



INTERIOR BOARD OF INDIAN APPEALS

James and Ruby Simpson v. Acting Billings Area Director,
Bureau of Indian Affairs

27 IBIA 300 (04/24/1995)

Related Board case:
26 IBIA 143



United States Department of the Interior

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

JAMES and RUBY SIMPSON, Appellants	:	Order Affirming Decision
	:	
	:	
v.	:	Docket No. IBIA 95-46-A
	:	
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	April 24, 1995

Appellants James and Ruby Simpson seek review of a September 30, 1994, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to release a hold on Mrs. Simpson's Individual Indian Money (IIM) account. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Board will limit its recitation of the background of this case to those facts necessary to an understanding of the decision. On February 1, 1984, the Crow Tribal Credit Committee (Committee) granted appellants a tribal loan in the amount of \$36,000, to establish a masonry business. On May 9, 1984, appellants executed several documents in relation to the loan. Of importance to this appeal, in an Assignment of Trust Property and Power to Lease, CF No. 1479, appellants assigned to the Tribe "any income from any source and any funds from any source accruing to my individual Indian [IIM] account." 1/

A total of \$15,470.48 was advanced to appellants on May 9 and August 8, 1984. Appellants made two loan payments of \$620.20 each, on August 13 and September 10, 1984.

The amount of business anticipated when the loan was approved did not materialize. Appellants' loan went into a delinquent status, and the BIA loan specialist who was servicing the loan for the Tribe stopped further advances. Appellants were notified that their loan was delinquent. The record contains three delinquency notices from the Committee, dated August 31, 1987; November 16, 1987; and March 4, 1988.

In September 1989, the Superintendent placed a hold on Mrs. Simpson's IIM account. In accordance with Kennerly v. United States, 721 F.2d 1252

1/ A Mar. 8, 1994, letter from appellants to the Superintendent, Crow Agency, BIA (Superintendent), stated that Mrs. Simpson's IIM account was established in August 1989 when she inherited some trust land. There is no other information concerning whether either appellant had an IIM account when they executed the assignment in 1984.

(9th Cir. 1983), 2/ on September 26, 1989, the Superintendent notified appellants of the hold, and stated that disbursements would be made from the account to repay the loan after 40 days. This letter stated:

If you disagree with this proposed action, you have the opportunity to a hearing on this matter before funds are disbursed from your IIM account to repay this loan. Prescribed procedures are outlined in 25 CFR Part 115.10, and are enclosed for your information.

If you want a hearing, your request must be presented to: Agency Superintendent * * * in writing within thirty (30) days of your receipt of this letter. If, instead, you desire to have this delinquency paid without delay and without a hearing, please sign on the space provided below and return this letter to [the Agency].

Although appellants do not dispute receiving this letter, they did not respond either by signing and returning the letter, or by requesting a hearing.

In November 1989 the Committee charged off the loan, so that interest stopped accruing. Appellants were still responsible, however, for repaying the principal and previously accumulated interest.

Funds in the total amount of \$1,857.88 were disbursed to the Tribe. 3/ No funds were disbursed after April 1992, although the hold remained.

On March 8, 1994, appellants asked BIA to lift the hold. BIA referred the request to the Committee, which voted to instruct BIA to collect any funds in the IIM account. The Superintendent notified appellants of the Committee's decision on April 22, 1994, and denied the request to lift the

2/ In Kennerly the court held that "where assignments [of IIM accounts] are executed as security for an underlying debt, due process requires some opportunity to be heard concerning the debt itself." 721 F.2d at 1258.

3/ For the first time in their notice of appeal, appellants contend that \$101.50 of the total amount disbursed to the Tribe came from September 1985, December 1985, and September 1986 per capita checks to Mr. Simpson in the amounts of \$37, \$41, and \$23.50, respectively. Appellants contend that they were not given their appeal rights in regard to these disbursements.

Whatever argument appellants may be seeking to raise in regard to these disbursements is time-barred. In 1985 and 1986, BIA appeal regulations provided a 30-day appeal period. The regulations did not require the deciding official to notify interested parties of the right to appeal. Parties dealing with BIA were instead presumed to know the regulations and the time limitation for appeals. The requirement that deciding officials specifically notify parties of the right to appeal and the time limitation was not added to the regulations until 1989. See, e.g., Merrill v. Portland Area Director, 19 IBIA 81, 83 n.1 (1990), and cases cited therein.

hold on June 23, 1994. ^{4/} The Area Director affirmed the Superintendent's decision on September 30, 1994. Appellants appealed to the Board, and later requested expedited consideration. The request for expedited consideration is hereby granted.

25 CFR 115.9 provides in pertinent part that “[f]unds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness * * * to the tribe of which the individual is a member * * *.” Appellants do not dispute this authority, but argue that the Tribe's claim is barred by a 2 -year tribal statute of limitations. In support of this argument, they cite Crow Credit Committee v. Left Hand Brothers, Inc., Civil Case No. 92-26 (Crow Tribal Ct. of Appeals Nov. 29, 1994), which discussed both the 2-year statute of limitations and a new 8-year statute of limitations. Appellants argue that BIA has a trust responsibility to lift the hold because the applicable statute of limitations has run.

Appellants bear the burden to prove that the Area Director erred in refusing to lift the hold. See, e.g., Fort McDermitt Paiute-Shoshone Tribe v. Acting Phoenix Area Director, 27 IBIA 162 (1995), and cases cited therein. In essence appellants argue that BIA must adjudicate their allegation that the Tribe's claim is barred by the tribal statute of limitations.

The correctness of the Area Director's decision not to lift the hold on Mrs. Simpson's IIM account is secondary to appellants' primary dispute with the Tribe over whether the Tribe can collect the delinquent loan. The dispute with the Tribe arises from a secured loan made to appellants by the Tribe, and raises questions concerning the applicability of a tribal statute of limitations. These are matters within the jurisdiction of the Crow Tribal Court, as is demonstrated by the Tribal Court case cited by appellants. This Board has consistently upheld the jurisdiction of tribal courts to review tribal disputes, and has deferred to tribal court jurisdiction when a BIA decision is secondary to an intratribal dispute. See, e.g., Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105, 107 (1995); Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79, 80 (1993) ("The Federal policy of respect for tribal courts, and of support for tribal self-government in general, counsels abstention by a Federal forum in a case in which a tribal forum has primary jurisdiction"). See also Middlemist v. Secretary of the Interior, 824 F. Supp. 940, 946-47 (D. Mont. 1993) (“[T]he authority of the Tribal Council to promulgate and enforce [a tribal ordinance] * * * is determinative of all of Plaintiff's claims, including the correctness of the BIA's approval and subsequent funding of the Ordinance”), aff'd, 19 F. 3d 1318 (9th Cir.), cert. denied, 115 S.Ct. 420 (1994).

The Tribal court, not BIA or this Board, is the proper forum for consideration of appellants' argument that the Tribe's claim is barred by the

^{4/} Appellants filed a premature appeal with the Board. The appeal was dismissed without prejudice at 26 IBIA 143 (1994).

tribal statute of limitations. If the Tribal Court holds that the Tribe cannot enforce its claim, appellants can return to BIA and request that the hold be lifted based upon the Tribal Court's decision.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Billings Area Director's September 30, 1994, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge