



INTERIOR BOARD OF INDIAN APPEALS

Ferdinand Jerome, d.b.a. Buck's Electric and Construction v.  
Acting Aberdeen Area Director, Bureau of Indian Affairs

23 IBIA 137 (01/05/1993)



# United States Department of the Interior

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

FERDINAND JEROME, d.b.a. BUCK'S	:	Order Affirming Decision
ELECTRIC AND CONSTRUCTION,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 92-156-A
	:	
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 5, 1993

This is an appeal from an April 3, 1992, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving an application for a direct loan. For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant is a member of the Turtle Mountain Chippewa Tribe. On September 5, 1991, he applied at the Turtle Mountain Agency, BIA, for a direct loan in the amount of \$27,459.15. He stated that he sought the loan for the purposes of constructing an office/shop facility, purchasing office equipment, and obtaining adequate working capital. BIA informed him that he would have to submit more information. Evidently, he submitted some additional, but still incomplete, information. On October 30, 1991, the Acting Superintendent (Superintendent) wrote to him, stating:

[W]e will still need more information before the application can be processed further. The following will still have to be submitted:

1. Submit two turndown letters from local banks which show the reason for denial of loan.
2. Show proof that IRS has been paid in full, Rolette County Register of Deeds office shows tax liens that are unpaid.
3. Rolette County Register of Deeds office shows several judgments filed against you, please address and show that these have been taken care of.
4. Please address what you will be offering for collateral, what you list as collateral basically is your equipment or inventory you need for your job. We generally do not accept this as collateral, do you have any solid collateral? You do list that you own land, the Register of Deeds office shows you have sold all the land that was in your name. We could possibly look at an assignment of contract proceeds for the loan amount.

We therefore have not acted on your application and will not until we have received the above requested information. We will be waiting to hear from you.

Appellant submitted additional information on November 7, 1991. On December 20, 1991, the Superintendent again wrote to him, noting that the two bank letters he had submitted were a year old and would need to be updated. Further, the Superintendent stated:

We also note that you have obtained financing from the First American Bank West in which you pledged all inventory, equipment and accounts receivable for collateral, this is not shown on your financial statements. Please submit an updated financial statement which shows this liability.

You will also need to address what you are offering for collateral, if you have pledged all inventory, equipment and accounts receivable for the First American Bank West, we will not be able to use this. If you are planning to use your house and land we will need an updated abstract of title to show ownership.

On January 30, 1992, the Superintendent once again wrote to appellant, requesting further information. There is no evidence in the record that appellant responded to either of the Superintendent's last two requests.

On March 4, 1992, the Superintendent informed appellant that his application had been disapproved. The Superintendent stated: "The basis for this decision is 1.) insufficient collateral and 2.) you have demonstrated the ability to obtain financing from the First American Bank West of Rugby, North Dakota in which you pledged all inventory, equipment and accounts receivable."

Appellant appealed the disapproval to the Area Director, stating: "In the loan package Attachment A is a listing of my collateral in the amount of \$57,370.00. I feel the amount of collateral is more than sufficient for the amount requested. Pertaining to item 2 the inventory, equipment and accounts receivable are not used as collateral for the loan with First American Bank West of Rugby. Collateral for that loan was our Fort Totten Contract."

On April 3, 1992, the Area Director affirmed the Superintendent's decision, stating: "We have determined that the Acting Agency Superintendent and the Credit Officer have made sound and responsible credit decisions in this matter. The Aberdeen Area Office fully supports their decision to disapprove your request." <sup>1/</sup>

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<sup>1/</sup> The Area Director issued his decision before appellant's time for filing a statement of reasons had expired. See 25 CFR 2.10. Presumably, the Area Director believed that appellant had made all the arguments he intended to make in his notice of appeal. However, unless an appellant clearly indicates that he intends to incorporate his statement of reasons in his

Appellant appealed the Area Director's decision to the Board. His notice of appeal states in its entirety:

This is a notice of Appeal. We applied for a loan through our local agency and appealed the decision to Aberdeen Area Office. The Turtle Mtn. Agency turned our company down because of a loan we received from Rugby bank. The Turtle Mtn. Agency is under the impression that our Company has sufficient borrowing power. Enclosed you will find a letter from the Rugby bank which states additional funding is denied.

If you have any questions, please feel free to contact me.

Appellant enclosed a copy of an April 13, 1992, letter from a Vice President of First American Bank West. The letter states: "[W]e are not in a position to provide any additional funding due to our previous credit experience which indicates that payments were not made on a timely basis and that your personal and business checking accounts have not been maintained properly due to the numerous overdrafts involved."

Appellant did not file a brief. 2/

It is apparent from the administrative record that, throughout the loan application process, appellant continually failed to submit complete and accurate information to BIA. Appellant's September 1991 loan application was inaccurate when he submitted it. The financial statement he included in the application had been prepared 3-1/2 months earlier and, among other things, did not show the loan from First American Bank West, presumably because appellant did not obtain the loan until after the financial statement was prepared. 3/ The financial statement also showed that appellant owned real property although, by September 1991, he evidently owned none.

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fn. 1 (continued)

notice of appeal, an Area Director should not issue a decision before the statement of reasons is due, because to do so cuts off the appellant's right to present his argument in its entirety. Cf. Cheyenne River Sioux Tribe v. Aberdeen Area Director, 23 IBIA 103 (1992).

In this case, because appellant has had an opportunity to present his arguments before the Board, the Area Director's procedural error may be deemed cured in these proceedings.

2/ Appellant did attempt to file a letter, dated July 1, 1992, in which he stated: "Since we filed this application we have been awarded more contracts. I would like them placed in our current application." Appellant did not enclose copies of any contracts, although he did enclose copies of his bids on three contracts.

Appellant failed to serve his July 1, 1992, letter on the other parties to the appeal, even after the Board explicitly ordered him to do so. The Board therefore rejected his attempted filing. The Board notes that, even if it had taken appellant's July 1 letter into consideration, it would not have reached a different result in this case.

3/ Appellant stated in an April 14, 1992, letter, enclosed with his notice of appeal, that he had obtained the loan in August 1991.

BIA asked appellant repeatedly to submit further information and specified the information needed. For the most part, appellant failed to respond. BIA was not required to repeat its requests to appellant ad infinitum. Undoubtedly, BIA's disapproval of his request was based to some extent on a lack of critical information. For this, however, appellant has no one but himself to blame.

In his appeal to the Area Director, appellant alleged that the Superintendent had incorrectly described the collateral for his loan from First American Bank West. Even then, however, appellant failed to submit any evidence--such as, for instance, a copy of the loan agreement--to refute the Superintendent's statement. In his appeal to the Area Director, appellant bore the burden of proving error in the Superintendent's decision. Likewise, he bears the burden here of proving error in the Area Director's decision. E.g., S & H Concrete Construction, Inc. v. Acting Phoenix Area Director , 20 IBIA 176 (1991). Appellant has failed to carry his burden.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's April 3, 1992, decision is affirmed.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge