



INTERIOR BOARD OF INDIAN APPEALS

Shirley Azure v. Acting Aberdeen Area Director, Bureau of Indian Affairs

27 IBIA 232 (03/08/1995)



United States Department of the Interior

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

SHIRLEY AZURE,	:	Order Affirming Decision
Appellant <u>1</u> /	:	
	:	
v.	:	Docket No. IBIA 95-32-A
	:	
ACTING ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 8, 1995

Appellant Shirley Azure seeks review of a September 7, 1994, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a direct loan. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

In June 1994, appellant applied to BIA for a direct loan in the amount of \$75,000, to be used in opening a retail store in Belcourt, North Dakota. The store was to sell educational, office, gift/party, and restaurant supplies. The loan proceeds were to be used to construct a 24~~1~~ by 40~~1~~ office and store (\$29,246) and to purchase office equipment (\$4,675), inventory (\$33,031), and office furniture and supplies (\$8,048).

The application was reviewed at the Turtle Mountain Agency, BIA, and was forwarded to the Area Director on July 22, 1994, with a recommendation that it be disapproved. The Agency credit memorandum stated:

Projections are unrealistic, sales are way too high. It has been proven in this area with other businesses that you cannot compete with the larger school supply stores and restaurant supply businesses. Local government schools have to go through GSA contracts which is half the price even though there is an Indian-owned business in the community.

* * * * *

[Appellant is] not injecting any of [her] own money into this business. The collateral [she is] offering is personal property that would not be used in this business. [She is] not requesting any operating funds, in this kind of business this is a must [she] will need carry over money until [she] receives payment from services sold. Usually suppliers will

1/ This appeal was originally docketed under the names of Melvin and Shirley Azure. The administrative record, including appellant's application, clarifies that the loan was requested solely by Shirley Azure.

not send supplies until they are paid for. Due to the above reasons I do not feel this company will cash-flow and recommend disapproval.

By letter dated September 7, 1994, the Area Director denied the loan application, stating:

We have determined that this proposal would be 100% financed with no equity injection. Also, we find the cash flow projections to be overly optimistic.

This decision is partially based on Title 25, Code of Federal Regulations, Part 101.1, which defines equity as “. . . the borrower's residual ownership, after deducting all business debt of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.”

On appeal, appellant contends that, if anything, her cash flow projections were conservative. She states that she contacted individuals, educational entities, and tribal and state programs to determine the need for, and feasibility of, the type of retail store she was proposing, and found that this type of store was "desperately needed." She further indicates that all of the educational entities she contacted urged her to start the business, and several stated they would purchase from her. 2/

Appellant's cash flow projections project gross sales of \$262,369 for the first year, \$288,616 for the second year, and \$317,485 for the third year. These sales projections are accompanied by projected gross profits of \$87,460 for the first year, \$96,219 for the second year, and \$105,832 for the third year. Projected sales of this volume for a start-up business, even one which may be needed, do not appear conservative. When these projected sales figures are considered in light of BIA's experience that businesses of this nature cannot compete with the larger school and restaurant suppliers, the Board cannot find that the Area Director erred in concluding that appellant's cash flow projections were overly optimistic.

Appellant next argues that she provided equity of either \$35,700 or \$41,200. She also states for the first time that certain property listed as collateral will be used in the business,3/ and repeats a statement made

2/ Several of these statements were expressly conditioned on appellant's prices being competitive with the school's current suppliers.

3/ In Hammerberg v. Acting Portland Area Director, 24 IBIA 78, 78-79 (1993), the Board stated that it "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."

in a letter submitted after the application that a 24N by 40N cement basement would be used "as the foundation and storage area for the business" (Notice of appeal at 2).

As the Area Director noted, "equity" for the purposes of a direct loan is defined in 25 CFR 101.1 as "the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position." A necessary element of equity for these purposes is that the assets are used in the business being financed. Danard House Information Services Division, Ltd. v. Sacramento Area Director, 25 IBIA 212 (1994). Of the various personal property assets listed in appellant's application, on appeal she contends that the 1990 Plymouth Voyager (valued at \$16,000), the Apple II GS computer (valued at \$1,000), and the Epson printer (valued at \$400), which she listed as collateral, will be used in the business. In addition, appellant ascribes a value of \$5,500 to a basement, which she says will be the foundation and storage area for the store.

Giving appellant the benefit of every doubt by using the values she ascribes to these assets and assuming that 100 percent of the values can be applied to equity, these assets have a value of \$22,900, which appears to be more than 20 percent of the total cost of the new enterprise, and would apparently meet the equity requirement of 25 CFR 101.3(a). However, even if appellant met the equity requirement, the Board would not reverse the Area Director's decision. The Board has already sustained the Area Director's finding that appellant's cash flow projections were overly optimistic. The Area Director's decision can be affirmed on that basis alone.

Appellant's last argument appears to be that the Area Office did not give adequate consideration to her application because the Area Director's decision was dated September 7, 1994, and she had been informed that the Area office had not begun to consider the application as of September 2, 1994, which was only 2 working days earlier.

Even assuming that the information appellant was given was correct, the Board cannot conclude that 2 working days would be insufficient to review appellant's application. 4/

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 September 7, 1994, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

4/ Appellant also states that certain information she provided to BIA in response to a request from the Agency was not included in the materials returned to the Agency from the Area Office. The materials were in the administrative record transmitted to the Board by the Area Office.