



INTERIOR BOARD OF INDIAN APPEALS

Home Respiratory Services and The Will Rogers Bank v. Muskogee Area Director,
Bureau of Indian Affairs

18 IBIA 299 (05/24/1990)



United States Department of the Interior

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

HOME RESPIRATORY SERVICES, INC. and
THE WILL ROGERS BANK & TRUST CO.

v.

MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-2-A

Decided May 24, 1990

Appeal from a denial of a loan guaranty.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters:
Financial Assistance

Decisions concerning whether a request for a loan guaranty under the Indian Loan Guaranty and Insurance Program should be approved are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Indians: Financial Matters: Financial Assistance

In determining whether or not to approve a loan guaranty, the Bureau of Indian Affairs should consider evidence that an Indian applicant has been denied a loan by one or more lending institutions. The mere fact that an application has been denied, however, is not, in and of itself, proof that a loan guaranty should have been granted.

3. Administrative Procedure: Burden of Proof--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions

When a challenge is raised to a discretionary decision issued by a Bureau of Indian Affairs official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

APPEARANCES: Verna B. Lamb, President, Home Respiratory Services, Inc. , and Mark M. Hart, Vice-President, The Will Rogers Bank & Trust Co., pro sese; Dennis Springwater, Acting Muskogee Area Director, for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants Home Respiratory Services, Inc. (HRS), and The Will Rogers Bank & Trust Co. (bank) seek review of an August 9, 1989, decision of the Muskogee Area Director, Bureau of Indian Affairs (BIA; appellee), denying the bank's request for a loan guaranty under Title II of the Indian Financing Act of 1974, 25 U.S.C. §§ 1481-1498 (1982). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

On June 30, 1989, the bank forwarded to appellee information supporting a request for a loan guaranty in the amount of \$150,000 for the purpose of purchasing equipment and providing working capital for HRS's business of renting, selling, and servicing home oxygen equipment and supplies. Verna Lamb and Carol Aldridge, co-owners of HRS, are members of the Osage Tribe. After reviewing the request package, on August 9, 1989, appellee informed the bank that:

25 CFR 103.16 states: "If information in an application indicates it may be possible for the applicant to obtain the loan without a guaranty . . . a loan may not be guaranteed." The financial statements of the principals involved, Mark R. and Carol L. Aldridge and Thomas G. and Verna B. Lamb, reflect these individuals have established credit, and should be able to meet future needs.

Based upon the above information, we are disapproving your Loan Guaranty request in behalf of Home Respiratory Services, Inc. [Omission in original.]

The Board received appellants' notice of appeal from this decision on September 12, 1989. On appeal, appellants submitted evidence that during the year preceding the loan guaranty request, HRS applied for and was denied loans ranging from \$40,000 to \$150,000 from seven different banks in the Oklahoma City area, including appellant bank. Appellants alleged that each of the seven banks was offered the personal guarantee of the shareholders and officers of HRS and the security pledge of any of HRS' assets that were not previously pledged. In support of these statements, appellants submitted letters from four of the banks that had denied HRS' loan requests.

Appellants further stated that, during the same time period, four financing and leasing companies verbally denied HRS a credit line of \$25,000 with the personal guarantee of HRS' shareholders and officers. They then set out the credit HRS had been able to obtain and listed other liabilities.

Because the information presented on appeal was not before appellee when he made his decision, by order dated March 20, 1990, the Board stayed

further proceedings before it, pending consideration by appellee of the additional information. Appellee reconsidered his decision and, by memorandum dated April 16, 1990, notified the Board that:

The Order Staying Proceedings, Docket No. IBIA 90-2-A, dated March 20, 1990 and the opening brief of the appellants have been received and reviewed by this office. This brief did provide information not contained in the original application, on which our decision was based.

However, our decision was based on the fact the applicants have been successful in obtaining financing previously needed. This is evidenced by their Balance sheet (Exhibit XII b), reflecting a net worth of \$620,053, with total liabilities of \$909,609.

Therefore, our decision of disapproval for the reasons cited in our letter of August 9, 1989, remains the same, as we feel the applicants' net worth reflects a positive equity position.

Discussion and Conclusions

[1] The Board has previously held that decisions concerning whether or not a particular request for a loan guaranty should be approved are committed to the discretion of BIA. In reviewing such decisions, it is not the Board's role to substitute its judgment for that of BIA. Instead, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. McCoy Industries, Inc. v. Eastern Area Director, 18 IBIA 234 (1990). Cf. La Jolla Band of Mission Indians v. Acting Sacramento Area Director, 18 IBIA 263 (1990); Sonney Thornburg v. Acting Anadarko Area Director, 18 IBIA 239 (1990).

In this appeal, appellants contend that appellee erred in determining that they could obtain a loan without a guaranty because of his misinterpretation of HRS' financial statements, misjudgment of the lending environment in Oklahoma, and lack of knowledge that HRS had previously been turned down for a loan by numerous financial institutions. The Board requested appellee to consider the additional information which appellants presented on appeal through its March 20, 1990, order. Appellant replied on April 16, 1990, that his decision remained the same after such reconsideration.

[2] In determining whether or not to approve a loan guaranty, BIA should consider evidence that an Indian applicant has been denied a loan by one or more lending institutions. See 25 CFR 103.16. 1/ The mere fact that

1/ Section 103.16 provides in pertinent part:

"If the information in an application for a guaranteed, or insured loan which requires the Commissioner's approval, indicates that it may be possible for the applicant to obtain the loan without guaranty or insurance, the Commissioner may require the applicant to furnish letters from two

an application has been denied by such lending institutions, however, is not, in and of itself, proof that a loan guaranty should have been approved. BIA retains discretion to consider such denials in light of the applicant's total financial picture and other relevant factors.

[3] In cases arising under 25 CFR Chapter I, the appellant bears the burden of showing that the decision appealed from was erroneous. When the decision being appealed involves the exercise of discretion, the appellant thus bears the burden of proving that BIA's discretion was not properly exercised. Although appellants clearly disagree with appellee's conclusion here, they have not made such a showing.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Muskogee Area Director's August 9, 1989, decision, as supplemented on April 16, 1990, is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

fn. 1 (continued)
customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant on reasonable terms and conditions without guaranty or insurance. If a lender will make a loan to an applicant without guaranty or insurance, a loan will not be guaranteed or insured for the applicant."