

TRIBAL COURT
OF THE
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

MARVIN MULHOLLAND,
Plaintiff,

v.

Case No. C-019-0500

NANCY WANSHON,
JUDY SKIPPERGOSH, and
CAROL JEFFERS,
Defendants.

CASE DECISION

DECISION OF THE COURT

This matter comes before the Tribal Court upon Trust Fund Board Member-Plaintiff's *Complaint* which alleges that:

- (1) the other members of the Trust Fund Board failed to explore all financial options in making a decision about where to invest trust funds;
- (2) Trust Fund Board Member-Defendant, Carol Jeffers, did not abstain from a vote in which she had a conflict-of-interest; and
- (3) a new member, Barbara Sharkey, was appointed to the Trust Fund Board by the Tribal Council without a vote of the Trust Fund Board.

REASONING AND ANALYSIS:

I. The burden of proof is on the Plaintiff to prove the allegations contained in his *Complaint*. His burden is to show by a preponderance of the evidence that the allegations are true.

II. As to each allegation, the Court reasons as follows:

(1) Plaintiff complains that his colleagues on the Trust Fund Board violated their fiduciary duty to act in the best interest of the beneficiaries of the trust fund, by not exploring all investment options. Defendants answer by detailing their decision-making process and the numerous activities undertaken to make an informed decision about the best investment option.

At the outset of this written Opinion, the Court would like to make known, as a matter of record, its observation that it believes in the sincerity of each Board Member who appeared at the Hearing. It is clear that each wants to take their responsibility seriously and is doing the best that s/he can. However, it is also clear that some growth and development is needed. The status quo is never good enough. The Court urges individual and collective growth in order to ensure competency in the management of the trust funds. This constructive urging comes because the Court recognizes that the Trust Fund Board is a relatively new entity and ought to be supported and encouraged to grow.

Two threshold considerations immediately jump to the forefront of the Court's deliberation: (1) Was there a real breach of fiduciary responsibility, or is this simply a matter raised by an aggrieved Board Member who was simply outvoted by his colleagues? (2) The role of the Court is not to second-guess the Trust Fund Board, but to provide redress if there is a violation of trust standards.

After careful consideration of the Hearing testimony and Plaintiff's Exhibits, the Court finds that Plaintiff has not demonstrated by a preponderance of the evidence that Defendants have violated their fiduciary responsibility. The standard used by the Court is that of a reasonable prudent tribal volunteer trust fund manager. This is the appropriate standard because Defendants are merely adult members of the Tribe who have volunteered to serve on the Trust Fund Board.

However, it is clear that policies need to be put into effect that will move Board Members from interested volunteers to fully-competent trust fund managers. For

example, the Court respectfully recommends the adoption of a clear policy and procedure that will maximize the solicitation and receipt of investment options for consideration. In the present instance, individual Board Members solicited proposals on their own from a few managers. The solicitation was very limited. It seems to the Court that an open, published request for investment proposals would not only open the process up, but also maximize the number of proposals in competition for the Tribe's business. Ultimately, this would have the potential effect of driving up the return on the investment. Additionally, the Court recommends that the Board develop both a skill and an investment knowledge building orientation program for new Board Members, as well as on-going skill and knowledge building activities for sitting Board Members.

(2) Plaintiff complains that his colleague, Ms. Carol Jeffers, had a conflict-of-interest in her vote on moving the funds to a different investment. The Court agrees that a conflict may have existed, but points out that the testimony before the Court on this issue is not clear. However, it is clear that Plaintiff would have been outvoted by the other two Board members without Ms. Jeffer's vote. What is not clear is whether Ms. Jeffer's vote influenced the vote of the other two Board Members, or if Ms. Jeffers actively participated in the deliberations leading up to the vote.

The Court respectfully recommends that the Tribal Council adopt a Code of Ethics that includes the adoption of ethical standards, procedures for compliance and an enforcement process. In addition, the Trust Fund Board itself may need to adopt supplemental standards to carry out its duties in conformity with the highest fiduciary standards.

The instant matter is undoubtedly complicated by the apparent aspirations of Plaintiff to have a full-time job of managing the trust fund and by the social activism philosophy and ideas of one of the Defendant Board Members. The elevation of personal agendas over a common one for the beneficiaries can never be good. Appointment to the Board carries with it the overriding responsibility to develop a common agenda.

(3) Plaintiff complains that a new Board Member was appointed without a vote by the Board itself to even nominate her in the first place. It is clear that Trust Fund Board appointments are made by the Tribal Council as the elected representatives of the people. See Waganakising Odawak Statute 999011, Section II(A). There is no requirement in tribal law which requires any sort of concurrence by the Board Members already sitting.

WHEREFORE THIS HONORABLE COURT FINDS that each allegation of Plaintiff's *Complaint* is without merit and **ORDERS** the dismissal of this action.

7-7-00
DATED

Michael Petoskey Chief Judge 

