ELAINE FREASE and BESSEY VILLALOBOS
v.
SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-15-A Decided August 24, 1989

Appeal from a decision of the Sacramento Area Director, Bureau of Indian Affairs, conditionally approving a bingo management agreement.

Dismissed.

1. Administrative Procedure: Standing--Indians: Generally

A tribal member lacks standing to bring an administrative action for the tribe based on a personal assessment of what is or is not in the best interests of the tribe.

APPEARANCES: Dennis G. Chappabitty, Esq., Sacramento, California, and Jerome L. Levine, Esq., Los Angeles, California, for appellants; Howard L. Dickstein, Esq., Sacramento, California, and William J. Belli, Esq., Reno, Nevada, for the Rumsey Indian Rancheria; Gary Verburg, Esq., Phoenix, Arizona, for British American Bingo, Inc.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Elaine Frease (Frease) and Bessey Villalobos (Villalobos; collectively, appellants) seek review of a September 12, 1988, decision of the Sacramento Area Director, Bureau of Indian Affairs (BIA; appellee), conditionally approving a bingo management agreement between the Rumsey Indian Rancheria Band of Wintun Indians (tribe) and Sovereign Holdings, Ltd., d.b.a. Indian Bingo Management of Northern California, Inc. (Sovereign Holdings), with assignment to British American Bingo, Inc. (British American Bingo). For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

Background

The tribe is a Federally recognized Indian tribe operating under a Constitution and Bylaws adopted pursuant to section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 (1982), and approved by the Commissioner of Indian Affairs on March 18, 1976. Under Article III of the Constitution, membership in the tribe consists of 16 named individuals and their lineal descendants. Article IV provides that the tribe's governing body is the Community Council, composed of all qualified voters 18 years

WWWVersion

of age or older. The Community Council is empowered to elect an Executive Committee, consisting of a chairman, secretary, and treasurer. Article VIII, sec. 2, of the tribe's constitution states:

> The executive committee shall have the following powers, but shall not commit the Rumsey Indian Rancheria to any contract, lease or other transaction unless it is authorized in advance by a duly enacted ordinance or resolution of the community council:
>
> (a) Carry out all ordinances, resolutions or other enactments of the community council;
>
> (b) Represent the Rumsey Community Council in all negotiations with Federal, State and local government and advise the community council of the results of such negotiations.

On May 1, 1984, the Community Council adopted "An Ordinance Regulating the Play of Bingo on the Rumsey Indian Rancheria." Section 3 of that ordinance authorized the Executive Committee to obtain facilities and enter into contracts for the construction of a bingo facility (subsection b) and to enter into a management agreement for the operation of a tribal bingo enterprise (subsection c). Section 5 allowed the Executive Committee to, inter alia, determine whether there had been violations of any provision of the ordinance.

On August 2, 1984, the tribe, through its Executive Committee, entered into a bingo management agreement with Sovereign Holdings. The agreement required Sovereign Holdings to construct the facilities for the enterprise as well as to operate the enterprise once the facilities were ready. This enterprise was to be known as Cache Creek Indian Bingo.

Section XXI of the management agreement states:

> At least two United States District Courts have held that bingo management agreements with Indian tribes require the approval of the Secretary of the Interior pursuant to 25 U.S.C. § 81. On the other hand, a Field Solicitor for the Department of the Interior has concluded that Secretarial approval is not required. No regulation or directive has been issued by the Secretary stating his position on whether such agreements are subject to § 81 approval. In view of this legal uncertainty, the parties agree to submit this Agreement to the Secretary for review. If, at some future date, the Secretary of the Interior, Congress or a court of competent jurisdiction determines that Secretarial approval is required, the parties agree to seek, and to use their best efforts to obtain, such approval. In the event that the Secretary of the Interior requires changes in this Agreement as a condition of approval, the parties agree to make such changes as are reasonably requested or required by the Secretary.

WWWVersion

Pursuant to section XXI, the agreement was submitted to BIA for review in September 1984. BIA was not requested, however, to approve the agreement, and did not do so.

The bingo operation opened in June 1985. It initially appeared quite successful.

The Assistant Secretary - Indian Affairs (Assistant Secretary) issued guidelines for review of bingo management contracts on April 7, 1986. The guidelines indicated that because the courts were continuing to hold that bingo management contracts not approved by the Secretary under 25 U.S.C. § 81 (1982) were null and void, 1/ the Assistant Secretary would request all tribes with unapproved contracts to submit the contracts for approval and renegotiation if necessary to bring them into compliance with the guidelines.

By an undated letter received in the Central California Agency, BIA (Agency), on April 16, 1986, tribal Chairman Philip Knight (Knight) formally requested BIA approval of the Cache Creek Indian Bingo management agreement. This request was apparently unrelated to the issuance of the Assistant Secretary's April 7, 1986, memorandum. Included with the agreement was a "Bingo Narrative" in which the tribe's Executive Committee set forth additional factors for BIA's consideration. The narrative indicated that although the tribe did not believe Secretarial approval of the management agreement was necessary, it thought the agreement could serve as a model for other tribes.

The management agreement was reviewed under the Assistant Secretary's April 7, 1986, guidelines. Review did not progress smoothly. Although several problems were identified and relayed to the tribe for action, and the agreement was amended as necessary, intra-tribal disputes arose over the operation of the bingo enterprise. These disputes appear to have centered around financial accounting of the bingo proceeds, the belief that at least one tribal official had misappropriated funds from the enterprise, and the concerns of one group of tribal members that Sovereign Holdings was interfering in tribal affairs. Because of these internal disputes, BIA decided at a meeting held on December 16, 1986, to stay further consideration of the agreement pending clarification of the situation within the tribe.

On February 1, 1987, the Community Council adopted a resolution which established a committee to oversee the bingo enterprise. The resolution stated "that a committee known as the Bingo Policy and Monitoring Committee be created and Philip Knight, Elaine Frease, Marshall McKay and Paula Lorenzo-Cook be appointed as members of the committee to exercise the rights and duties granted to the Tribe under the Bingo Contract."

1/ See Wisconsin Winnebago Business Committee v. Koberstein, 762 F.2d 613 (7th Cir. 1985), United States ex rel. Shakopee Mdewakanton Sioux Community v. Pan American Management Co., 616 F. Supp. 1200 (D. Minn. 1985).

WWWVersion

A tribal election was held in March 1987. At that election, Frease was elected Chairperson, Villalobos was elected Treasurer, and Paula Lorenzo-Cook was elected secretary.

At some point between December 1986 and April 1987, BIA resumed its review of the management agreement. Several additional changes were found necessary, to which the tribe agreed. The Superintendent formally submitted the agreement to the Sacramento Area Office (Area Office) for approval by memorandum dated June 19, 1987. The Superintendent recommended that the agreement be approved.

Review by the Area Office was interrupted when the Department of the Interior's Office of Inspector General began an investigation of operations at Cache Creek Indian Bingo. Appellee decided to stay further processing of the agreement until the Inspector General's investigation was completed. 2/

On several occasions while they were in office, appellants or Frease individually wrote to the Superintendent indicating her suspicions that Sovereign Holdings, through David Ingenito, the bingo manager, was interfering in tribal affairs, in violation of the agreement and the Assistant Secretary's April 7, 1986, guidelines. In particular, appellants cited their suspicions that Sovereign Holdings had instigated a suit filed by tribal members in state court against Mr. Chappabitty, 3/ and their belief that the tribal Secretary had been influenced by Sovereign Holdings and could no longer be trusted.

On December 12, 1987, a special Community Council meeting was held. 2/ Resolution 12-12-87-A, adopted at that meeting, provided "that the Community

---

2/ After initially asking that the management agreement be approved, in July 1987, Frease requested that appellee suspend further action pending the completion of review of various internal financial transactions of the bingo enterprise by a certified public accountant. It also appears that on or about July 5, 1987, Frease became aware of negotiations between Sovereign Holdings and British American Bingo aimed at a possible sale and assignment of Sovereign Holdings' interest in this and two other bingo management agreements to British American Bingo for approximately $5,000,000. Appellee informed Frease that he intended to proceed with consideration of the agreement because review had been requested by the general membership of the tribe, a hold had not been requested by the general membership, and her concerns about the financial matters were apparently not sufficient to ask for a cessation of operations under the agreement. Frease again told appellee not to process the agreement. Appellee states that his stay pending completion of the Inspector General's investigation was unrelated to Frease's request.
3/ This state court action is discussed in Docket No. IBIA 89-24-A, also decided today. See Frease v. Sacramento Area Director, 17 IBIA 241 (1989).
4/ The validity of actions taken at this and another Community Council meeting on Jan. 3, 1988, is the subject of Docket No. IBIA 89-24-A. See note 3, supra.

WWWVersion

Council of the Rumsey Indian Rancheria terminates any contractual relationship with Sovereign Holdings, Inc., for its interference with our governmental affairs, the failure of the BIA to approve the existing agreement with Sovereign Holdings, Inc."

On March 14, 1988, nine tribal members signed a petition seeking the recall of appellants from their tribal offices. On April 14, 1988, appellants were recalled and Knight was re-elected as tribal Chairman. 5/

When Knight requested that approval of the agreement be completed, he was informed that BIA was considering the agreement. Following a few more changes, appellee signed a conditional approval on September 12, 1988. Appellee's conditional approval states in its entirety:

> Pursuant to the Act of March 3, 1891, as amended (16 Stat. 570; 25 U.S.C. § 81), and the authority redelegated from the Secretary of the Interior by 209 DM 8 and 230 DM 3, that Management Agreement dated August 2, 1984 and Amendments thereto dated February 28, 1986; September 12, 1986; May 26, 1987; and August 20, 1988 between the RUMSEY INDIAN RANCHERIA and SOVEREIGN HOLDINGS, LTD., dba Indian Bingo Management of Northern California, and that ASSIGNMENT OF MANAGERS INTEREST dated August 31, 1988 between the Rumsey Indian Rancheria, Sovereign Holdings, Ltd., and BRITISH AMERICAN BINGO, INC., are hereby approved this date, subject to the following conditions:
>
> 1. This approval on behalf of the Secretary of the Interior may be revoked if the principals, officers, or any parties in interest of Sovereign Holdings, Ltd., or British American Bingo, Inc., shall be found to have a felony conviction or plea of nolo contendere.
>
> 2. This approval on behalf of the Secretary of the Interior may be revoked if the parties hereto fail to update the environmental assessment and comply with any mitigation measures deemed necessary by the Secretary's representative in order to prevent or minimize any negative impacts to the quality of the human environment.
>
> 3. This approval on behalf of the Secretary of the Interior may be revoked if the parties hereto fail to immediately submit an appropriate amendment to Article IX, Notice, pages 15 and 16 of the subject Management Agreement.

5/ Under Article VII, sec. 2, of the tribal constitution, the recall of tribal officials could be initiated by a petition signed by 30 percent of the qualified voters. It appears that appellants appealed their recall to BIA, but their appeal was dismissed because it was not timely filed.

WWWVersion

Attached to the Certificate of Approval was a page entitled "Acceptance of Conditions to Approval of Management Contract," signed on September 17, 1988, by representatives of Sovereign Holdings, British American Bingo, and the tribe.

On September 27, 1988, appellants filed an appeal from appellee's conditional approval. Appellants alleged primarily that they were interested parties with a right of appeal because of the pendency of their appeal in what is now Frease, Docket No. IBIA 89-24-A, 17 IBIA 241 (1989). Appellants argued that, should they prevail in that appeal, any contractual relationship with Sovereign Holdings would have been terminated by Resolution 12-12-87-A.

Appellants' appeal was pending before the Washington, D.C., BIA office on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. 6/ The appeal was transferred to the Board on March 16, 1989, for consideration under the new procedures. By notice of docketing dated March 17, 1989, the Board requested that appellee provide it with a copy of the entire administrative record. By order dated April 18, 1989, the Board established a briefing schedule, pursuant to which briefs were received from appellants, the tribe, and British American Bingo. 7/

Discussion and Conclusions

On appeal, appellants argue that appellee erred in approving the management agreement by failing to consider their allegations, made while they were tribal officials, that Sovereign Holdings had interfered with tribal officials and tribal politics in violation of both the provisions of the management agreement and the Assistant Secretary's April 7, 1986, guidelines. Appellants also argue that the merits of their allegations against Sovereign Holdings are not at issue in this appeal.

It is clear that appellants object to the manner in which the tribal bingo operation has been managed. It is also clear that they are very "interested" in what happens to Cache Creek Indian Bingo. However, the initial question before the Board is whether appellants have standing to bring this appeal.

6/ See 54 FR 6478 and 6483 (Feb. 10, 1989).

7/ Appellants argue that the answer brief filed by British American Bingo should be stricken because it was not timely filed. British American Bingo had filed a motion for an extension of time in which to file an answer to appellants' opening brief with the Assistant Secretary before this case was transferred to the Board. The Assistant Secretary did not act upon that motion because the case was transferred almost immediately after it was received. British American Bingo's brief, dated Mar. 17, 1989, was received by the Board on Mar. 21, 1989. After learning of appellants' motion, British American Bingo refiled its brief with the Board on July 26, 1989.

Appellants' motion to strike this answer brief is denied.

WWWVersion

[1] In Redfield v. Acting Deputy Assistant Secretary - Indian Affairs (Operations), 9 IBIA 174, 177, 89 I.D. 67, 70 (1982), the Board noted that despite the fact that a tribal member might be "interested" in the outcome of an appeal, "[t]he Department has never recognized * * * any right of an individual member of a tribe to bring an action for the tribe based on a personal assessment of what is or is not in the best interests of the tribe." Instead, in accordance with the doctrines of tribal sovereignty and self-determination, such disagreements within a tribe are properly resolved through tribal political processes.

This appeal presents precisely the situation envisioned in Redfield. When the management agreement was approved, appellants were merely members of the tribe, not tribal officials. The newly elected tribal officials had full authority to represent the tribe and deal with BIA concerning approval of the agreement. Appellants no longer had any responsibility for dealing with BIA as tribal representatives. Despite the fact that appellants disagreed with the way the bingo enterprise was being handled, they had only the rights of a tribal member to deal with their tribal government concerning these matters. The fact that appellants continue to disagree with Knight and the tribal members who voted them out of office does not give them standing to bring an administrative appeal concerning what remains essentially an internal tribal dispute in which BIA and the Board have no role. Any other determination would impermissibly interfere with the tribe's sovereignty and right of self-determination. 8/

Even assuming appellants had standing to bring this appeal, the Board would still affirm appellee's decision. Appellants argue that BIA was required to consider their allegations that Sovereign Holdings was interfering in tribal affairs. They base their argument on appellee's statement that, in reaching his decision to approve the agreement, he did not consider their allegations. Appellants thus contend that appellee had a responsibility to consider their allegations and that the failure to consider them resulted in a violation of his fiduciary duties to the tribe. 9/

8/ Appellants additionally argue they have standing because appellee failed to inquire into the details of the arrangement between Sovereign Holdings and British American Bingo that eventually resulted in a sale and assignment of Sovereign Holdings' interest in Cache Creek Indian Bingo to British American Bingo for approximately $1,500,000. Appellants seem to believe that the tribe was entitled to this payment. Such a belief has no support under the law of contracts and fails, as well, to provide appellants with standing.

9/ Appellants' arguments concerning interference relate to actions of Sovereign Holdings. When the agreement was approved, an assignment of Sovereign Holdings' interests to British American Bingo was also approved. The only allegation appellants made against British American Bingo was that it was involved in secret negotiations aimed at an assignment of Sovereign Holdings' interest. Any assignment of Sovereign Holdings' interest was

WWWVersion

Appellants assume that appellee's statement that he did not consider their allegations in reaching his decision means he totally disregarded them. The administrative record and appellee's further statements, however, indicate that he considered the allegations and determined they either were without merit or were disputed by other tribal officials. Once appellee made this determination, he was under no responsibility to withhold approval merely because the allegations had been made. 10/

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 Sacramento Area Director's September 12, 1988, conditional approval of the Rumsey Indian Rancheria's bingo management contract and assignment is dismissed for lack of standing. 11/

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge

fn. 9 (continued)
subject to approval by the tribe. The fact that negotiations were undertaken which may or may not have resulted in a proposal to the tribe to assign the agreement, does not amount to interference in tribal affairs.

In addition, as appellee noted on several occasions, the tribe never initiated any action against Sovereign Holdings for violation of the provisions of the management agreement.

10/ In fact, it is quite probable that appellee believed that expeditious approval of the management agreement and assignment was in the tribe's best interest precisely because of the tribe's internal problems. Approval of the agreement with its provisions against interference in tribal politics would result in a contract which was unquestionably enforceable against the manager should the allegations of interference be provable, while the assignment would replace the manager against whom the allegations were made.

11/ Appellants also challenge whether Howard L. Dickstein, Esq., is qualified to appear as counsel for the tribe, and contend that the brief filed by the tribe should be stricken from the record. These issues were addressed in Frease, 17 IBIA at 244, and will not be repeated here.

Any motions not otherwise addressed are hereby denied.

WWWVersion