



INTERIOR BOARD OF INDIAN APPEALS

Estate of Harry J. Crebassa

44 IBIA 84 (01/12/2007)

Related Board case:

44 IBIA 1



## United States Department of the Interior

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

ESTATE OF HARRY J. CREBASSA : Order Docketing and Dismissing  
: Appeals  
:  
: Docket Nos. IBIA 06-79  
: 06-80  
:  
: January 12, 2007

Appellants Lois Bogda (Docket No. IBIA 06-79) and Agnes Hueckstaedt (Docket No. IBIA 06-80) appealed from a July 7, 2006 Order Denying Petition for Reopening entered by Administrative Law Judge Richard J. Hough in the estate of Harry J. Crebassa (Decedent), deceased L'Anse Indian, Probate No. TC 494S-91. Judge Hough denied reopening, finding as a threshold matter that Bogda, who filed the petition, was present at the original probate proceedings and therefore lacked standing under 43 C.F.R. § 4.242(a) to petition for reopening. 1/ The Board docketed these appeals, but dismisses them for failure to prosecute because Appellants have failed to respond to a November 2, 2006 order by the Board to comply with service requirements and to show standing. 2/

Appellants' separately filed notices of appeal did not indicate they had served copies of their notices of appeal on Judge Hough and on all interested parties, as required by 43 C.F.R. § 4.320(c). On July 27, 2006, the Board issued an order requiring Appellants, on or before August 11, 2006, to complete these service requirements and to file a statement with the Board that they had done so.

On August 8, 2006, the Board received from Appellants a letter, sent by certified mail, in which they reiterated their reasons for appealing Judge Hough's July 7, 2006 order,

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1/ In order to have standing (i.e., to be permitted) to file a petition for reopening an estate, the person filing the petition must have had "no actual notice of the original proceedings." 43 C.F.R. § 4.242(a).

2/ On October 18, 2006, the Board of Indian Appeals (Board) dismissed, for failure to prosecute, an appeal from Genevieve Eklund from the same July 7, 2006 order denying reopening. Estate of Harry J. Crebassa, 44 IBIA 1 (2006).

but failed to indicate that they served their notices of appeal, or the most recent letter, on all interested parties and on Judge Hough. Because it appeared that Appellants may have misunderstood the Board's July 27, 2006 order and that their August 2006 letter may have been an attempt to comply, the Board by order dated November 2, 2006 gave Appellants another opportunity, on or before December 1, 2006, to serve interested parties with copies of all of their filings and to certify to the Board that they had done so.

In the November 2, 2006 order, the Board also ordered Appellants to show cause concerning two jurisdictional issues, the first related to the Board's jurisdiction and the second related to Judge Hough's jurisdiction. First, the Board ordered Appellants to show that they have standing to bring this appeal because it appeared that Judge Hough's failure (by denying reopening) to correct an alleged error in the original probate order was not material to the distribution of Decedent's estate and caused no injury to Appellants. <sup>3/</sup> Second, the Board ordered Appellants to show why Judge Hough was not correct in determining that Bogda did not have standing to petition for reopening Decedent's estate because she had notice of the probate proceedings, see supra note 1, as evidenced by the fact that she appeared and provided testimony at the hearing held on March 30, 1992.

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<sup>3/</sup> A showing of injury is required to establish standing. See 43 C.F.R. § 4.242(h) (petition for reopening must be filed by "aggrieved" party); see also Arizona State Land Dep't v. Western Regional Director, 43 IBIA 158, 163 (2006) ("injury" is an element of constitutional standing requirements for Federal courts, which the Board follows as a matter of prudence).

The original May 7, 1992 probate order determining heirs and distributing Decedent's estate found that Decedent (Appellants' father) had "two marriages," and the Data for Heirship Finding and Family History form indicates that one of those marriages was to Virginia Asher Crebassa VanLinden (Appellants' mother). Appellants contend that the May 7, 1992 order and the related documents in the record (including Bogda's own transcribed testimony) erroneously state that Decedent was married to Virginia. Appellants disavow Bogda's testimony, and contend that Decedent and Virginia were never legally married. Even assuming their assertion is correct, Appellants' inheritance from Decedent was not determined or affected by whether or not their parents were married. Thus, neither Bogda's testimony on this issue nor the documents indicating that Decedent and Virginia were legally married — even if erroneous — were necessary or material to the determination of heirs and distribution of the estate, and therefore apparently caused no legal injury to Appellants.

The Board advised Appellants that failure to comply with the Board's November 2, 2006 order concerning service and order to show cause could result in dismissal of their appeals without further notice. The Board has received no response from Appellants.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed these appeals, but dismisses them for failure to prosecute. 4/

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Debora G. Luther  
Administrative Judge

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4/ Although we dismiss this appeal, Appellants' position on whether Decedent and Virginia were ever married will of course be reflected in Decedent's probate record by the addition of this appeal record, including Appellants' filings and this order, which may be reviewed in the event the issue ever becomes relevant.