IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JUAN E. AQUINO, Plaintiff, vs. TINIAN COCKFIGHTING BOARD, Defendant.	CIVIL ACTION NO. 90-35 DECISION AND ORDER

This matter was tried before this court on February 14, and February 26 of 1991. At the conclusion of the trial counsel for both parties were instructed to submit findings of fact and law. Based on these submissions, the record, and counsels' oral arguments, the court makes the following conclusions of fact and law.

FACTS

On June 5, 1989, the Tinian Cockfighting Board (hereinafter "the Board") issued a notice of invitation to bid for the Cockfighting Franchise License for the Island of Tinian pursuant to 10 CMC §§ 2411 - 2419 (hereinafter "the Cockfighting Act"). The Board posted this notice on public buildings, but failed to publish notice in a newspaper of general circulation as required by 10 CMC § 2415.

On July 14, 1989, the Board held a prebid conference in order to inform potential bidders of the bidding requirements and qualifications. Plaintiff was present at this meeting.

On July 17, 1989, the Plaintiff submitted the only bid for the franchise. This bid, for five thousand dollars ($5,000), was publicly opened and announced by the Secretary, who was a Board Member. In accordance with 10 CMC § 2416(a), Plaintiff's bid was accompanied by a check for one thousand dollars ($1,000) which constituted twenty percent (20%) of his total bid. This money was subsequently deposited into the general fund of the CNMI government.

Several days later, the Plaintiff paid the remaining four thousand dollars ($4,000) to the Secretary. One week later, the Board met to discuss the franchise license. At this meeting, the Secretary raised the issue of whether the Plaintiff's prior criminal record would affect his receiving the franchise. Consequently, the Board sought a decision from the Attorney General on this issue.

In September of 1989, the Attorney General informed the Board that the defendant's prior criminal history was not a bar to his receiving the franchise. The Attorney General did, however, inform the Board that it failed to comply with § 2415 of the Cockfighting Act. This section requires that the Notice of Invitation for Bids be published three times in a newspaper of general circulation. According to the Attorney General, this required the Board to reject Plaintiff's bid, reinstitute the process for notice of invitation for bids, properly follow the procedures

outlined in the Cockfighting Act, and ask that the Plaintiff resubmit his bid.

In accordance with the Attorney General's interpretation of the Act, the Board advised Plaintiff that his bid was rejected, returned the four thousand dollars ($4,000), and asked that he resubmit his bid.

On October 4, 1989, the Board issued a second notice of bids for the franchise license, posted the notice on public buildings, but again failed to publish the notice in a newspaper of general circulation for three consecutive weeks.

The Board again received bids and subsequently awarded the franchise to another party. The Plaintiff objected to and refused to participate in the second invitation for bids.

The Plaintiff subsequently filed this action asking that the court estop the government from denying that it induced his reliance on the fact that he had been granted the franchise. Under this theory, the Plaintiff asks that the court award him the damages he suffered from relying on the Board's actions. Alternatively, the Plaintiff seeks to estop the Board from refusing to grant him a franchise, thus eliminating the need for an award of damages.

OPINION

The elements of estoppel are as follows: 1) the party to be estopped must know the facts; 2) he must intend that his conduct be acted upon or must act in a manner that would lead the party seeking estoppel to believe that he intends to induce such

reliance; 3) the party asserting estoppel must be ignorant of the inducing facts; 4) the party asserting estoppel must rely to his detriment on the actions of the party to be estopped. Pangelinan v. Castro, 2 CR 368 (C.N.M.I. 1985).

In the present case, the elements of estoppel are clearly present. The Secretary of the Board should have been aware of the post-bid procedure for granting the franchise. The procedure states as follows: ""Payment of the cockfighting license by the successful bidder must be made within 10 days after the opening and award of the franchise license by the Board. The method of payment shall be the same as that designated for deposits." 10 CMC § 2416(c). By its terms, the statute mandates that payment shall not be made until after the Board awards the franchise. When the Secretary accepted the Plaintiff's payment of the balance due ($4,000.00), he obviously induced Plaintiff to believe he had received the franchise because the statute does not require the bidder to pay the balance until the Board has granted the license. There is nothing in the facts to indicate that the Secretary placed any conditions on the acceptance of the balance due. Thus, there is nothing to indicate that the Plaintiff was aware of any need for further delay prior to his beginning operations. Furthermore, the Plaintiff relied to his detriment on the Secretary's actions by purchasing materials and incurring other expenses associated with the establishment of a cockfighting franchise. Therefore, the elements of estoppel have been clearly established.

Even where the elements of estoppel are clearly present, courts are generally reluctant to invoke the doctrine where the party to be estopped is the government or one of its agents. Apatanq v. Marianas Public Land Corp., 3 CR 937, 944 (Super. Ct. 1989). The government may, however, be estopped from engaging in wrongful conduct "that will cause a serious injustice and the public's interest will not suffer undue damage by imposition of liability." Id. The NKI District Court has required that an individual's actions rise to a level of "affirmative misconduct" prior to the imposition of estoppel against the government. Pangelinan v. Castro, supra at 372. Affirmative misconduct may be found where the government gives incorrect information or fails to warn of potential traps in its procedures. Id. at 374. Though individuals who deal with the government are expected to know the law, where the government's behavior is so blatantly unconscientious and creates serious inequity, the court will allow a claim for estoppel. Apatang v. Marianas Public Land Corp., supra at 944.

In the present case, the Board's actions clearly rose to a level of affirmative misconduct. It is inconceivable how a Board can be assembled for the purpose of executing a statutory franchise and have no knowledge of the law providing for its existence. The Board's lack of knowledge and failure to follow the provisions of the Cockfighting Act caused confusion that never should have existed. The Board misinterpreted the statute and mislead the Plaintiff at every step in the process. After virtually ignoring the provisions of the statute, the Board now

asks this court to vindicate its lack of competence and punish the Plaintiff for believing that a government entity would follow its own procedures. The court vehemently denies this request, thus finding that the Board is estopped from denying that it induced Plaintiff to believe he had been awarded the franchise.

Having found that the Board is estopped from denying that it induced Plaintiff to believe he had been awarded the franchise, the only issue left for resolution is whether the Board must now award the Plaintiff a franchise.

10 CMC § 24l6(f) provides that the Board may reject any or all bids for good cause. The Defendant has not presented any evidence that would have justified the Board in refusing to award the Plaintiff the franchise. The Attorney General's office correctly told the Board that the Plaintiff's past criminal record was not a bar to his being awarded the franchise. The Attorney General's office, however, incorrectly notified the Board that its failure to properly publish notice invalidated the original bidding procedure. Where the grantee acts in good faith, the failure of **the** grantor to properly publish notice for bids for three consecutive weeks as required by statute does not render the bidding process void. See 36 Am Jur 2d **§,** at 742 nl8 (citing Raynolds v. Cleveland, 84 N.E. 1131 (Ohio 1908) [text of case unavailable on Westlaw]). Instead, the grantor is estopped from refusing to grant the franchise to the Plaintiff. Any other decision would punish the Plaintiff, who acted in good faith, and condone the actions of the Board, which incompetently executed its duties.

The court fully realizes that the Board subsequently granted the franchise to a third party. However, if the court accepted the Defendant's argument concerning the Board's failure to publish notice, it would also have to invalidate the second bidding process. Instead, the court finds that under the circumstances of this case, the Board's failure to follow the publishing requirement in 10 CMC § 2415 constituted an immaterial irregularity in the bidding process under 10 CMC § **2416(f).**

For the foregoing reasons, IT IS HEREBY ORDERED that the Board issue the Tinian Cockfighting franchise to the Plaintiff upon his payment of the sum of four thousand dollars ($4,000) to the Board. Plaintiff's claim for damages for his expenses is DENIED.

Dated this 8TH day of May, 1991.

Marty W. K. Taylor
Associate Judge