



INTERIOR BOARD OF INDIAN APPEALS

Estate of Irene C. Ramos

45 IBIA 306 (09/25/2007)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF IRENE C. RAMOS            )    Order Affirming Decision  
  )      
  )    Docket No. IBIA 07-81  
  )      
  )    September 25, 2007

Appellant Brenda Jones-Smith appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing issued March 1, 2007, by Indian Probate Judge M.J. Stancampiano (IPJ) in the estate of Irene C. Ramos (Decedent), deceased Pit River Indian, Probate No. P-00001-6715-IP. The Order Denying Rehearing let stand a February 8, 2007, Order Determining Heirs and Disapproving Will (Order Determining Heirs) issued by the IPJ. The IPJ denied rehearing because he determined that Appellant was not an interested party entitled to seek rehearing and was not legally aggrieved by the Order Determining Heirs. We conclude that Appellant has not shown that she has standing to petition for rehearing and therefore summarily affirm the Order Denying Rehearing.

## Background

Decedent died on October 23, 1984. In the February 8, 2007, Order Determining Heirs, the IPJ determined that Decedent's heirs under the laws of intestate succession of the State of California were the heirs of her predeceased siblings who had children, i.e., her nieces and nephews.<sup>1</sup> The IPJ ordered the distribution of Decedent's trust assets to (1) those nieces and nephews who were alive at the time of the Order Determining Heirs, (2) the heirs of those nieces and nephews who predeceased Decedent, and (3) the estates of those nieces and nephews who were alive at the time of Decedent's death, but who subsequently died. One of the children of Decedent's predeceased half-brother Alfred

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<sup>1</sup> Decedent had one child who predeceased her, leaving no issue. Decedent also had eleven brothers and sisters, all of whom predeceased her. The record shows that only two of the eleven siblings had children.

Logan, Sr. is Emma Estella (Logan) Earl.<sup>2</sup> Emma, who died on June 5, 1995, is Appellant's mother. Because Emma post-deceased Decedent, the Order Determining Heirs reflects that Emma's interest is to be distributed to the estate of Emma Estella (Logan) Earl.

In her petition for rehearing, Appellant (1) asserted that notice of the hearing held in this estate and the Order Determining Heirs were not sent to all interested parties,<sup>3</sup> and (2) inquired about Decedent's estate inventory. The IPJ denied rehearing because he determined that Appellant was not an interested party entitled to petition for rehearing and was not legally aggrieved by the Order Determining Heirs. He explained that heirship is determined as of the date of Decedent's death. Those heirs who were alive at the time of Decedent's death (e.g., Emma) still inherited from Decedent even though some of the heirs died before Decedent's Indian trust assets were probated. The IPJ went on to explain that when the estate of a subsequent deceased heir is probated (e.g., Emma's estate), the interest inherited from Decedent will then be passed on to the heirs of the subsequent deceased heir (e.g., Emma's heirs). He also explained that distribution of the trust assets of deceased Indians is made by the Bureau of Indian Affairs (BIA).

Appellant appealed to the Board. In her notice of appeal, Appellant asserted that she is an interested party because the Superior Court for the State of California named her the administratrix of Emma's estate and Emma's sole heir.<sup>4</sup> She enclosed copies of documents from the state court probate of her mother's estate, which confirmed Appellant's assertions.<sup>5</sup>

On July 31, 2007, the Board ordered Appellant, on or before August 20, 2007, to show cause why the IPJ's denial of rehearing should not be summarily affirmed on the ground that Appellant did not have standing to petition for rehearing because she had not alleged any substantive error in the Order Determining Heirs. The Board advised Appellant

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<sup>2</sup> Alfred Logan, Sr., and Decedent shared the same father, Greenberry Logan, who was non-Indian. However, each had different mothers.

<sup>3</sup> Appellant herself evidently received notice of the hearing because she was in attendance.

<sup>4</sup> Appellant also inquired about the status of a number of other probates. Inquiries regarding the initiation of Indian probate proceedings and the distribution of assets from completed Indian probate proceedings are properly directed to BIA, *see* 25 C.F.R. § 15.101 *et seq*; inquiries concerning probate proceedings that have been initiated with the Office of Hearings and Appeals (OHA) properly are addressed to the appropriate OHA office.

<sup>5</sup> These documents were not part of the record before the IPJ. Therefore, the IPJ may not have had a basis for presuming that Appellant properly represented the interests of her mother's estate while the matter was before him.

that failure to respond to the show cause order may result in dismissal of her appeal without further notice.

The Board has not received a response from Appellant.

### Discussion

We conclude that Appellant has failed to allege any substantive injury resulting from the Order Determining Heirs, and therefore she lacked standing to petition for rehearing.

To have standing to petition for rehearing, a party seeking rehearing must allege some error that has resulted in injury to him or her. *See Estate of Eunice Martha Creek*, 44 IBIA 214, 215 (2007); *Estate of Harry J. Crebassa*, 44 IBIA 84, 85 n.3 (2007); *see also* 43 C.F.R. § 4.241(a) (petition for rehearing must be filed by an aggrieved party); *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).

Appellant asserts in her notice of appeal that “[b]ased on . . . documentation [showing that a state court named her the administratrix of Emma’s estate and her mother’s only heir] I believe that I have been legally aggrieved by the decision of the [IPJ].” However, Appellant has not identified any substantive error in the Order Determining Heirs either in her Petition for Rehearing or in her Notice of Appeal.

Because Appellant has failed to respond to the Order to Show Cause and because she has not otherwise identified any substantive error in the Order Determining Heirs, we conclude that she has not shown that she has standing to petition for rehearing and that the Order Denying Rehearing was proper.

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 summarily affirms the Order Denying Rehearing because Appellant has failed to show that she has standing to petition for rehearing the Order Determining Heirs.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge