



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frank Andrew Spencer

39 IBIA 190 (11/05/2003)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF FRANK ANDREW SPENCER : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 04-9
:
: November 5, 2003

On November 3, 2003, the Board of Indian Appeals (Board) received a notice of appeal from Appellant Richard A. Lewis, pro se. Appellant's notice of appeal contained only the name of Decedent Frank Spencer and a case number of IP SA 33 N 01. The Board contacted the office of Administrative Law Judge William E. Hammett to determine if Judge Hammett had handled this matter. It was informed that the Judge issued an order approving Decedent's will on September 15, 2003. A copy of that order was provided to the Board. For the reasons discussed below, the Board docketed this appeal but dismisses it as premature.

Judge Hammett correctly informed interested parties that the decision in this estate would be final unless a petition for rehearing was timely filed with him in accordance with 43 C.F.R. § 4.241. Rather than filing a petition for rehearing with Judge Hammett, Appellant filed a notice of appeal with the Board. The Board does not have jurisdiction to entertain an appeal in a probate case unless rehearing has first been sought from the Administrative Law Judge. See 43 C.F.R. § 4.320 ("A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate"); Estate of Wilford Louie "Hops" Broncho, 36 IBIA 4 (2001), and cases cited there.

Because no "order of an OHA deciding official on a petition for rehearing" has been issued, this appeal is premature.

Therefore, 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 from Judge Hammett's September 15, 2003, decision is docketed but dismissed without prejudice as premature.

//original signed

Kathryn A. Lynn
Administrative Judge

//original signed

Kathleen R. Supernaw
Acting Administrative Judge