



INTERIOR BOARD OF INDIAN APPEALS

Duane Traversie v. Acting Aberdeen Area Director, Bureau of Indian Affairs

27 IBIA 58 (12/05/1994)



United States Department of the Interior

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

DUANE TRAVERSIE, : Order Affirming Decision
Appellant :
 :
v. : Docket No. IBIA 94-155-A
 :
ACTING ABERDEEN AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : December 5, 1994

Appellant Duane Traversie seeks review of a June 10, 1994, decision issued by the Acting Aberdeen 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) affirm that decision.

On April 19, 1994, appellant and his wife, Carol Traversie, submitted an application for a direct loan in the amount of \$205,800. The loan was for the purpose of purchasing 2,940 acres of land, to be held in trust, on the Cheyenne River Sioux Reservation. The application stated that the price agreed upon was less than the appraised value of the land.

The application was reviewed by the Cheyenne River Sioux Tribal Credit Office. In an April 20, 1994, credit memorandum to the Superintendent, Cheyenne River Agency, BIA (Superintendent), the Tribal Credit Officer recommended that the application be approved. The memorandum noted that appellant had an outstanding direct loan in the remaining amount of \$113,937; that repayment was to be through the sale of calves and of breeding herd; that the collateral was all livestock, chattels, and the land to be purchased; and the guarantors would be appellant and his wife. The memorandum states:

Financial Analysis Comments: Strong cash flow and balance sheet. The balance sheet shows a gain of 100 cows that will come from the purchase of cattle from proceeds from a gravel sale of Richard Lamb's. I do not have a contract as yet on the gravel sale of Richard's. I understand he has the contract for highway 20 from Timber Lake to Trail City (600,000 tons at 50 cents to \$1.00).

Management/Organization: [Appellant] seems to do a good job on his ranch, but there is a lot of money borrowed here. He needs the cattle from the gravel sale to make it work right, and with less risk than outside cattle. No contract has yet been signed with the State on this gravel as yet, but there will be to my knowledge.

On April 29, 1994, the Superintendent transmitted the application package to the Area Director, with the recommendation that it be approved.

A second credit memorandum was prepared at the Area Office. The Area credit memorandum disagreed slightly with some valuations. However, it also stated:

Financial Analysis: The cash flow is 100% contingent upon a pledge by Mr. Richard Lamb to [appellant]. For some reason in the distant past [appellant did] a lot of work for Mr. Lamb and they feel 100 head of cattle would compensate in full. The deal is that Richard would give [appellant] enough cash to purchase 100 head of cows. They propose to buy these cattle via Mr. Lamb's gravel sales. We have asked for a copy of the gravel sale contract. We have not received any evidence that these sales will materialize.

The cash flow is optimistic. No allowances for vehicle expenses, depreciation, etc. Total expenses figure less than \$100 per cow, far under business norms.

Management/Organization/Background Comments: [Appellant] has made all of his Direct Loan payments and seems to be trying. * * *

Officer's Recommendations and Comments: This proposal is 100% dependent on a promise by Mr. lamb to buy [appellant] 100 head of cows. They cannot substantiate the gravel sales. Even with the 100 head of cattle (debt free to ([ppellant]) the cash flow is tight.

On June 10, 1994, the Area Director notified appellant that his application was not approved. The decision states: "Your equity position is insufficient to justify a land purchase this large. Your proposal is dependent upon an unsubstantiated capital injection by Richard Lamb. Also, we find your cash flow projections to be over optimistic."

Appellant's arguments are included within both his notice of appeal and an opening brief. A large portion of each document is devoted to a discussion of appellant's equity position. Appellant calculates that he met the 20 percent equity requirement initially, and that with the seller's agreement to reduce the price of the land, his equity position has improved.

The Area credit memorandum indicated that, with two allowances, appellant exactly met the 20 percent equity requirement. Although the Area Director's decision letter stated that appellant's "equity position" was not sufficient to justify the large land purchase, it is not entirely clear whether the Area Director was referring to the 20 percent equity requirement or to appellant's general financial position. Accordingly, because of the uncertainty surrounding this particular reason for disapproval, the Board finds that appellant should be deemed to have met the equity requirement.

The Area Director also found appellant's cash flow projections to be overly optimistic. Appellant states that "[i]f [he] pasture[s] cattle for others * * * [he would] be able to meet [his] obligation to [BIA] and have about \$3,000 left to purchase more cattle for [himself], yearly" (Notice of Appeal at 2). However, appellant offers no evidence that he would be able to obtain contracts for pasturing the projected number of cattle. In the absence of any proof in this area, appellant's cash flow projections remain optimistic.

The Area Director's third reason for denying the application was the unsubstantiated capital injection from Richard Lamb, in the form of 100 head of cattle to be purchased for appellant. In his notice of appeal, appellant states that he plans to omit the capital injection from Lamb.

Both credit memoranda indicated that appellant's proposal would work only with the debt-free cattle supplied by Lamb. If appellant is now not going to receive these cattle, he would be responsible for buying his own cattle, or pasturing cattle belonging to others. In either case, appellant's financial position is negatively impacted.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Aberdeen Area Director's June 10, 1994, decision is affirmed. 1/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ In his opening brief, appellant states that the seller has agreed to a lower sale price, and, in effect, amends his application, seeking a loan in the amount of \$191,100. If appellant intends to amend his application, he should submit a new application to BIA for its initial consideration.