



INTERIOR BOARD OF INDIAN APPEALS

Richard R. Kirn v. Billings Area Director, Bureau of Indian Affairs

21 IBIA 53 (11/13/1991)



United States Department of the Interior

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

RUSSELL R. KIRN

v.

BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-72-A

Decided November 13, 1991

Appeal from denial of a loan modification request.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

Decisions concerning whether an application for a loan under the Indian Revolving Loan Program should be approved are committed to the discretion of the Bureau of Indian Affairs. It is not the function of the Board of Indian Appeals, in reviewing such decisions, 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.

APPEARANCES: Laura Christoffersen, Esq., Wolf Point, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Russell R. Kirn seeks review of a March 6, 1991, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying his application to modify a loan under the Indian Revolving Loan Program. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellant is an enrolled member of the Assiniboine and Sioux Tribes who operates a farming enterprise on the Fort Peck Reservation. On October 16, 1989, he was approved for loan No. CF 2188 in the amount of \$26,293, for the purpose of paying operating expenses and consolidating bills. The loan was scheduled to be repaid in three annual installments, due on December 1,

1990, December 1, 1991, and December 1, 1992. Appellant made his 1990 payment in a timely manner. 1/

Three modifications to loan No. CF 2188 were approved during 1990, increasing the loan amount by, respectively, \$3,624.08, \$20,648.84, and \$2,323.00, to cover operating expenses. Repayment under modifications 1 and 2 was due November 1, 1990. Appellant repaid modification 1 in a timely manner. He repaid modification 2 in part but, as of March 1991, he was delinquent in the amount of \$9,139.67 under that modification. Repayment under modification 3 was not due until November 1, 1991.

In June 1990, appellant was also approved for loan No. ST 22781 in the amount of \$2,000 for operating expenses. Repayment was due November 1, 1990, but was not made. The loan was still delinquent in March 1991.

In November 1990, appellant applied for a new loan in the amount of \$94,102.67, to refinance loan No. CF 2188, pay for farm equipment, and pay 1991 operating expenses. 2/ The Superintendent, Fort Peck Agency, transmitted the request to the Area Director, recommending approval, but later requested return of the application. In February 1991, appellant submitted a request to modify loan No. CF 2188 by increasing the loan amount by \$37,029.

On March 6, 1991, the Area Director denied appellant's request, stating:

Your request for modification of your present loan for an additional \$37,029 for 1991 farm operating expenses was carefully reviewed at this office. Your present unpaid debt to the Fort Peck Tribal Credit Program for \$29,970 includes several years operating loans. 3/ Operating loans should be paid-in-full at the end of each year.

Approval of additional loan funds from the Fort Peck Tribal Credit Program cannot be justified as feasible in view of your

1/ Appellant was first approved for a loan in January 1989. That loan, No. CF 2182, was made to cover operating expenses and, together with two modifications approved in April 1989, totalled \$30,000. Repayment of the entire amount was due Dec. 1, 1989. Appellant repaid it on Oct. 4, 1989, shortly before approval of loan No. CF 2188.

The Board relies for most of its information concerning appellant's loans on a Mar. 26, 1991, letter from the Loan Specialist, Fort Peck Agency, BIA, to appellant's attorney. The letter was submitted to the Board with appellant's notice of appeal.

2/ The requested amount included \$64,132 in new funds.

3/ This statement appears to be in error, or at least misleading. Although appellant still owed on his 1989 loan, repayment of the outstanding amount was not yet due. Appellant's two overdue loans both dated from 1990.

current financial status. Your outstanding debts exceed \$100,000 and are secured by limited collateral.

A major concern, at this time, is the foreclosure action by Indian Credit Corporation pending final disposition by the tribal court. A judgment in favor of the lender could close down your farming operation. Additional loan advances would involve undue risk and there would not be reasonable repayment ability with your current indebtedness. Your request for an additional \$29,970 [sic] is disapproved.

Appellant's notice of appeal from this decision was received by the Board on April 2, 1991. Only appellant filed a brief.

Discussion and Conclusions

[1] 25 U.S.C. § 1466 (1988) provides: "Loans [from the Indian Revolving Loan Fund] may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." The Board's decisions in appeals from loan denials establish that (1) BIA's decision to approve or deny a loan is discretionary; (2) the Board will not substitute its judgment for BIA's; (3) the Board's role in such cases is to ensure that BIA gave consideration to all legal prerequisites to the exercise of discretion; and (4) where there is no procedural error, and the decision and/or administrative record show how BIA reached its conclusions, the BIA decision will be affirmed. See Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190 (1991), and cases cited therein.

Appellant argues that the reasons for denial given by the Area Director are inadequate because appellant's financial situation in 1991 was no worse than it was in 1989, when loan No. CF 2188 was approved, or in 1990, when the three modifications were approved. He states that he has been in foreclosure proceedings with the Indian Credit Corporation since he first sought a loan through the Revolving Loan Program in 1989. ^{4/} Further, he contends that he has a good repayment record.

Although appellant did make prompt repayments during 1989, it clearly appears that his repayment record deteriorated in 1990, so that, by March 1991, he was delinquent in the amount of \$11,139.67, representing funds borrowed to cover 1990 operating expenses. In light of this trend in appellant's repayment performance, together with his problems with the Indian Credit Corporation, it was not unreasonable for the Area Director to conclude that appellant's circumstances were no longer such that there was a reasonable prospect of repayment.

^{4/} Appellant states that he filed suit against the Indian Credit Corporation in February 1989 and declined to make any further payments on a loan he had received from that entity. Appellant further states that the foreclosure action brought against him by the corporation was a counterclaim filed in appellant's suit.

