

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA, et al.,)
)
 Petitioners,)
)
 v.) Docket No. 251-A
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
 Decided: January 9, 1969

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. The Miami Tribe of Oklahoma, et al., petitioners in Docket 251, filed timely claims under the Indian Claims Commission Act in connection with matters occurring after the removal of the Miami Tribe to Kansas. Certain claims, originally pleaded in Docket 251, were severed for separate trial under a separate docket number, 251-A. (Docket 251 has been tried and disposed of.)

2. Docket 251-A includes claims for forced allotments, failure to protect the Indians from injury by settlers, improper taxation, and particularly, an accounting by the United States as trustee for the proceeds of sales of unallotted lands. These lands amounted to slightly more than 10,000 acres on which about \$80,000 was realized. They were sold at appraised value. Since the Commission has repeatedly disallowed tribal recovery for forced allotments or for individual injuries of tribal members, and since there was little evidentiary basis for challenging the appraisals, it appeared unlikely that further investigation and prosecution of these claims would produce substantial recoveries or would

indeed justify further expense. Accordingly, the settlement was negotiated at \$10,000.00.

3. On November 29, 1966, tribal counsel for petitioners incorporated this settlement proposal in a letter to the Department of Justice. The offer was accepted by the Assistant Attorney General on February 28, 1967, subject to approval of the Miami Tribe of Oklahoma as well as of the Secretary of the Interior or his authorized representative.

4. More than ten days prior to April 15, 1967, Mrs. Helen L. Efird, Secretary-Treasurer of the Miami Tribe of Oklahoma, issued a notice of meeting to all members of the tribe to be held Saturday, April 15, 1967, at 1:00 P.M., in the Community Room, Ottawa County Courthouse, Miami, Oklahoma, for the purpose of considering and voting upon acceptance or rejection of the proposed settlement. Written notice of the meeting was mailed to all members of the tribe with express reference to the proposed settlement more than ten days prior to the meeting. Notice of the meeting was also published in various daily newspapers, including those of Miami and Tulsa, Oklahoma, and Joplin, Missouri.

5. On April 15, 1967, at 1:00 P.M., the scheduled meeting took place in the Community Room, Ottawa County Courthouse, Miami, Oklahoma. Sixty-four members of the tribe were present. A quorum is twenty-five under the bylaws of the Miami Tribe of Oklahoma.

6. The Bureau of Indian Affairs was represented by Erma Walz, Tribal Operations Officer, Washington, D.C.; Frank Sokolik, Assistant Tribal Operations Officer, Muskogee Area Office; Marcel McDaniel, Operations

Assistant, Muskogee Area Office; and T. J. Perry, Miami Indian Agency, Miami, Oklahoma.

7. Edwin A. Rothschild, attorney of record for the Miami Tribe of Oklahoma and partner of the claims attorneys of said tribe, reported to the tribe on the proposed settlement. After explaining the basis of the proposed settlement, the meeting was opened for questions from the floor. Many questions were asked, all were fully answered and full opportunity for discussion and questioning was given to all.

8. All of the proceedings were conducted in English. All members of the Miami Tribe of Oklahoma being fully conversant with English, no interpreters were necessary. Moreover, in many preceding meetings with the tribe, the attorney of record had discussed the progress of the respective claims, including the claim in Docket 251-A, and most of the members of the tribe were familiar with them.

9. After full discussion, on motion duly made and seconded, the following resolution was adopted:

WHEREAS, the Miami Tribe of Oklahoma as petitioner is prosecuting claims before the Indian Claims Commission which were severed from Docket 251 and are now known as Docket 251-A, which claims involve miscellaneous acts and omissions of the government after the tribe emigrated from Indiana; and

WHEREAS, the United States Department of Justice representing the defendant in said claims has agreed to a settlement of said claims, after allowance of consideration and offsets, of \$10,000, subject to approval of the Miami Tribe of Oklahoma and the Secretary of the Interior or his authorized representative; and

WHEREAS, the tribal claims attorney for the Miami Tribe of Oklahoma believes that the proposed settlement of \$10,000 is fair and equitable and has recommended that it be accepted; and

WHEREAS, said proposed settlement has been explained to the members of the tribe and all interested persons were given full opportunity to ask questions concerning the same.

NOW, THEREFORE, BE IT RESOLVED, that the Miami Tribe of Oklahoma hereby accepts and approves the proposed settlement, and its said claims attorney is hereby authorized to execute an appropriate stipulation and to take all necessary action to accomplish the entry of final judgment in Docket 251-A in the amount of \$10,000.

The votes cast were counted by the chairman and Mr. Perry of the Miami Indian Agency. The chairman announced that there were 64 votes in favor of the motion and no votes against it. The meeting lasted three hours.

10. By letter dated November 3, 1967, addressed respectively to the claims attorneys for the Miami Tribe of Oklahoma, petitioner in Docket 251-A, the Deputy Commissioner of Indian Affairs, as representative of the Secretary of the Interior, approved the proposed settlement and the resolution. The letter stated:

According to your offer and your proposed stipulation, there shall be entered in Docket No. 251-A a net final judgment of \$10,000.00. The entry of final judgment will dispose of all claims or demands which the petitioners have asserted in Docket No. 251-A. The defendant shall be barred from asserting offsets and counterclaims in other actions only as to those which it asserted or could have asserted in Docket No. 67. No appeal or review from the final judgment will be taken by either party.

* * * * *

Based on the information which you have furnished us, that submitted by our field office, and that obtained from other sources, the proposed settlement of claims of the Miami Tribe of Oklahoma in Indian Claims Commission Docket 251-A for a net final judgment of \$10,000.00 is hereby approved.

11. The letter noted that the meeting was called in accordance with the tribe's constitution and bylaws and that there was a quorum present. With reference to the conduct of the meeting, the Deputy Commissioner stated:

You presented the proposed settlement to the Miami Tribe of Oklahoma at a special meeting on April 15, 1967. The special meeting was called in accordance with Article III of the tribe's constitution and bylaws. A notice of the meeting appeared in the Tulsa Daily World on April 5, 1967, and individual notices were mailed to all adult tribal members at their last known addresses by the tribal secretary-treasurer ten days in advance of the meeting. The notices stated that the purpose of the special meeting was to consider the settlement of some of the claims of the Miami Tribe of Oklahoma presently pending before the Indian Claims Commission, as well as any other business that might come before the council. We are satisfied that the meeting was duly noticed and called, and that the tribal members were given the opportunity to attend the meeting.

The Miami Council met in general session on April 15 with a quorum present. Our Tribal Operations Officer from the Muskogee Area Office attended the meeting and reported that it was well attended by more than 65 members.

Claims attorney Edwin A. Rothschild attended the meeting and gave a comprehensive review of the claims and explained the proposed settlement. The tribal members were given the opportunity to ask questions and a full and free discussion of the proposed settlement ensued. The claims attorney gave detailed and adequate answers to the questions asked by the Indians.

Our Tribal Operations Officer reported that the tribal members who attended the meeting, in his opinion, understood the proposed settlement. A vote was then taken and the members of the Miami Tribe of Oklahoma voted to accept the proposed settlement, 64 for, and 0 against. Minutes

of the meeting were taken. Our Tribal Operations Officer certified that the signatures of the tribal officials affixed to the resolution and minutes of the meeting are genuine.

We are satisfied that the number of members who attended the April 15 meeting were representative of the Miami Tribe of Oklahoma, that they understood the proposed settlement, and that views expressed in the resolution reasonably expressed the views of the membership of the tribe.

The resolution adopted by the Miami Council on April 15, 1967, is hereby approved.

12. On May 27, 1968, a hearing was held before the Commission.

Documentary evidence was introduced of the approval of the settlements by the Miami Tribe and by the Bureau of Indian Affairs.

13. Forest D. Olds, Chief of the Miami Tribe of Oklahoma, testified with respect to the approval of the Miami Tribe of Oklahoma. He confirmed that a quorum was present, that there was a thorough discussion in which all questions were answered, and that the matter was fully understood by the members of the tribe. He also testified that there was widespread publicity for the meeting. David Olds, a member of the tribe, confirmed Chief Old's testimony.

14. The parties have entered into a stipulation which has been made a part of the record herein, which reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

The parties by and through their respective attorneys of record hereby agree and stipulate that the above-entitled case shall be settled and finally disposed of by entry of final judgment, from which no appeal or review will be taken by either party, as follows:

1. There shall be entered in the above-entitled case, after all allowable deductions, credits and off-sets, a net final judgment of \$10,000.

2. The entry of said final judgment in the above-entitled case shall finally dispose of all claims or demands whatsoever which the petitioners have asserted against the defendant in this case, Docket No. 251-A, and petitioners shall be barred from asserting all such claims or demands in any other action.

3. In arriving at the amount of the net final judgment to be entered herein, the parties did not extend or go beyond the offsets and counterclaims which were heretofore adjudicated between the same parties in Docket No. 67 and defendant shall be barred from asserting off-sets and counterclaims in other actions only as to those which it asserted or could have asserted in said Docket No. 67.

4. This stipulation and the final judgment to be entered pursuant hereto are by way of compromise and settlement and are not to be construed as an admission for the purpose of precedent or argument in any case.

This stipulation executed as of the 25th day of June, 1968.

(s) Edwin A. Rothschild
Attorney of Record for Petitioners


(s) Clyde O. Martz
Assistant Attorney General

(s) W. Braxton Miller
Attorney for Defendant


15. From the entire record the Commission finds that the compromise settlement as set forth in the Stipulation for Entry of a Final Judgment has been carefully and fully presented to the Indians who are petitioners in said Docket No. 251-A and has been freely and voluntarily approved

by them and that the said compromise agreement under all the circumstances is fair and just to petitioners and defendant.


16. The Commission therefore approves and adopts the terms of a Stipulation for Entry of a Final Judgment.



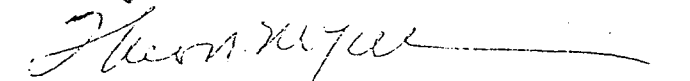
Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Theodore R. McKeldin, Commissioner