



INTERIOR BOARD OF INDIAN APPEALS

Berube & Associates v. Acting Aberdeen Area Director, Bureau of Indian Affairs

19 IBIA 264 (03/19/1991)



# United States Department of the Interior

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

BERUBE AND ASSOCIATES,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 90-120-A
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 18, 1991

Appellant Berube and Associates seeks review of a May 23, 1990, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving its Indian Business Development Program (IBDP) grant application. For the reasons discussed below, this appeal must be dismissed for lack of jurisdiction.

Appellant, under the initial name of Motivation Dynamics, Inc., wished to establish a business in Bismarck, North Dakota, "designed to motivate people through 'Attitude Motivation,' by accelerated, positive habit changes resulting in more aggressive and positive attitudes" (Letter of Apr. 4, 1990, from appellant to Bismarck State Bank, Bismarck, North Dakota).

In late April or early May 1990, appellant filed an application with the Standing Rock Agency, BIA, for IBDP grant assistance. An April 26, 1990, letter to appellant from the Norwest Bank North Dakota (bank) indicates that the bank had approved financing for appellant "in an amount up to \$42,000.00 \* \* \* subject to the following conditions: 1. A 90% SBA [Small Business Administration] guaranty. 2. A Bureau of Indian Affairs Grant of not less than \$13,500.00." On May 9, 1990, the application was forwarded to the Area Director for consideration.

By letter dated May 23, 1990, the Area Director informed appellant that its application had been disapproved. The Area Director stated:

It has been determined that your proposal does not comply with Bureau of Indian Affairs Regulations nor the Indian Financing Act. The regulations for the Indian Business Development Grant Program are very specific. In order to qualify for financial assistance, your business must be located on or near an Indian reservation and must contribute beneficially to the economy of an Indian reservation. Your proposal fails to meet these requirements.

The Board received appellant's notice of appeal on June 29, 1990. In his memorandum transmitting the administrative record to the Board, the Area Director stated that the appeal might not be timely. No further arguments were presented in support of this statement. The administrative record, however, contained a copy of a return receipt card showing that appellant received the Area Director's decision on May 25, 1990. Although appellant's notice of appeal was dated June 22, 1990, it was not received by the Board until June 29, through next-day delivery.

The Area Director properly informed appellant that it was required to file a notice of appeal within 30 days. 43 CFR 4.332(a), which establishes that filing deadline, further states that "[a] notice of appeal not timely filed shall be dismissed for lack of jurisdiction." The notice of appeal in this case was not timely filed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the May 23, 1990, decision of the Acting Aberdeen Area Director is dismissed for lack of jurisdiction.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge