



INTERIOR BOARD OF INDIAN APPEALS

Ken Chambers v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

39 IBIA 44 (05/09/2003)

Related court cases:

Seminole Nation of Oklahoma v. Norton, No. 00-2384 (CKK)
(D.D.C. Sept. 27, 2001), 29 Indian L. Rptr 3287

Seminole Nation of Oklahoma v. Norton, 223 F.Supp.2d 122 (D.D.C. 2002),
<http://www.dcd.uscourts.gov/02-739.pdf>



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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KEN CHAMBERS,	:	Order Dismissing Appeals
Appellant	:	
	:	
v.	:	
	:	Docket Nos. IBIA 02-10-A
ACTING EASTERN OKLAHOMA	:	IBIA 02-46-A
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	May 9, 2003

Appellant Ken Chambers sought review of two decisions issued by the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The first decision, dated October 10, 2001, concerned the decision in Seminole Nation of Oklahoma v. Norton, No. 00-2384 (CKK) (D.D.C. Sept. 27, 2001), and matters related to the government-to-government relationship between the United States and the Seminole Nation of Oklahoma (Nation). This appeal was assigned Docket No. IBIA 02-10-A. The second appeal related to an October 17, 2001, decision issued by the Regional Director declining to contract programs to the Nation under the Indian Self-Determination Act (ISDA), and to a December 17, 2001, recommended decision after informal conference issued by the BIA Designated Representative. The second appeal was assigned Docket No. IBIA 02-46-A. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses these appeals.

On October 25, 2001, the Board noted that it appeared that Appellant's objection in Docket No. IBIA 02-10-A was to BIA's recognition of Jerry Haney as the Nation's Principal Chief. It stayed proceedings in that case and authorized the Regional Director to continue his efforts to assist the Nation in resolving its internal leadership disputes. Appellant did not object either to the Board's characterization of his appeal or to the stay.

The notice of appeal in Docket No. IBIA 02-46-A indicated that it was filed under the ISDA appeal regulations in 25 C.F.R. Part 900, Subpart L, and requested relief addressing ISDA issues. However, the accompanying statement of reasons dealt, in large part, with issues relating to BIA's recognition of Haney as Principal Chief. In complying with the ISDA appeal regulations, on January 28, 2002, the Board determined that this appeal fell under 25 C.F.R. § 900.150(i) and raised questions of law, not of fact. Therefore, in accordance with 25 C.F.R. § 900.160(a)(1), it informed the parties that the appeal would proceed under 43 C.F.R. Part 4,

Subpart D, and would not be referred for a hearing. This appeal was also stayed pending attempts to resolve the Nation's leadership disputes. Again, Appellant did not object to either the Board's characterization of his appeal or to the stay.

The stays have been extended through the present time.

On March 7, 2003, the Board received a status report in these cases from the Regional Director. Attached to the report was a copy of a February 28, 2003, decision issued by the Acting Assistant Secretary - Indian Affairs (Assistant Secretary), recognizing the removal of Haney as the Nation's Principal Chief and of James Factor as its Assistant Chief. The decision further recognized the appointment of Appellant as the Nation's Principal Chief. ^{1/}

By order dated March 10, 2003, the Board asked Appellant to inform it whether the Assistant Secretary's decision granted him the relief he was seeking in these two appeals. It received Appellant's response on May 6, 2003. Appellant characterized the Board's order as asking the "Nation to respond as to whether the real intent of the appeal was to dispute the recognition of Jerry Haney as Chief." Response at 1. Appellant stated: "It was not." Id. He continued:

The issues involved in this appeal were stated in the January 22, 2002 Notice of Appeal:

1. Whether the Acting Regional Director properly declined to renew the [ISDA] contracts?
2. Whether the Acting Regional Director illegally accepted the retrocession of [ISDA] programs from an individual not authorized under law to retrocede such program?

The Seminole Nation of Oklahoma requests a hearing on the record under 25 C.F.R. § 900.160 and 25 C.F.R. § 900.150(a) (e) [sic, presumably should be (a) and (e)].

Id. at 1-2. See also Jan. 22, 2002, Statement of Reasons at 4-5.

^{1/} Haney and Factor appealed the Feb. 28, 2003, decision to the Board. On Apr. 3, 2003, the Board dismissed the appeal on the grounds that it lacked authority to review the Assistant Secretary's decision. Haney v. Acting Assistant Secretary - Indian Affairs, 39 IBIA 25 (2003).

Appellant's response addresses only Docket No. IBIA 02-46-A. The Board's March 10, 2003, order informed Appellant that failure to respond to the order would result in the dismissal of the appeals. Because Appellant has failed to provide any response in regard to Docket No. IBIA 02-10-A, the Board dismisses that appeal for failure to prosecute.

In regard to Docket No. IBIA 02-46-A, Appellant responded to the Board's March 10, 2003, order by, for the first time, making the ISDA issues the sole focus of the appeal. The Board's January 28, 2002, order determining that this appeal fell under 25 C.F.R. § 900.150(i) and would proceed under the regulations in 43 C.F.R. Part 4, Subpart D, removed it from the ISDA appeal process. Among other things, this obviated the necessity for a decision on Appellant's standing to appeal from an ISDA decision. However, now that Appellant has opted to restrict his appeal to ISDA issues, the question of his standing must be addressed.

The appeal regulations in 25 C.F.R. Part 900, Subpart L, like the regulations throughout Part 900, are addressed to tribes and tribal organizations. "Indian tribe" is defined in section 900.6 as:

any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

In pertinent part, the section defines "tribal organization" to mean:

the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities * * *.

There can be no dispute that Appellant is not an Indian tribe or tribal organization as defined in the ISDA regulations. In fact, at the time he brought this appeal, he was not even a recognized official of an Indian tribe or tribal organization. Instead, just as he asserts in his appeals with respect to Haney, Appellant was an individual tribal member. Nothing in the ISDA regulations authorizes a tribal member to appeal an ISDA decision.

In both his statement of reasons and in his response to the Board's March 10, 2003, order, Appellant stated that "the Seminole Nation of Oklahoma" requested a hearing. When he made this statement in his statement of reasons, Appellant was not authorized to speak for

the Nation. The facts that Appellant is now recognized as the Nation's Principal Chief and that he has repeated this statement in his response cannot convert his appeal as an individual into an appeal by the Nation.

The Board dismisses Docket No. IBIA 02-46-A on the grounds that Appellant lacks standing to bring an appeal from the Regional Director's October 17, 2001, decision and/or from the Designated Representative's December 17, 2001, recommended decision after informal conference.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Kathleen R. Supernaw
Acting Administrative Judge