



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Charmane Rosella Sanchey, Estate of Virginia Agnes Yelechchin,  
and Estate of Diana Kay Broncheau

46 IBIA 160 (01/04/2008)

Related Board cases:

46 IBIA 60

46 IBIA 195

46 IBIA 245



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF CHARMANE ROSELLA )	Order Affirming Decisions
SANCHEY )	
)	
ESTATE OF VIRGINIA AGNES )	Docket Nos. IBIA 07-66
YELECHCHIN )	07-69
)	07-72
ESTATE OF DIANA KAY )	
BRONCHEAU )	January 4, 2008

These three appeals were filed with the Board of Indian Appeals (Board) by the Yakama Nation Credit Enterprise (YNCE) from separate but substantively identical orders denying rehearing in the estates of Charmane Rosella Sanchez, Virginia Agnes Yelechchin, and Diana Kay Broncheau. Each order denying rehearing was entered by Administrative Law Judge Steven R. Lynch (ALJ) on November 28, 2006. In each case, YNCE sought rehearing after the ALJ denied on the merits the claims that YNCE had filed in the probates of these Yakama Indian estates. In rejecting YNCE's claims, the ALJ relied on grounds that have since been rejected by the Board in several other appeals filed by YNCE. *See Estates of Roy Phillip Watlamatt, Peter Smartlowit, and Beverly Ann Tallman*, 46 IBIA 60 (2007). However, prior to our decision in *Estate of Watlamatt*, we ordered YNCE to show cause why the ALJ's decisions in the present three cases should not be affirmed for another reason that was not considered by the ALJ — that YNCE's claims were time-barred under 43 C.F.R. § 4.250(a) (2002).<sup>1</sup> Upon consideration of YNCE's response, which effectively

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<sup>1</sup> Originally these three appeals were consolidated with YNCE's appeals in the estates of Watlamatt, Smartlowit, and Tallman, and with YNCE's appeals from orders denying its claims in the estates of Arleia Wesley Jolley (Docket No. IBIA 07-68) and Eva Marie Shippentower (Docket No. IBIA 07-93). For YNCE's appeals in Jolley and Shippentower, the Board issued a separate show cause order regarding the timeliness of YNCE's claims, based on the interim probate regulations in effect in 2001, when those individuals died. *See* 25 C.F.R. § 15.303 (2001); 43 C.F.R. § 4.250(a) (2001). Subsequently, the Board granted YNCE's request for a limited remand of the Jolley and Shippentower cases to allow for settlement negotiations.

concedes that its claims in these cases are time-barred, we affirm the ALJ's denials of rehearing on this ground alone, and do not address the underlying merits of the claims themselves.

## Background

### I. Claims Deadline Under 2001 Final Probate Regulations

On December 31, 2001, 43 C.F.R. § 4.250(a) was amended to require that all claims against the estate of a deceased Indian be filed with the Bureau of Indian Affairs (BIA)

(i) [w]ithin 60 days from the date BIA receives a certified copy of the death certificate or other verification of the decedent's death under 25 C.F.R.

15.101 or

(ii) [w]ithin 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later.

*See* 66 Fed. Reg. 67,652, 67,662-663 (Dec. 31, 2001), *codified at* 43 C.F.R. § 4.250(a) (2002). The December 31, 2001, regulations applied to decedents who died after the effective date of the rule, which was January 30, 2002. *See* 66 Fed. Reg. 67,652.

As discussed below, Sanchey, Yelechchin, and Broncheau all died after January 30, 2002, and therefore the above regulation and deadlines governed the submission of YNCE's claims against their estates. Thus, to file a timely claim YNCE needed to file either (1) within 60 days from the date BIA received verification of the respective decedent's death, or (2) within 20 days from the date YNCE was chargeable with notice of the decedent's death. 43 C.F.R. § 4.250(a).

### II. Estate of Charmane Rosella Sanchey (Docket No. IBIA 07-66)

Charmane Rosella Sanchey died testate on January 16, 2003, owning an interest in trust or restricted Yakama Public Domain Allotments and in trust or restricted property located on the Yakama Reservation. On March 14, 2003, BIA received a certified copy of Sanchey's death certificate, as shown by a datestamp on the certificate.

The probate record for Sanchey indicates that Sanchey and two friends were murdered in Yakima County on January 16, 2003. On August 11, 2003, the Yakama Tribal Court appointed Sanchey's son as administrator of her estate. The record further

indicates that on July 27, 2004, Sanchez's brother was acquitted of her murder, in what two newspaper articles in the record suggest was a highly-publicized trial.

On October 6, 2004, approximately 21 months after Sanchez's death and approximately 19 months after BIA received the death certificate, YNCE prepared a claim against Sanchez's estate in the amount of \$5,939.29, and apparently submitted it to BIA or the Office of Hearings and Appeals (OHA) the next day.<sup>2</sup> The claim was for the amount remaining due on a loan from YNCE to Sanchez, and was accompanied by an assignment of income executed by Sanchez and approved by BIA.<sup>3</sup>

The ALJ denied YNCE's claim on the ground that post-death income from Sanchez's trust or restricted property vested in Sanchez's heirs at the instant of her death and was not available to pay claims. *See* Order Approving Will and Decree of Distribution, Estate of Charmane Rosella Sanchez, June 7, 2006. YNCE filed a timely petition for rehearing, which the ALJ denied on November 28, 2006, and from which YNCE appealed to the Board.

### III. Estate of Virginia Agnes Yelechchin (Docket No. IBIA 07-69)

Virginia Agnes Yelechchin died testate on August 22, 2002, owning an interest in trust or restricted Yakama Public Domain Allotments and in trust or restricted property located on the Yakama Reservation. On October 3, 2003, an employee of the BIA Land Titles and Records Office (LTRO) prepared an inventory of the trust or restricted interests owned by Yelechchin at the time of her death. BIA also completed a Data for Heirship Finding and Family History (OHA-7) form, and on July 16, 2004, the Acting Superintendent for the Yakama Agency certified that the OHA-7 form was complete and accurate. The OHA-7 form indicated that Yelechchin's death certificate was attached.

There is no direct evidence in the probate record of when YNCE received actual notice of Yelechchin's death. However, Yelechchin died in White Swan, Washington, in Yakima County, in which a portion of the Yakama Reservation is located. *See Tiller's Guide to Indian Country* 1026 (Veronica Tiller, ed. & compiler, 2005).

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<sup>2</sup> A datestamp on the claim shows that it was "entered" on October 7, 2004, but it does not identify to whom the claim was submitted.

<sup>3</sup> The assignment provided that upon Sanchez's death, the assignment would constitute a claim superior to that of Sanchez's heirs.

On September 20, 2004, over 2 years after Yelechchin's death and 66 days after BIA certified the OHA-7 form with the attached death certificate, YNCE prepared a claim against Yelechchin's estate in the amount of \$2,483.23, and submitted it to BIA or OHA.<sup>4</sup> The claim covered amounts due on six loans from YNCE to Yelechchin, and was accompanied by assignments of income executed by Yelechchin and approved by BIA.<sup>5</sup>

The ALJ denied YNCE's claim for the same reason he relied upon in Sanchey's probate proceedings. *See* Order Approving Will and Decree of Distribution, Estate of Virginia Agnes Yelechchin, Aug. 18, 2006. YNCE filed a timely petition for rehearing, which the ALJ denied on November 28, 2006, and from which YNCE appealed to the Board.

#### IV. Estate of Diana Kay Broncheau (Docket No. IBIA 07-72)

Diana Kay Broncheau died intestate on December 13, 2003, owning funds on deposit in her Individual Indian Money (IIM) account and interests in trust or restricted property on the Yakama and Nez Perce reservations. On December 23, 2003, the Nation's Enrollment Office received a certified copy of Broncheau's death certificate, as shown by the datestamp on the death certificate.

On September 13, 2004 — ten months after Broncheau's death, and approximately nine and a half months after the Nation received a certified copy of Broncheau's death certificate — YNCE prepared a claim for \$765.03 against Broncheau's estate, and apparently submitted it to BIA or OHA.<sup>6</sup> The claim covered the amount remaining due on four loans from YNCE to Broncheau, and was accompanied by assignments of income executed by Broncheau and approved by BIA.<sup>7</sup>

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<sup>4</sup> A datestamp on the claim shows that it was "entered" on September 20, 2004, but it does not identify to whom the claim was submitted.

<sup>5</sup> Yelechchin's assignments used the same BIA form document as used by Sanchey and contained the same language providing that upon her death, the assignment would constitute a claim superior to that of her heirs.

<sup>6</sup> A datestamp on the claim shows that it was "entered" on September 13, 2004, but it does not identify to whom the claim was submitted.

<sup>7</sup> Broncheau's assignments used the same BIA form document as used by Sanchey and Yelechchin, and contained the same language providing that upon her death, the assignment would constitute a claim superior to that of her heirs.

The ALJ denied YNCE's claim for the same reason he relied upon in the probate proceedings for Sanchez and Yelechchin. *See* Order Determining Heirs, Estate of Diana Kay Broncheau, July 12, 2006. YNCE filed a timely petition for rehearing, which the ALJ denied on November 28, 2006, and from which YNCE appealed to the Board.

### Board's Order to Show Cause

In each of these three cases, the evidence in the record indicated quite clearly that YNCE had filed its claim more than 60 days after BIA received verification of the decedent's death, and therefore that YNCE's claims were not timely under the 60-day deadline provided in 43 C.F.R. § 4.250(a)(i).

In addition, the evidence in each case further suggested that YNCE had either actual or constructive notice of each decedent's death at the time or shortly after it occurred: Sanchez's death was surrounded by much publicity; Yelechchin died in Yakima County more than two years before YNCE filed its claim; and the Nation's Enrollment Office received a copy of Broncheau's death certificate more than nine months before YNCE filed its claim.<sup>8</sup> Therefore, it appeared that YNCE would not be able to avail itself of the alternative 20-day claims deadline triggered by the date when YNCE was chargeable with notice of the respective decedent's death. *See Estate of Owen Snez*, 45 IBIA 28, 33 (2007) (actual or constructive notice of a decedent's death makes a creditor chargeable with notice of the death).

On October 1, 2007, based on the above evaluation of the record, and because timeliness is a threshold issue, the Board issued an order for YNCE to show cause why the ALJ's denial of its claims in these three cases should not be affirmed on the grounds that YNCE's claims were untimely.

YNCE filed a response, in which it essentially concedes the untimeliness of its claims. *See* Response to Order to Show Cause at 2 (“[I]n each of these cases, it appears the claim was filed more than 60 days from the date BIA received verification of the decedent's death and more than 20 days after [YNCE] received actual notice”). Instead, YNCE argues that it misunderstood what rules applied to the filing of claims and suggests that its misunderstanding is excusable because “[e]ven the ALJ appears not to have recognized that there was a problem.” *Id.* YNCE contends that it serves “a very real need in this reservation community for available credit,” and that the ALJ's orders denying the claims

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<sup>8</sup> YNCE is a tribal entity. *See* Response to Order to Show Cause at 2; Notice of Appeal in Estate of Sanchez at 14.

“threatened the rights of Yakama Tribal members to obtain credit secured by their trust property.” *Id.* at 2-3. YNCE further contends that if the claims are not paid, “then other Tribal members will bear the burden.” *Id.* at 2. YNCE asserts that it is uncontroverted that the loans were valid and that the BIA-approved assignments of trust property represented the decedents’ actual intent that the loans would be repaid. YNCE contends that the heirs expressed an intention and desire at the hearings held in these estates that these claims be paid, and no family members filed any opposition to the petitions for rehearing or notices of appeal.

### Discussion

Subsection 4.250(a) of 43 C.F.R. provides that “[a]ll claims against the estate of a deceased Indian must be filed” within one of the two time periods provided. YNCE does not argue that it complied with this deadline. Instead, YNCE seeks to be excused from the deadline because its oversight of the claims deadline was understandable, the availability of credit to Yakama Tribal members will be jeopardized if its claims are not paid, payment of the claims will give effect to each decedent’s intent in signing the assignments of trust property, and the heirs were willing to have the claims paid. We find none of these arguments convincing to overcome the regulatory time-bar.

It is well-established that creditors are presumed to have knowledge of applicable regulations. *See Estate of John Martin Red Bear*, 41 IBIA 273, 275 (2005) (noting that it was creditor’s responsibility to familiarize himself with the rules governing the submission of claims against a deceased Indian’s estate). It is also well-established that the Board does not have authority to ignore or to waive applicable regulations. *See Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006); *Louriero v. Acting Pacific Regional Director*, 37 IBIA 158, 159 (2002). YNCE’s policy argument that denial of its claims will jeopardize its ability to serve other tribal members cannot change that result: it was YNCE’s responsibility to file timely claims if it wished to be paid from decedents’ trust estates. In addition, the fact that each decedent executed an assignment that constituted a “claim” upon her death did not mean that the claim did not need to be timely filed. Nor does YNCE explain how the absence of expressed opposition by the heirs to its claims provides grounds to overcome the regulatory bar that applied when the claims deadlines expired.<sup>9</sup> We conclude, based on the evidence in the probate records for these three estates

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<sup>9</sup> As a factual matter, the hearing transcripts do not support YNCE’s contention that the heirs expressed an intention and desire at the hearings that YNCE’s claims be paid, but YNCE is correct that no heirs filed briefs in opposition to its petitions for rehearing or to its appeals to the Board.

and based on the absence of any evidence from YNCE to demonstrate otherwise, that its claims in these three cases were untimely. Thus, we affirm the ALJ's decision to deny YNCE's claims, but on the ground that they were barred as untimely, rather than on the merits.

### Conclusion

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 affirms the ALJ's orders denying rehearing dated November 28, 2006, on the ground that YNCE's claims were untimely.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge