



INTERIOR BOARD OF INDIAN APPEALS

Estate of Henry Hank Houle

33 IBIA 183 (03/03/1999)



United States Department of the Interior

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

ESTATE OF HENRY HANK HOULE : Order Dismissing Appeal
:
: Docket No. IBIA 98-14
:
: March 3, 1999

Appellant Martha R. Wyrick filed an appeal with the Board of Indian Appeals (Board) concerning the payment of the funeral expenses of Decedent Henry Hank Houle. Indian Probate No. IP TC 274 R 95. For the reasons discussed below, the Board dismisses this appeal.

Decedent died on March 25, 1995. His funeral was handled by the Neiwoehner Funeral Home, Rolla, North Dakota. On April 7, 1995, the funeral home submitted a claim for \$5,231 against Decedent's trust estate.

Administrative Law Judge Richard L. Reeh held a hearing in Decedent's estate on March 19, 1996. No one attended the hearing. On August 16, 1996, Judge Reeh issued an order finding that Decedent's sole heir was his daughter, Appellant here. As to claims against Decedent's estate, the order stated:

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that claims be approved and paid in accordance with 43 C.F.R. § 4.251, as follows:

<u>Claimant</u>	<u>Amount Claimed</u>	<u>Allowed-Priority</u>	<u>Allowed-General</u>
Neiwoehner Funeral Home	\$5,231.00		\$5,231.00 *

* Note: No determination has been [made] regarding payments made to claimant(s) after the estate was submitted for probate. The Special Trustee, Area Trust Fund Account, or designee should verify any balance prior to remittance.

Aug. 16, 1996, Order at 2.

A petition for rehearing was filed by Terrance Poitra and Natalie Ramos, who alleged they were also Decedent's children. On May 19, 1997, Administrative Law Judge Vernon J. Rausch held a hearing on rehearing. Appellant did not personally attend that hearing, but was represented by counsel.

On August 29, 1997, Judge Rausch issued an order finding that Poitra and Ramos were Decedent's children, and redistributing the estate in 1/3 shares to Appellant, Poitra, and Ramos.

Appellant appealed to the Board. She did not contest the finding that Poitra and Ramos were Decedent's children. Instead, she contended:

The Appellant, as personal representative of the decedent's estate, paid Niewoehner Funeral Home for funeral expenses in full by check number 108 on May 27, 1995 in the amount of \$5,207.96. (A copy of which is attached and labeled Exhibit 1.) Appellant has never been reimbursed for the payment of funeral expenses.

The Appellant seeks reimbursement of the funeral expenses. Appellant notified the Administrative Law Judge at the hearing and subsequent to the hearing th[at] she was entitled to reimbursement of funeral expenses, yet the determination appears to be silent regarding that issue. [1/]

Notice of Appeal at 2. The attached copy of a check showed that it was drawn against an account held by the "Estate of Henry Houle by Martha R. Houle Wyrick, Per. Rep."

On November 10, 1997, the Board issued an order in which it asked the funeral home if it contested receipt of payment in full for Decedent's funeral. As to Appellant's claim, the Board stated:

Appellant does not have a claim to reimbursement of her alleged payment to the funeral home if that payment was made from estate funds rather than from her personal funds. Before this case may proceed further, Appellant will be required to show that, despite the indicated owner of the account on which Check No. 108 was drawn, the payment was from her personal funds.

The funeral home acknowledged that, on May 27, 1995, it had received \$5,207.96 against Decedent's funeral expenses. It submitted a copy of its ledger sheet for Decedent, which showed a \$0 balance. The Board concludes that the bill for Decedent's funeral expenses was paid in full from sources other than Decedent's trust assets.

In her response to the Board's order, Appellant stated that she had paid the funeral expenses "in her capacity as personal representative, [and] ha[d] never been reimbursed for the payment of funeral expenses." Dec. 6, 1997, Response at 1. She continued:

The Appellant takes issue with the statement of the [Board] that she would not have a claim for reimbursement of the payment of expenses in that

1/ The transcript of the hearing before Judge Rausch shows that the issue of creditors' claims was not raised, even by Appellant's counsel. There is no evidence in the record of any communication from Appellant to Judge Rausch subsequent to the hearing.

she was appointed by a collateral court that has authority to administer the assets that came before the court and also had an obligation in administering the assets to pay funeral expenses. As the personal representative of that estate, she would be entitled to the payment of the funeral expenses as would anyone else who would be entitled to reimbursement for paying them in advance of [the Department's] action.

* * * * *

It is clear * * * that Appellant is engaging in the appeal process on behalf of the decedent's estate as administered through the Turtle Mountain Tribal Court. As such, the estate should be reimbursed any funds paid to Niewoehner Funeral Home for funeral expenses. The Turtle Mountain Tribal Court would thereafter have the responsibility of overseeing any disbursements out of property administered through said court.

Id. at 1-2.

In an order dated December 12, 1997, the Board allowed briefing to proceed, stating:

[T]he Board accepts Appellant's statement in her Response that she is asking that decedent's non-trust estate be reimbursed from his trust estate. In effect, therefore, Appellant asks that trust funds under the jurisdiction of the Department of the Interior be transferred to the jurisdiction of the Turtle Mountain Tribal Court so that they can be administered as non-trust property, and distributed according to the order of that court.

Dec. 12, 1997, Order at 2. In order to ensure that relevant issues were briefed, the Board raised several questions and specifically advised Appellant that she should

address what appear to be the facts that she did not object to the allowance of the claim for funeral expenses by Judge Reeh, even though she had paid the claim prior to the issuance of Judge Reeh's Order; that she did not seek rehearing as to the allowance of the claim by Judge Reeh; and that she objected to the allowance of the claim and/or the failure to reimburse her for [Decedent's funeral expenses] only after the entry of Judge Rausch's Order After Rehearing.

Id. at 3.

Appellant filed an Opening Brief. No other briefs were filed.

Appellant argues: "It is not a fact, per se, that the Appellant did not object to the allowance of the claim for funeral expenses by Judge Reeh. Ascertainment of that fact may only be proved or disproved by the record." Opening Brief at 3. Appellant continues:

It is not clear whether or not the appellant objected to the allowance of the claim for funeral expenses by Judge Reeh, even though she paid the claim prior to the issuance of Judge Reeh's Order. Apparently, Judge Reeh and Judge Rausch did not make mention of this in their records. Judge Reeh did not specifically rule on this claim, but rather, he ordered the payment of all claims. It was understood by the appellant at that time that the appellant's claim was included in that order. It later became apparent that it was not included, but rather the Niewoehner Funeral Home would have been paid double. The appellant objected to the allowance of the claim and the failure to reimburse her, as personal representative of the estate, for the funeral expense after the entry of Judge Rausch's Order After Rehearing when it was discovered.

Id. at 4-5.

Appellant contends that Judge Reeh did not rule on her claim against Decedent's estate. The record shows that Judge Reeh sent Appellant notice of the March 19, 1996, hearing. Appellant has not contested receipt of that notice. The notice specifically stated that one purpose of the hearing was to hear any claims against the estate. ^{2/} Appellant did not file a claim concerning the funeral bill. If Appellant had a claim against Decedent's trust estate, it was her responsibility to file that claim. 43 C.F.R. § 4.250(a) provides:

All claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under [43 C.F.R.] § 4.211(c) shall be filed with either the Superintendent or the administrative law judge prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.

Appellant's only suggestion that she filed a claim is found in her assertion on appeal that Judge Reeh did not rule on her claim. The Board finds that Appellant did not file a timely claim against Decedent's estate. Her attempt to file a claim on appeal is barred by 43 C.F.R. § 4.250(a). Estate of Pauline Muchene Gilbert, 17 IBIA 15 (1988). This appeal is therefore subject to dismissal under 43 C.F.R. § 4.250(a).

Furthermore, 43 C.F.R. § 4.241(a) provides: "Any person aggrieved by the decision of an administrative law judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing." There is nothing in the record even suggesting that Appellant petitioned for rehearing of Judge Reeh's approval of the funeral home's claim, and Appellant does not contend that she did so. Instead, she argues that neither Judge mentioned whether or not she objected to approval of the claim. It is Appellant's responsibility to prove--or at an absolute minimum, at least to allege--what she did; it is not the Judges' responsibility to mention what she did not do. The Board

^{2/} There is no evidence in the probate record that Appellant inquired about claims that had been filed against the estate prior to the hearing or to the issuance of Judge Reeh's decision.

finds that Appellant did not file a timely petition for rehearing of Judge Reeh's approval of the funeral home's claim. The filing of a timely petition for rehearing is a prerequisite to Board jurisdiction over an appeal. Estate of Bernard Whittier, 20 IBIA 86 (1991). Therefore, this appeal is also subject to dismissal for failure to file a timely petition for rehearing.

Appellant's suggestion that she first discovered that she had not been reimbursed after the issuance of Judge Rausch's order may be an attempt to argue that she should not be bound by 43 C.F.R. § 4.241(a). Appellant was sent a copy of Judge Reeh's order. She has not denied receipt of that order. Indeed, parts of her argument are based on that order. Contrary to Appellant's assertion, Judge Reeh did not "order[] the payment of all claims." As clearly shown in the quotation above from his August 16, 1996, order, Judge Reeh ordered the payment of one specific claim--the only claim which had been filed. Nothing in Judge Reeh's order provides any basis for Appellant's alleged understanding that the Judge approved a claim from her, or for her alleged belief that she--or Decedent's non-trust estate--would be reimbursed for the payment of the funeral expenses. Because it finds no basis for the underlying factual premise of Appellant's argument, the Board concludes that there are no grounds for excusing Appellant's failure to file a timely petition for rehearing under 43 C.F.R. § 4.241(a).

Therefore, the Board dismisses this appeal for either or both Appellant's failure to file a timely claim against Decedent's estate and her failure to file a timely petition for rehearing. Because of this dismissal, the Board does not reach the merits of Appellant's appeal.

In accordance with the Note in Judge Reeh's August 16, 1996, Order, the amount approved by Judge Reeh for the payment of the claim filed against Decedent's estate by the Neiwoehner Funeral Home should not be paid because it has been determined that payment in full was made from non-trust assets prior to the issuance of that Order. The amount approved for the funeral home should instead be distributed to Decedent's heirs in accordance with Judge Rausch's August 29, 1997, order redetermining heirs.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge