



INTERIOR BOARD OF INDIAN APPEALS

Estate of Beulah Delorme Jacobson

52 IBIA 52 (08/17/2010)

Board sent the Order to both Appellant's Dodson, Montana, post office box and the California address she had used as her return address for her notice of appeal and other appeal submissions. Appellant responded to the Board's Order to Show Cause, emphatically denying that she had received the IPJ's Show Cause Order.

The Board has held that a notice sent to a party's last known address and not returned is presumed to have been received. *See Rosebud Indian Land & Grazing Ass'n v. Acting Great Plains Regional Director*, 39 IBIA 247, 248 (2004); *Estate of Rose Hyson Hardick Sparlin*, 19 IBIA 153, 155 (1991); *Estate of Ella Sarah Case Barnes*, 17 IBIA 72, 74 (1989), and cases cited therein. That presumption, however, is rebuttable, and the Board has refused to apply the presumption when an appellant specifically denies receiving notice and the record shows that the appellant used a different return address for her notice of appeal to the Board than the one used to send the notice. *Estate of Everett Cozad*, 13 IBIA 185 (1985); *see also Rosebud Indian Land & Grazing Ass'n*, 39 IBIA at 249; *Estate of Sparlin*, 19 IBIA at 155.

We find that Appellant has successfully rebutted the presumption in this case and vacate the IPJ's Reopening Order. Not only does Appellant deny that she received the IPJ's orders but she also used a different return address on her appeal submissions, and the record shows that the U.S. Postal Service returned the Board's orders that were sent to the Dodson, Montana, post office box, with the notation "VACANT UNABLE TO FORWARD." Accordingly we conclude that Appellant has successfully shown that she did not have notice of the reopening petition until after the IPJ issued his Reopening Order and thus was unaware that she had to timely object to the reopening or lose her right to do so. Because we conclude that Appellant has successfully rebutted the presumption of delivery and established that she was not served with the IPJ's Show Cause Order, we vacate the IPJ's Reopening Order and remand the matter to the Probate Hearings Division for a determination as to whether to reopen Decedent's estate. *See* 43 C.F.R. § 30.242; *Estate of Milward Wallace Ward*, 5 IBIA 5, 8 (2007).

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 vacates the Reopening Order and remands the matter to the Probate Hearings Division.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.