the Secretary or his delegate, be able to obtain adequate financing from other sources.

APPEARANCES: Martha Billings, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On March 21, 1989, this appeal was forwarded to the Board of Indian Appeals (Board) by the Washington, D.C., Office of the Bureau of Indian Affairs (BIA). Appellant Martha Billings, d.b.a. Galena Commercial Company, seeks review of a January 31, 1989, decision issued by the Acting Juneau Area Director, BIA (appellee), denying her request for a grant under the Indian Business Development Program (IBDP). The appeal was received by the Washington, D.C., BIA office on March 17, 1989, after new appeals regulations for the Board and BIA took effect on March 13, 1989. <sup>1/</sup> The appeal was forwarded to the Board for consideration in accordance with the new regulations. For the reasons discussed below, the Board affirms appellee's decision.

### Background

On December 3, 1988, appellant applied for an IBDP grant in the amount of \$37,500. Appellant stated that the grant would be used to purchase inventory for a proposed expansion of a general store and delicatessen

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<sup>1/</sup> See 54 FR 6478 and 6483 (Feb. 10, 1989).

located in the town of Galena, Alaska. She indicated that an additional \$145,000 for property acquisition was being obtained from a Community Enterprise Development Corporation loan.

On January 3 and 18, 1989, additional information relating to appellant's financial status was provided pursuant to a request from BIA. BIA personnel met with appellant's certified public accountant on January 26, 1989. Following review of all of the information provided, on January 31, 1989, appellee disapproved appellant's application. The disapproval letter stated at page 1:

It has been determined that you have the ability to finance your deficit capital funding requirements through sources other than the BIA's Indian Business Development Grant Program. According to Section 402(b) of Public Law 93-262 [25 U.S.C. § 1522(b) (1982) 2/], "A grant may be made only to an applicant who in the opinion of the Juneau Area Director (delegated authority) is unable to obtain adequate funding for its economic enterprise from other sources . . ."

As an alternative for funding for your project's start-up-inventory requirements, please contact Mr. Charles Katasse of our credit office \* \* \*. Mr. Katasse will explain the BIA's loan guaranty program as the source to meet your inventory funding needs with certain terms and conditions. Enclosed for your reference is information about the BIA's loan guaranty program.

On March 1, 1989, appellant filed an additional statement addressing BIA's concerns about her application. It also appears that at this time she furnished BIA with letters received in November 1988 from the Denali State Bank, Fairbanks, and the Alliance Bank, Anchorage, declining loan requests. Appellee treated appellant's submissions as both a request for reconsideration and an appeal, responding by letter dated March 9, 1989. Appellee's letter stated at page 1:

For your information we have reexamined our determination in light of the additional information submitted by your certified public accountant. Regrettably, we found no basis to change our original determination denying your funding request. Therefore, your appeal is being forwarded to our Deputy Assistant Secretary for a determination.

Because we are confident that our review and determination was proper and because we recognize how critical timing is, we urge you to seriously consider following through on the loan guaranty option we suggested to you on January 31, 1989 \* \* \*. For your clarification and consideration the BIA's loan guaranty program can make available an interest subsidy. The subsidy could

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2/ All further references to the United States Code are to the 1982 edition.

give you a loan interest rate below the prime rate. For example, currently the subsidy could provide an 8.6 percent interest charge compared to the current prime rate of 11.5 percent.

The appeal was forwarded to the Board when it was received in the Washington, D.C., BIA office after the new appeals regulations took effect. Only appellant filed a statement on appeal.

### Discussion and Conclusions

The IBDP is authorized by Title IV of the Indian Financing Act of 1974, 88 Stat. 82, 25 U.S.C. §§ 1521-1524. Section 1521 states that the purpose of the IBDP "is to stimulate and increase Indian entrepreneurship and employment by providing equity capital through nonreimbursable grants made by the Secretary of the Interior to Indians and Indian tribes to establish and expand profit-making Indian-owned economic enterprises on or near reservations." Section 1522(b) provides that "[a] grant may be made only to an applicant who, in the opinion of the Secretary, is unable to obtain adequate financing for its economic enterprise from other sources."

Regulations implementing the IBDP are found in 25 CFR Part 286. Section 286.17(a) states that

a grant may be made only when in the opinion of the Commissioner the applicant is unable to obtain adequate financing from other sources such as banks, Farmers Home Administration, Production Credit Associations, Federal Land Banks and, is also unable to obtain a guaranteed or insured loan under Title II of the Indian Financing Act of 1974 (88 Stat. 77).

[1] A major limitation on the approval of an IBDP grant, found in both the statute and the regulations, is that the necessary funds must not be available to the applicant through other sources, primarily either regular commercial credit organizations or government loan programs. The reason for this limitation is obvious: a person who qualifies for a loan should be required to exhaust loan sources before being entitled to a nonreimbursable grant so that grant funds can be reserved for those persons who could not otherwise obtain the capital needed to begin or expand a business enterprise.

The record indicates that appellant applied for the IBDP grant in December 1988, after receiving the declination letters from the Denali State Bank and the Alliance Bank. The letter from the Denali State Bank indicates that the requested loan was in the amount of \$175,000. The letter from the Alliance Bank does not show the amount of the loan appellant requested from it. The record further indicates that not all of appellant's financial information was completed when she requested loans from the two banks.

Appellee's review of appellant's financial information revealed that she was in a strong financial posture and could afford to assume more debt. It further suggested the possibility that the banks might have been reluctant to make appellant a loan because the financial information they had was

incomplete. Appellee's considered and informed opinion was that appellant could probably obtain a commercial loan in the amount of \$37,500, especially if BIA were to offer the commercial lender a loan guaranty. Accordingly, appellee offered a loan guaranty as an alternative to the disapproved IBDP grant.

The Board has reviewed the documents submitted by appellant and appellee's analysis of those documents. It finds that appellee's conclusion that appellant should be able to obtain a commercial loan through BIA's loan guaranty program is fully supported by the evidence.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 31, 1989, decision of the Acting Juneau Area Director is affirmed. This decision in no way precludes appellant and appellee from continuing to work together to obtain the funds necessary for appellant's expansion project.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge