LYLE COCHRAN
v.
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-55-A Decided August 21, 1990

Appeal from a partial denial of an application to modify a loan under the Indian Revolving Loan Program.

Vacated and remanded.

1. Administrative Procedure: Generally--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Financial Matters: Financial Assistance

When the reason for denial of an application to modify a loan under the Indian Revolving Loan Program is not given in the denial decision, the decision will be vacated and the matter remanded for further proceedings.

APPEARANCES: Lyle Cochran, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Lyle Cochran seeks review of a February 2, 1990, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying in part his application to modify a loan under the Indian Revolving Loan Program. For the reasons discussed below, the Board vacates the Area Director's decision and remands this case to him for further proceedings.

Background

Appellant has a loan under the Indian Revolving Loan Program. His original loan application was approved by the Superintendent, Fort Belknap Agency, BIA, on February 17, 1984, following a favorable recommendation from the Credit Committee of the Fort Belknap Indian Community. The loan was approved in the amount of $49,750, for the purpose of enabling appellant to purchase cattle for his ranching operation. Several modifications have been made to the loan agreement since 1984. On May 21, 1985, the loan amount was increased by $1,700. On August 28, 1985, it was increased by $14,978. On June 20, 1986, the repayment schedule was modified. On February 6, 1987, the security for the loan was modified. On January 17, 1989, two modifications were approved; one increased the loan amount by $32,150, and the other modified the repayment schedule.

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Appellant has also received a grant under the Indian Business Development Program (IBDP). The grant was approved on March 2, 1987, in the amount of $31,760, to enable appellant to purchase more cattle.

In January 1990, appellant requested an increase of $7,570 in the amount of his loan. The Superintendent and the Chairman of the Fort Belknap Indian Community recommended approval of the request. The Area Director approved it in part but disapproved it to the extent of $3,500, the amount sought by appellant for purposes of making a payment on a pickup truck. The Area Director's February 2, 1990, memorandum stated:

> The modification request number 7 on the tribal loan to [appellant] was reviewed at this office. This loan folder is filled with plans and modifications for additional funding. This loan has continuously been in an unstable condition for a number of reasons.
>
> In March 1987, an Indian Business Development Grant for $31,760 was given to [appellant] to increase his producing cattle herd. The grant and a loan from Security State Bank, Harlem, Montana, was to increase his livestock herd to 160 head to improve his cash flow and repayment ability. Within 2 years time, the cattle numbers are again reduced to 65 head of producing cows and the indebtedness to the tribe increased from $59,321 in 1987, to $71,845.99 today.
>
> This new plan would sell the cows down to 20 head and use the proceeds of the sale of cows to purchase 103 heifers for a yearling operation. The purpose of the change in operation is to again increase cash flow and repayment ability. According to the narrative and the projections in the loan package, an increase in the cash flow could be achieved if all conditions in the plan are followed.
>
> The plan of operations for 1990 indicates the loan payments can be made. This is mainly because the projected expenses in the budget have been substantially reduced in comparison with actual budget for 1989. There are certain expenses in the budget that can be reduced, however, large reductions in actual budget expense may not be realistic. A payment of $24,008 to the tribes in 1990 is questionable in view of this borrower's past history, the outside indebtedness and the annual operating expenses.
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> Review of this file shows the credit committee and the Credit staff have worked with this borrower in an attempt to make this a profitable ranching operation. Last year the committee agreed to loan an additional $32,150 to pay off Security State Bank and other debts. Upon approval of the additional amount, the committee cautioned [appellant] on the importance of following the budget. Each year, the past year's actual budget always greatly exceeds the planned budget. This family must curtail their outside indebtedness if this loan is to be repaid.

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The performance on this loan has been less than satisfactory and to continue to advance additional loans each year to pay debts could place this loan in more serious trouble. The outstanding debt should be reduced each year, instead of a steady increase in the loan balance.

The modification is returned approved for the grazing and lease $3,500; veterinarian expenses $270.00; miscellaneous expenses $300.00; totaling $4,070. The pickup payment for $3,500 is not included in this modification.

By letter of February 6, 1990, the Superintendent informed appellant of the Area Director's action.

Appellant's notice of appeal was received by the Board on February 20, 1990. No briefs were filed.

Discussion and Conclusions

25 U.S.C. § 1463 (1982) provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." Given the history of appellant's loan and IBDP grant, the Area Director could reasonably have denied appellant's loan modification request on grounds that there was not a reasonable prospect of repayment. 1/ However, if this had been the basis for his decision here, it would appear that appellant's request should have been denied in toto. Instead, the Area Director approved the request in part and denied it in part, without explaining the basis for the distinction. In fact, the Area Director gave no reason for the partial denial of appellant's request.

Decisions concerning whether or not to approve a loan under the Indian Revolving Loan program are decisions based on the exercise of discretion. Hamilton v. Acting Anadarko Area Director, 17 IBIA 152 (1989). In reviewing such discretionary decisions, the Board does not substitute its judgment for that of BIA. However, the Board does have a responsibility to ensure that no violation of law or regulation accompanies the exercise of discretion. See, e.g., Aubertin Logging & Lumber Enterprises v. Acting Portland Area Director, 18 IBIA 307 (1990).

[1] In Price v. Portland Area Director, 18 IBIA 272, 280 (1990), the Board stated that "[i]t is an abuse of discretion and a violation of due process to disapprove a[n IBDP] grant application on grounds that are not

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1/ The Area Director alludes to but does not pursue this rationale in his statement:

"The performance on this loan has been less than satisfactory and to continue to advance additional loans each year to pay debts could place this loan in more serious trouble."

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communicated to the applicant in the disapproval notification." The Board vacated the decision at issue in that case. The same result must be reached here. Because the Area Director did not include in his decision the reason for the partial denial of appellant's loan modification request, his decision must be vacated.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's February 2, 1990, decision is vacated, and this case is remanded to him for issuance of a new decision which, if it again denies appellant's request, shall include the reason for denial.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

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