



INTERIOR BOARD OF INDIAN APPEALS

Leroy Ames v. Acting Billings Area Director, Bureau of Indian Affairs

20 IBIA 246 (09/19/1991)



United States Department of the Interior

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

LEROY AMES, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 91-31-A
ACTING BILLINGS AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : September 19, 1991

Appellant Leroy Ames seeks review of a November 16, 1990, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director), denying his application for a U.S. Direct Loan in the amount of \$310,420. Appellant stated that he intended to use the loan to pay off debts to the Farmers Home Administration, restock his ranch, purchase farm equipment, and erect or improve livestock buildings.

The Area Director's decision states at pages 1-2:

The real estate is in danger of foreclosure by two lenders holding first and second position real estate mortgages. The original loan from Federal Land Bank in 1972 was \$43,700 and has now increased to \$68,000. The ranch has no livestock and the land has not been farmed or properly maintained in recent years.

The farm machinery listed with a value of \$67,250 is an inflated amount, since much of this equipment is not in working condition. This equipment for loan collateral would be of limited value and would realize only a small fraction of the value listed if liquidated by a forced sale.

The cash flow pro forma statements show total gross sales for the first year of \$106,250 and total operating expenses of \$68,794. The gross sales are overestimated and the expenses are underestimated, resulting with an unrealistic net profit for the first year of \$40,956.

The historical data on your ranching operation shows you have been unable to service debts in the past, and they are smaller amounts than the amount requested in this application. An operator cannot borrow to purchase land, livestock, farm machinery, construct buildings, and for operating expenses, and generate sufficient cash flow to service the debt.

A hog operation of the size in your proposal would require extensive management ability and modern facilities for proper year-round operation. The plan of operation or historical data

do not provide sufficient information that you have the management ability for an operation of this size. For the benefit of the borrower and the lender, this proposal should include a complete farm plan for the hog operation, the cattle operation, and the farming operation. This operation would be an extensive undertaking for any borrower and would be classified in a high risk category by the lender. A requirement of the Indian Financing Act of 1974 is that loans must show there is a reasonable prospect of repayment to qualify for approval.

We are returning the loan disapproved for the following reasons:

1. The loan does not have reasonable repayment ability with realistic projections of income and expenses.
2. Limited security in relation to the amount of the loan.
3. Past credit history and managerial ability of the applicant would involve undue risk.

The Area Director's decision is further supported by a detailed credit memorandum contained in the administrative record.

Appellant's notice of appeal indicates only that he is challenging each of the statements made in the Area Director's decision. Appellant did not file a brief in support of his appeal.

In appeals arising under 25 CFR Part 2, the appellant bears the burden of proving that the agency decision complained of was erroneous or not supported by substantial evidence. See, e.g., Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190 (1991); Hernandez v. Acting Aberdeen Area Director, 19 IBIA 162 (1991). In this case, the notice of appeal does not set forth any grounds for the appeal, and although he was informed of his right to do so, appellant did not file a brief indicating those grounds. Because he has not given any reasons for the appeal, or attempted to show the error in the Area Director's decision, appellant cannot sustain his burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 16, 1990, decision of the Acting Billings Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge