



INTERIOR BOARD OF INDIAN APPEALS

Leslie K. Hammerberg, d.b.a. Dakota Travel v. Acting Portland Area Director,  
Bureau of Indian Affairs

24 IBIA 78 (06/22/1993)



# United States Department of the Interior

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

LESLIE K. HAMMERBERG,	:	Order Affirming Decision
d.b.a. DAKOTA TRAVEL,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 93-61-A
	:	
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 22, 1993

Appellant Leslie K. Hammerberg, d.b.a. Dakota Travel, seeks review of a March 12, 1993, decision issued by the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a U.S. direct loan. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Board received appellant's notice of appeal on March 29, 1993. A notice of docketing, setting forth the parties' briefing privileges was issued on April 20, 1993. On May 19, 1993, the Board received a timely statement from appellant that she would "forego the filing of an opening brief and request[ed] that her appeal be processed with reliance upon the materials in the record and the notice of appeal." On June 18, 1993, the Board received a second filing from appellant, enclosing additional information which appellant requested that the Board consider in deciding her appeal. A review of the information submitted by appellant disclosed that on April 23, 1993, while this appeal was pending before the Board, the Area Director issued a decision on reconsideration.

The Board has consistently held that once an appeal has been filed with it, BIA loses jurisdiction over the matter except to participate in the appeal as a party. The reasons for this rule were extensively discussed in Five Sandoval Indian Pueblos, Inc. v. Deputy Commissioner of Indian Affairs, 21 IBIA 17, 18-19 (1991), and will not be repeated here, except to comment that the rule is part of any orderly review process and is intended to ensure that only one forum at a time has authority to act in a matter. See also United Auburn Indian Community v. Sacramento Area Director, 24 IBIA 33, 38-39 (1993); Cherokee Nation of Oklahoma v. Muskogee Area Director, 22 IBIA 240, 244 (1992).

The Board has been very lenient in reviewing appeals brought under the Indian Financing Act, holding that it will not apply the usual rule of appellate procedure that reviewing bodies do not normally consider information and/or arguments presented for the first time on appeal. This deviation from usual procedure is intended to ensure that BIA's decisions in this area are based upon consideration of all relevant information, while keeping the

adversarial nature of the proceedings to a minimum. The Board has also suggested that BIA might consider using a preliminary determination of disapproval, rather than an appealable decision, in order to allow the applicant to respond to problems BIA finds in the application before entering into the appellate process. See, e.g., Nockey Construction, Inc. v. Portland Area Director, 22 IBIA 38 (1992); Gauthier v. Portland Area Director, 18 IBIA 303, 305-06 (1990).

The Board's leniency does not, however, negate the rule that BIA does not have jurisdiction to issue a decision in a matter once an appeal has been filed with the Board. If the parties wish to have further consideration of the application by the Area Director, the Board should be so notified so that it can take appropriate action. Any decision issued by BIA in a matter pending before the Board without express authorization from the Board is a nullity and is without any force or effect. See United Auburn.

The Area Director's March 12, 1993, decision denied appellant's application because:

1. The financials provided show that Dakota Travel has a Negative cash flow.
2. The balance sheet shows that Dakota Travel has a Negative Net Worth. A negative net worth means there are no assets to secure the loan, and the proceeds of the loan will not be used for items that would provide adequate security.
3. Due to the above, the business does not show that there is a reasonable assurance of repayment of the loan.

(Decision at 1). The Board has reviewed the administrative record and finds more than adequate support for this decision. Accordingly, the Area Director's March 12, 1993, decision is affirmed.

The Area Director's April 28, 1993, decision, made while this matter was pending before the Board, has no force or effect. Appellant may submit a new application to the Area Director with additional supporting information. However, the present posture of appellant's application is that it has been denied for the reasons stated in the Area Director's March 12, 1993, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Portland Area Director's March 12, 1993, decision is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge