



INTERIOR BOARD OF INDIAN APPEALS

Estate of Oscar Spencer

4 IBIA 173 (10/31/1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF OSCAR SPENCER

IBIA 75-55

Decided October 31, 1975

Petition to reopen.

Granted and Remanded.

APPEARANCES: DNA, People's Legal Services, Inc., by Carolyn E. Slaby, Attorney, for petitioners.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

An Order Determining Heirs was entered by Administrative Law Judge Richard B. Denu on November 19, 1969, wherein he found Mary Spencer (now Mrs. John Davidson) to be the wife and sole heir of the decedent, Oscar Spencer.

Oscar Spencer died intestate in or about 1921. The only information available to the Judge listed Mary Spencer as a probable heir. Mary Spencer was notified that a hearing would be held to probate the decedent's estate and a hearing was held by the Judge on November 13, 1969. No one else was present at the hearing. Mary Spencer erroneously testified through her interpreter that she was the surviving spouse of the decedent who died without issue.

The Judge was subsequently apprised by collateral kin that Mary Spencer was in fact the decedent's sister. A hearing was held on August 5, 1974. From the evidence adduced at said hearing it appears that Mary Spencer was in fact a sister of the decedent and that the heirs of decedent are in fact collateral.

Because the matter is obviously more than 3 years old, the Judge could not reopen the matter on his own motion. (See 43 CFR 4.242(d).)

Consequently the Judge forwarded the aforementioned petition to this Board pursuant to 43 CFR 4.242(b) with a recommendation that the petition be granted to prevent manifest injustice.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen is hereby GRANTED and the matter is REMANDED to the Administrative Law Judge for such proceedings as he deems necessary and appropriate in the matter and for the issuance of an order or decision pursuant thereto.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Chief Administrative Judge