



INTERIOR BOARD OF INDIAN APPEALS

Estate of Johnny Bill Tustis

7 IBIA 9 (01/30/1978)



United States Department of the Interior

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

ESTATE OF JOHNNY BILL TUSTIS

IBIA 77-58

Decided January 30, 1978

Appeal from an order after rehearing.

Dismissed.

1. Indian Probate: Appeals: Timely Filing

Appeals not timely filed under the regulations will be rejected and dismissed.

APPEARANCES: W. James Kennedy, Esq., Thorner and Kennedy P.S., for appellants, Floyd Bill and Inez Isadore.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

An order to determine heirs was entered in the above-entitled matter by Administrative Law Judge Robert C. Snashall on December 2, 1976. Thereafter, on December 10, 1976, a petition for rehearing was filed by Floyd Bill, one of the appellants herein. The petition was granted and the matter was set for rehearing on May 17, 1977.

Following the rehearing the Judge entered an order on June 2, 1977, wherein he affirmed his initial decision of December 2, 1976. Copies of the order of June 2, 1977, were mailed on the same date to all interested parties including the appellants herein.

The appellants, through their Attorney, W. James Kennedy, of Thorner and Kennedy, filed a notice of appeal bearing the date of August 1, 1977. The appeal although mailed on August 1, 1977, was not received in Judge Snashall's office until August 3, 1977, two days in excess of the 60-day period required by 43 CFR 4.291(a). ^{1/} The late filing was duly noted by the judge in his transmittal of the appeal to this Board pursuant to 43 CFR 4.291(c).

^{1/} Under Departmental rules a document is filed as of the date it is received in the required office. 43 CFR 4.22.

Clearly, the appeal was not timely filed as required by 43 CFR 4.291(a) which in pertinent part provides:

Notice of Appeal. The appellant shall file a written notice of appeal signed by him or his attorney or other qualified representative, in the office of the Administrative Law Judge who issued the decision being appealed, within 60 days after the date of mailing of the notice of the decision being appealed.

A caveat to the above effect appeared in the judge's Notice to All Persons Having An Interest In The Subject Matter Of The Proceeding [Estate of Johnny Bill Tustis], dated June 2, 1977.

[1] The Department has long adhered to the practice of rejecting and dismissing appeals not timely filed under the regulations, Estate of Ralyen Rabyea Voorhees, 1 IBIA 62 (February 12, 1971); Estate of Jack Fighter, 71 I.D. 203 (1964); Estate of Edward Alpheus Jones, 5 IBIA 138 (June 18, 1976).

To deviate from the above-stated practice would be beyond the Board's authority. Accordingly, the appeal must be dismissed.

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 appeal dated August 1, 1977, filed by W. James Kennedy, of Thorner and Kennedy, is hereby DISMISSED for untimely filing.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Chief Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Administrative Judge

//original signed
Mitchell J. Sabagh
Administrative Judge