



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Samuel Charley

52 IBIA 57 (08/25/2010)



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 CHARLES SAMUEL)
CHARLEY) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 10-101
)
) August 25, 2010

Kini J. Johnson (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Rehearing (Order Denying Rehearing) entered on May 11, 2010, by Administrative Law Judge (ALJ) Richard L. Reeh, in the estate of Appellant's father, Charles Samuel Charley (Decedent), deceased Cherokee Indian, Probate No. P000069248IP. The Order Denying Rehearing declined to set aside a December 22, 2009, Order Determining Heirs and Decree of Distribution, in which the ALJ concluded that Decedent had died intestate (i.e., without a will) and that his property should be distributed in equal shares to his seven children. The ALJ declined to approve a purportedly conformed copy of a will prepared for and possibly executed by Decedent.¹ No original will was located or accounted for. The ALJ found that Appellant had not alleged that any evidence existed to show proper execution of the original will, see 25 C.F.R. § 15.4, and to show that the absence of the original was not due to its destruction by Decedent with an intent to revoke, *cf. Estate of Dennis Calf Looking*, 52 IBIA 1, 4 (2010) (two-step process for determining when to accept a copy of a will in the absence of the original).

On receipt of the appeal, the Board ordered Appellant to serve copies of her notice of appeal on all interested parties and, because it was unclear on what legal basis Appellant was contending that the ALJ erred, the Board ordered Appellant to show cause why the ALJ's Order Denying Rehearing should not be summarily affirmed. The Board advised

¹ The will was prepared for Decedent by private counsel. The copy, which was first presented to the ALJ by Appellant in her petition for rehearing, was not a photocopy of an executed will, but a copy that contained the symbol “/s/” on signature lines. After receiving the petition for rehearing, the ALJ allowed the parties several months to locate the original will.

Appellant, whose response was due July 23, 2010, that if she failed to respond, her appeal might be summarily dismissed without further notice.

The Board has received no response from Appellant.

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 but dismisses this appeal for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge