INTERIOR BOARD OF INDIAN APPEALS

Estate of Enoch Abraham

5 IBIA 89 (04/22/1976)

United States Department of the Interior

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

ESTATE OF ENOCH ABRAHAM

IBIA 76-14 Decided April 22, 1976

Petition to reopen.

Denied.

1. Indian Probate: Reopening: Waiver of Time Limitation

A petition to reopen on the grounds of lack of notice, filed more than 3 years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence.

APPEARANCES: Jacob J. Mann, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before the Board on a letter-affidavit filed on August 8, 1975, by Jacob J. Mann, Sr., hereinafter referred to as petitioner, with Administrative Law Judge Robert C. Snashall which the Judge treated as a petition to reopen.

The estate having been closed since October 31, 1963, the petition was referred to this Board for disposition by the Judge pursuant to 43 CFR 4.242(h) with his recommendations that the petition not be granted notwithstanding the fact that the Petitioner appears to have been related to the decedent as alleged.

The petitioner in support of his petition states:

> Enoch's estate was probated and submitted without listing myself as an heir. I was a grand nephew and this

> was of record of the Agency. However, I did not receive notice and was never mentioned. Bert French who was also a grand nephew stated to me that there was a Will naming him as sole beneficiary. I now find there was no Will but I was left off the family data.
>
> In further support of his petition he states:
>
> * * * Since one of the tracts he owned was willed to him by my aunt, Emma Buchanan, I would like my fair share.

[1] The record, as presently constituted, indicates that petitioner, notwithstanding lack of notice of the hearing, has failed to show by compelling proof that the 12-year delay in asserting his claim was not occasioned by his lack of diligence. Under similar circumstances the Department in the Estate of George Minkey, 1 IBIA 1 (August 13, 1970), [Same case as 1 IBIA 56, (December 29, 1970)], in denying a petition to reopen stated:

> * * * A petition to reopen on the grounds of lack of notice, filed more than three years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence.

See also the Estate of Samuel Picknoll (Pickernell), 1 IBIA 168 (November 1, 1971).

Assuming, arguendo, that the petitioner could have shown that he was not dilatory in asserting his claim, the petition would still be denied on the ground that it would be impossible to correct at this late date any manifest injustice, if one in fact existed, because the original estate, due to sales and probate actions, no longer remains in the ownership of the original heirs as determined in the Order Determining Heirs of October 31, 1963 (Probate No. E-193-63).

In view of the foregoing reasons, the petition to reopen filed by Jacob Mann Sr., must be denied.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen dated February 11, 1975, filed by Jacob J. Mann, Sr., be, and the same is hereby DENIED.

This decision final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge