

Robin Duncan  
John Vittone



Date Issued: February 17, 1993

Case No.: **90-JTP-23**

In the Matter of:

AMERICAN INDIAN BUSINESS ASSOCIATION  
OF CHICAGO AND THE MIDWEST,  
Complainant

**v.**

U.S. DEPARTMENT OF LABOR,  
Respondent

Before: JOHN M. VITTONI  
Deputy Chief Judge

#### DECISION AND ORDER

This proceeding arises under the Job Training Partnership Act (JTPA), 29 U.S.C. § 1579(a) and the applicable regulations set forth at 20 C.F.R. § 636 et seq.

On April 12, 1990, the United States Department of Labor (DOL) issued a Final Determination (FD) notifying the American Indian Business Association of Chicago and the Midwest (Complainant) of the disallowance of **\$5,018.00** as a result of **DOL's** audit of Complainant's programs under JTPA. On May 7, 1990, Complainant made a request for hearing before this Office. This Office issued a Notification of Receipt of Request for Hearing and Pre-Hearing Order on May 17, 1990, which required the parties to file certain information in this case. On June 20, 1990, DOL requested an extension of time to file the information. **DOL's** request was granted on June 28, 1990, and DOL filed a response to the Pre-Hearing Order on August 21, 1990.

On August 6, 1992, this Office ordered Complainant to show cause why a default decision should not be entered in this case. To date, Complainant has failed to answer either the Notification of Receipt of Request for Hearing and Pre-Hearing Order or the Show Cause Order. The regulations at 29 C.F.R. § 18.6(d)(2)(v)

provide that where a party fails to comply with an order, the Administrative Law Judge may:

Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying **party**, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying **party**, or both.

After reviewing the record I adopt the following as my findings of fact.

The United States Government awarded Complainant Grant Number **99-7-0809-55-109-02**. An audit was performed on this grant and assigned Audit Report No. **05-90-003-03-355**. The audit covered the grant period beginning July 1, 1987 and ending June **30, 1988** and revealed the following information.

Questioned Costs:	<b>\$5,018.00</b>
Allowed Costs:	0.00
Disallowed Costs	<b>5,018.00</b>
Amount Subject to Debt Collection	<b>\$5,018.00</b>

After the audit, the Grant Officer set forth in his FD that Complainant is liable for the disallowed costs. In the May 7 request for a hearing, Complainant states that it paid **\$4,740.00** to the Internal Revenue Services (IRS) for "unpaid taxes for the period ending September 30, **1984**". In addition, Complainant has acknowledged and agreed to pay the interest and penalty amount (\$278.00) which incurred on the amount paid to IRS. Complainant attached a copy of a check showing payment to IRS in the amount of **\$4,835.87**.

In Finding No. I, DOL questioned the \$5,018 for Penalty and Interest Costs in this matter. The auditors assert that "costs of fines and penalties resulting from violations of, or failure to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award." Further, DOL asserts that an allowable cost "must be necessary and reasonable for proper and efficient administration of grantee's program." Complainant has not contested this finding.

Due to the failure of Complainant to further participate in this proceeding further, I hereby ORDER that a Default Judgment is entered against Complainant on Finding No. I in the Final Determination. By reason of the Default Judgment, Complainant is liable for a sum equal to **\$5,018.00**.

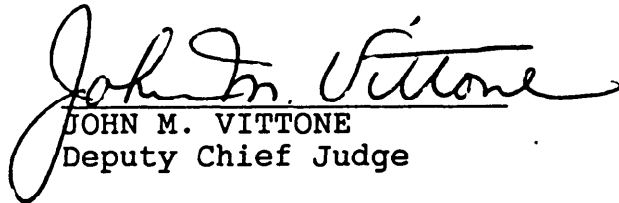
ORDER

In light of the foregoing, Complainant is ORDERED to pay by cashier check the amount of **\$5,018.00** to U.S. Department of Labor. This check should be sent to:

Mr. David O. Williams, Administrator  
Employment and Training Administration  
U.S. Department of Labor  
Room 4671  
**200** Constitution Avenue, N.W.  
Washington, DC 20210

To insure proper credit, please indicate the appropriate Audit Report and Grant Numbers on the check.

I ORDER FURTHER that Complainant's request for hearing is DISMISSED.

  
JOHN M. VITTON  
Deputy Chief Judge

Washington, D.C.

**JMV/jsp**

SERVICE SHEET

**Case Name :** AMERICAN INDIAN BUSINESS ASSOCIATION  
OF CHICAGO AND THE MIDWEST

Case No. : **90-JTP-23**

Title of Document: DECISION AND ORDER

A copy of the above-entitled document was sent to the following:

Charles D. Raymond  
Associate Solicitor for  
Employment and Training  
Attn: Robert J. Lesnick, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Washington, DC 20210

David O. Williams, Administrator  
Office of the Special Counsel  
U.S. Department of Labor, ETA  
Room 4671  
200 Constitution Avenue, NW  
Washington, DC 20210

Harry Sheinfeld  
Counsel for Litigation  
Office of the Solicitor  
U.S. Department of Labor  
Room N-2101  
200 Constitution Avenue, NW  
Washington, DC 20210

Charles A. Wood  
Contract/Grant Officer  
Chief, Division of Audit  
Closeout and Appeals Resolutions  
U.S. Department of Labor, ETA  
Room 4671  
200 Constitution Avenue, NW  
Washington, DC 20210

Donald R. White  
Executive Director  
American Indian Business Association  
of Chicago and the Midwest  
Suite 700  
4753 North Broadway  
Chicago, IL 60640

John H. Secaras  
Regional Solicitor  
U.S. Department of Labor  
Federal Building, 8th Floor  
230 South Dearborn Street  
Chicago, IL 60604

Ernest P. Clark  
Chairman  
American Indian Business Assn.  
of Chicago and the Midwest  
Suite 700  
Chicago, IL 60640

American Indian Business Assn.  
964 North Pennsylvania, #3  
Indianapolis, IN 46204