



## INTERIOR BOARD OF INDIAN APPEALS

Bonnie Hohman and Marian Campbell Hohman v.  
Acting Rocky Mountain Regional Director, Bureau of Indian Affairs

52 IBIA 245 (11/19/2010)



# 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

BONNIE HOHMAN AND	)	Order Affirming Decision
MARIAN CAMPBELL HOHMAN,	)	
Appellants,	)	
	)	
v.	)	
	)	Docket No. IBIA 09-044
ACTING ROCKY MOUNTAIN	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	November 19, 2010

Bonnie Hohman and Marian Campbell Hohman (Appellants) appealed to the Board of Indian Appeals (Board) from a December 24, 2008, decision (Decision) of the Acting Rocky Mountain Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision addressed the distribution of trust funds from a settlement and judgment awarded to Vida Ione Campbell Waarvick Hughes (Decedent) during her lifetime as a member of a litigation class, but which were allocated and deposited into an Individual Indian Money (IIM) account for Decedent after her death. The judgment funds were distributed by the Office of the Special Trustee (OST) to James Richard Wiegand, the devisee named in the residuary clause in Decedent's will.<sup>1</sup> The Regional Director concluded that OST's distribution of the funds was correct.

Appellants, who received interests in Indian trust allotments from Decedent under her will, disagree with the Decision and contend that the final probate order issued by an administrative law judge (ALJ) for Decedent's estate contains specific language requiring that funds deposited into Decedent's IIM account after her death must be paid to the individuals who received allotments from which income was generated. According to Appellants, the ALJ's order required the judgment funds to be distributed to them because

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<sup>1</sup> Appellant Marian Hohman is Decedent's sister and Appellant Bonnie Hohman is Decedent's niece. Wiegand is Decedent's nephew, the son of another of Decedent's sisters, Sylvia Campbell Roberts. Wiegand's name is variously spelled "Wiegand" and "Weigand" in the Decision and in other documents in the administrative record. We use the spelling used by Decedent in her will, which is also how Wiegand's name is entered as a devisee of Decedent in the Department of the Interior's probate tracking system, ProTrac.

the funds were derived from income generated by the allotment interests devised to Appellants.

Instead of defending the Decision on the merits, the Regional Director moved to dismiss this appeal, contending that OST, rather than BIA, made the operative decision when it disbursed the judgment funds from Decedent's estate account, and that the Board lacks jurisdiction to review OST's decision. The Regional Director is correct that the Board lacks jurisdiction to review OST's action. But we disagree with the Regional Director that we lack jurisdiction over this appeal and we note that nowhere does the Decision purport to be dependent upon an OST decision. On the contrary, the record before the Board indicates that BIA is responsible for providing instructions to OST for the disbursement of estate funds and that BIA has authority to correct errors by OST if funds are deposited into the wrong IIM account. And we have jurisdiction to review the Regional Director's Decision, which rejected Appellant's arguments on the merits and found that OST's disbursement to Wiegand was proper. Because we have jurisdiction to review the Decision, we deny the Regional Director's motion to dismiss the appeal.

On the merits, however, we conclude that despite BIA's (or OST's) failure to provide Appellants with any clear explanation for why the judgment funds were disbursed as they were, and despite a troubling procedural irregularity in this case, the Regional Director's Decision was correct in concluding that Wiegand, as the residuary devisee, was entitled to receive the judgment funds. The ALJ's probate order, on which Appellants rely, contained a latent ambiguity regarding IIM account funds. That ambiguity was made manifest only after the judgment funds, which accrued during Decedent's lifetime and which were attributable to interest on income earned during her lifetime, were deposited into a judgment fund IIM account created for Decedent's estate after the probate order issued. Appellants argue that the ALJ's probate order controls this case, and supersedes the residuary clause in Decedent's will to the extent of any inconsistency. We agree that the probate order controls, but we do not agree with Appellants' reading of that order. Instead, we believe that the probate order is most reasonably construed as intended to be fully consistent with Decedent's will and with the proper characterization of the judgment funds as trust personalty. Construed in that way, the probate order provides that the judgment funds should pass to Wiegand as the residuary beneficiary.

## **Background**

### **I. Decedent's Probate**

Decedent died on January 25, 2004, and a final probate order (Probate Order) was issued by ALJ Robert G. Holt on March 24, 2005, in Decedent's estate, Probate No. RM-

206-0359 (now assigned No. P000001996IP in ProTrac). The ALJ approved Decedent's will, which devised Decedent's interests in certain allotments to each Appellant. The will contained no devises to Appellants of trust personalty (e.g., Decedent's IIM funds). The residuary clause of the will devised all of the rest and residue of Decedent's estate, including personalty, to Wiegand. *See* Last Will and Testament of Vida I. Hughes at 2.

In the section of the Probate Order containing Findings and Conclusions, the ALJ found that "[t]here was no money in Decedent's [IIM] account as of the date of death." Probate Order at 1. Notwithstanding this finding, the ALJ's decree of distribution expressly addressed the disposition of funds "in Decedent's IIM account on the date of death," in addition to providing for the disposition of funds "which have been deposited into Decedent's IIM account after death":

Funds in Decedent's Individual Indian Money (IIM) account.

The funds in Decedent's IIM account on the date of death, if any, should be paid as follows in accordance with the residuary clause of Decedent's will.

[Name: James Richard Wiegand; Share: All]

Funds which have been deposited into Decedent's IIM account after death should be paid so far as possible to the devisee of the allotments that generated the income . . . .

Probate Order at 7. At the time the ALJ issued his decision, there was no judgment fund IIM account in existence for Decedent.<sup>2</sup>

The probate regulations in effect at the time of the Probate Order defined "Estate" to include the "trust cash assets . . . owned by the decedent at the time of his or her death." 43 C.F.R. § 4.201 (2005). "Trust cash assets" were defined as "the funds held in an IIM account that had accumulated *or were due and owing to the decedent as of the date of death.*" *Id.* (Emphasis added.)

## II. Judgment Award to Decedent and BIA/OST Distribution of Funds

In 1999, Congress appropriated \$4,522,551.84 to satisfy an award that had been made by the United States Court of Federal Claims to the Assiniboine and Sioux Tribes of the Fort Peck Reservation and to individual Indian plaintiffs in a class action against the

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<sup>2</sup> An IIM account created for judgment funds apparently is designated as a "J account." *See* Administrative Record (AR) Tab 13.

United States to recover interest earned on trust funds while those funds were in Special Deposit and certain other accounts maintained by the BIA Fort Peck Agency during the period of August 13, 1946, through September 30, 1981. *See* 69 Fed. Reg. 65,216 (Nov. 10, 2004); Notice of Class Action and Settlement of Litigation (Notice of Settlement) at 1, *Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al. v. United States*, No. 773-87-L (Fed. Cl. Aug. 6, 2004). The funds were deposited in a Federal account to be held pending a court-ordered distribution to the plaintiffs. Notice of Settlement at 2.

The Notice of Settlement, dated August 6, 2004, notified individual Indians who were members of the class of their eligibility to share in the judgment, and informed each individual of his or her respective share. *Id.* at 3. As noted above, Decedent died on January 25, 2004, which was after the judgment was entered by the Court of Claims, but before the plan of distribution had been approved and before the Notice of Settlement was sent to class members. Thus, when the Notice of Settlement issued, the statement of Decedent's share was addressed to Decedent's estate, and her share of the settlement was determined to be approximately \$15,457.20, as of March 18, 1999. *See* Statement of Your Share in the Settlement, addressed to "Vida Hughes Estate" and attached to Notice of Settlement.

A final order of distribution was entered by the Court of Claims on April 1, 2005,<sup>3</sup> shortly after the Probate Order was issued by the ALJ in Decedent's estate. Payments to deceased class members, including Decedent, were deposited into estate accounts to be distributed as part of the estate. SOL Memorandum at 1.

After the judgment funds were deposited into estate accounts for deceased class members, a question arose about how to handle the settlement payments when a deceased class member had left a will and his or her estate had previously been probated. More specifically, would these estates need to be reopened to determine the distribution of the settlement proceeds? The SOL Memorandum addressed this issue and concluded that, as a general rule, the estates need not be reopened and the distribution could be made pursuant to the probate order issued for each estate. The SOL Memorandum construed a BIA regulation governing the distribution of judgment funds, 25 C.F.R. § 87.10(d), as allowing

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<sup>3</sup> *See* Memorandum from Karen Lindquist, Office of the Solicitor, to Special Trustee for American Indians and to Deputy Bureau Director, Trust Services, BIA, at 1, May 5, 2008 (SOL Memorandum).

the distribution of the settlement proceeds without reopening an estate.<sup>4</sup> Nevertheless, the SOL Memorandum cautioned that it might be necessary to seek reopening in particular cases due to unforeseen complications, and such a decision would have to be made on a case-by-case basis. *See* SOL Memorandum at 1 n.1. The SOL Memorandum directed that the probate orders be located and reviewed and that the settlement proceeds

be distributed based upon the language of the probate order. Where there is a distinction in the will, and therefore [in] the probate order, between specific devisees/legatees and residuary devisees/legatees, it is highly likely that the residuary devisee/legatee(s) will be the proper party to receive the funds from the Ft. Peck settlement. The probate orders will have to be read and interpreted very carefully to ensure that the distribution is in compliance with the order.

SOL Memorandum at 2.

Internal guidance for BIA and OST for handling probate and estate accounts provides that BIA has the responsibility of forwarding a copy of the probate order and distribution or disbursement instructions to the Office of Trust Funds Management (OTFM) in OST. OTFM then disburses the funds from the account and closes the estate account “once all funds have been distributed in accordance with the probate order *and the BIA distribution instructions.*” *Interagency Procedures Handbook: Management of Trust Funds Derived from Assets and Resources on Trust and Restricted Indian Land*, Ch. 7, Sec. 7-4, at 3 (July 8, 2002) (emphasis added), attached to Memorandum from Regional Director to Board, April 10, 2009.

In the present case, BIA apparently provided OST with a copy of the Probate Order, without any additional disbursement instructions. OST distributed the funds in Decedent’s judgment account to Wiegand, apparently on June 11, 2008. *See* AR Tab 13.

Following the distribution to Wiegand, Appellants complained to the Superintendent that the judgment funds, which were derived from the claims for earned

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<sup>4</sup> Part 87 of 25 C.F.R. is titled “Use or Distribution of Indian Judgment Funds,” and § 87.10(d) provides: “The shares of deceased individual beneficiaries, plus all interest and investment income accruing thereto, shall be paid to their heirs and legatees upon their determination as provided in 43 CFR part 4, subpart D.” In 2008, the Department’s Indian probate regulations were revised and the probate hearings procedures that were formerly contained in subpart D are now found, as revised, in 43 C.F.R. Part 30.

interest on lease income, should have been distributed to the devisees of the allotments — i.e., the interest earned on the lease income should have followed the land. *See* Letter from Appellants to Superintendent, June 24, 2008. A Fiduciary Trust Officer of OST responded to Appellants, stating that the funds “were distributed in accordance with the ‘residuary clause’ of [Decedent’s will].” Letter from Charles Knowlton to Bonnie Hohman, July 11, 2008. The Fiduciary Trust Officer did not mention the Probate Order, but stated that, “the distribution method was previously reviewed by the Solicitor’s Office who approved the distribution in accordance with the residuary clause.” *Id.* No other explanation was provided.

Appellants then asked OST to “correct” the distribution of the funds to conform to the ALJ’s Probate Order. Letter from Appellants to [Catherine] Rugan, OST, July 15, 2008. Appellants focused on the language in the Probate Order stating that “[f]unds which have been deposited into Decedent’s IIM account after death should be paid so far as possible to the devisee of the allotments that generated the income as set forth [in the portion of the order directing the distribution of Decedent’s real property].” *Id.* at 2. Appellants argued that OST had ignored the intent of Decedent’s will and the ALJ’s order. Appellants sent a copy of their letter to the Superintendent. *See* Letter from Appellants to Superintendent, Aug. 5, 2008.

On September 18, 2008, Rugan, an OST Regional Trust Administrator, acknowledged Appellants’ objection to the distribution of Decedent’s judgment funds and responded to Appellants’ request for information on their appeal rights. Rugan stated that “[a]n appeal would be directed to” the Regional Director, and she apparently enclosed a copy of BIA’s appeal regulations.

On December 24, 2008, the Regional Director issued the Decision that is the subject of this appeal. The Decision quoted the portion of the SOL Memorandum directing that a decedent’s share of the judgment funds be distributed “as specified in the probate order,” but also noted that where a will distinguished between specific devisees and residuary devisees “it is highly likely” that the residuary devisee will be the proper party to receive the judgment funds. Decision at 1, quoting SOL Memorandum at 2. The Regional Director stated that “[p]ursuant to that legal analysis,” Decedent’s share of the judgment funds were distributed according to the residuary clause in her will. *Id.* at 1. The Regional Director “affirm[ed] the Superintendent’s decision” to distribute the funds to Wiegand, stating that neither the Superintendent nor the Regional Director had “the authority or discretion to disregard the Department of Interior’s official position and the legal analysis provided by . . . the Office of the Solicitor.” *Id.* at 2. The Decision does not discuss the language of the ALJ’s probate order.

On appeal to the Board, Appellants argue that the ALJ's Probate Order, and Decedent's intent as expressed in her will, require that the judgment funds should be paid to the devisees of the real property that generated the income from which the judgment for interest was derived. The Regional Director moved to dismiss the appeal, arguing that OST, not BIA, issued the operative decision.<sup>5</sup>

## Discussion

### I. Introduction

We first address the Regional Director's argument that we lack jurisdiction over this appeal, and therefore it must be dismissed. We reject that argument, concluding that because we have jurisdiction to review the Regional Director's Decision, which decided the funds-distribution issue on the merits, we have jurisdiction over this appeal and may decide the issues raised by Appellants, notwithstanding the fact that OST is the agency that actually disbursed the funds from Decedent's IIM account.

On the merits, we conclude that although BIA unquestionably should have sought to reopen Decedent's estate to obtain clarification of the Probate Order as applied to the judgment funds, the Regional Director's Decision reached the correct substantive conclusion that Wiegand was entitled to receive the judgment funds. The judgment funds constituted trust personalty because they had accrued at the time of Decedent's death; the ALJ's Probate Order allowed for the possibility that accrued funds would be deemed to be "in" Decedent's IIM account on the date of death; and the ALJ's decree that funds "deposited" after Decedent's death should be paid to the devisee of the allotment "that generated the income," properly understood, only governs income from allotments that was generated and accrued after death, which does not include the judgment funds at issue here.

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<sup>5</sup> In response to the Regional Director's motion to dismiss, the Board asked the Regional Director to address what, if any, administrative remedies Appellants might have if the operative decision was made by OST and not by BIA. The Regional Director responded that OST does not have a process for administrative review of a decision made by an OST official, but suggested that Appellants might seek to reopen Decedent's probate pursuant to the Department's probate regulations. But of course, Appellants do not seek to have the ALJ's Probate Order modified, which would be the purpose of seeking reopening. Instead, Appellants seek to have BIA and OST comply with what they understand to be required by the existing Probate Order.

## II. The Board Has Jurisdiction Over This Appeal

The Regional Director moves to dismiss this appeal for lack of jurisdiction, arguing that OST made the operative decision to distribute the funds to Wiegand and the Board lacks jurisdiction to review an OST decision. Regardless of what action OST took in this case, or even what “decision” someone in OST might have made, the subject of this appeal is the Regional Director’s Decision, and that Decision addressed Appellants’ complaint and rejected Appellant’s arguments on the merits. In addition, BIA was responsible for disbursement instructions and could take corrective action if it concluded that OST’s distribution had been incorrect. Under these circumstances, we conclude that we have jurisdiction over this appeal from the Regional Director’s Decision.

As noted earlier, BIA has the responsibility of forwarding copies of probate orders and *distribution or disbursement instructions* to OST. In the event that BIA discovers an administrative error committed by either BIA or OST regarding an IIM account, BIA has the authority to take corrective action. *See, e.g.*, 25 C.F.R. Part 115.601(b)(4) (authority to restrict IIM account). Thus, when Appellants presented their arguments to the Regional Director that the judgment funds had been incorrectly disbursed to Wiegand, the Regional Director had authority to — and did — address Appellants’ claims on the merits. Although the Regional Director believed he was properly applying legal advice received from the Solicitor’s Office, nowhere does he suggest that OST had made a decision concerning the distribution of Decedent’s judgment funds that was binding on BIA. The Board, of course, has authority to review the Regional Director’s Decision. *See* 43 C.F.R. § 4.330(a); 25 C.F.R. § 2.4(e).

We therefore conclude that we have jurisdiction over this appeal and we deny the Regional Director’s motion to dismiss.<sup>6</sup>

## III. Distribution of the Judgment Funds to Wiegand was Correct

Appellants argue that the ALJ’s Probate Order controls distribution of the judgment funds and that BIA and OST disregarded that Probate Order by distributing the judgment funds to Wiegand as the residuary beneficiary. Appellants construe language in the Probate Order as requiring that the judgment funds must go to the devisees of the allotments because the allotments generated the income that earned the interest that was the subject of the litigation and the judgment award.

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<sup>6</sup> Our conclusion is consistent with the OST Regional Trust Administrator’s advice to Appellants that they could appeal to BIA from the disbursement action.

We agree with Appellants that BIA was bound by the Probate Order. We also understand how some of the language in the Probate Order could be construed as providing that the judgment funds should go to the devisees of allotment interests. And unquestionably as a matter of procedure, when faced with Appellants' interpretation of the Probate Order and at least an ambiguity in that order, BIA should have sought to reopen Decedent's estate to obtain clarification or, if necessary, a modification.<sup>7</sup> But on the merits, we disagree with Appellants' reading of the Probate Order because that reading creates an unnecessary conflict between the Probate Order and Decedent's will. The Probate Order contained a latent ambiguity regarding the distribution of IIM account funds. We resolve that ambiguity by construing the Probate Order's language in a manner that harmonizes the language of the Probate Order and is consistent with the proper characterization of the judgment funds as trust personalty at the time of Decedent's death. To the extent any ambiguity in the Probate Order remains, we resolve that ambiguity by construing the Probate Order in a manner consistent with Decedent's will.

The Probate Order distinguished between (1) funds "in" Decedent's IIM account on the date of death; and (2) funds "which have been deposited into" Decedent's IIM account after death, consisting of income generated from the allotments devised in the will. With respect to the first category, the ALJ's reference to funds "in" the IIM account on the date of death may be construed as intended to include more than the funds that literally were recorded as being on deposit in the account on the date of death because elsewhere in the Order the ALJ had made a factual finding that there were no such funds in the account on the date of death. As noted earlier, when the Probate Order was issued, "trust cash assets" were defined as funds held "in an IIM account that had accumulated *or were due and owing to*" a decedent as of the date of death. 43 C.F.R. 4.201 (2005) (emphasis added). As a matter of law, Decedent's estate was fixed at the time of her death, and funds due and

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<sup>7</sup> The SOL Memorandum specifically advised BIA that distribution was to be made "pursuant to the probate order in each estate" and that in some circumstances it might be necessary to reopen a probate. Although the SOL Memorandum also asserted that where a will distinguished between specific devisees/legatees and residuary devisees/legatees, it was "highly likely" that the residuary devisee/legatee would be the proper party to receive the judgment funds, it also stated that the probate orders would have to be read and interpreted very carefully to ensure that the distribution was in compliance "with the order." SOL Memorandum at 2. When Appellants offered their interpretation of the Probate Order to BIA and contested the distribution to Wiegand, BIA had an obligation to seek reopening to obtain clarification from a probate judge, consistent with the advice in the SOL Memorandum that reopening might be needed in particular cases. *Cf.* 43 C.F.R. § 30.126 (procedures for adding omitted property to an estate).

owing to her on that date constituted personal property. *See Estate of Mary Cecilia Red Bear*, 48 IBIA 122, 123 n.2 (2008); *Estate of Samuel R. Boyd*, 43 IBIA 11, 21-22 (2006).<sup>8</sup> The judgment funds at issue in this case had been awarded to Decedent during her lifetime, and the settlement funds were due and owing to her on the date of death, even though the actual distribution plan for the settlement funds still required court approval. Although the judgment funds were not literally recorded as being on deposit “in” an IIM account for Decedent at the time of death, they would have constituted “trust cash assets” and trust personalty, as a matter of law, on the date of Decedent’s death. Within the context of the legal character of the settlement funds, and the ALJ’s specific directive for funds “in” an IIM account in which the ALJ found there were no actual deposits on the date of death, we construe the ALJ’s language as applying to all trust cash assets in Decedent’s estate, including the judgment funds, in directing which IIM funds pass to Wiegand.

The ALJ’s language regarding the second category of funds — “funds which have been deposited into Decedent’s IIM account after death” — does not compel a contrary conclusion. Because an estate is fixed at the time of death, and because title to property in the estate is deemed to pass to heirs and devisees at that time (even though adjudicated and recorded at a later time), a devisee’s title to real property dates back to the time of death. Because a devisee is deemed to have become the owner of the devised real property at the time of death, he or she is also entitled to the income generated by that real property after the decedent’s death, even if that income is deposited into the decedent’s IIM account pending the probate of the estate. *See Estate of Boyd*, 43 IBIA at 23 (income from allotments that accrued after death was never the personal property of the decedent and passes to the heirs of the allotment interests that generated the income); *see also Estate of Roy Phillip Watlamatt*, 46 IBIA 60, 73 (2007) (in deciding what law to apply, income generated up to the date of death is treated as personal property, whereas post-death income attaches to the trust real property generating such income).

Construed in this context, the Probate Order’s directive that the second category of funds, those “deposited into” Decedent’s IIM account after death, should go to the devisees of “the allotments that generated the income” is reasonably read as applying to income generated by the allotments *after* Decedent’s death, and not to the judgment funds, which were trust personalty already due and owing to Decedent on the date of death. Moreover, the judgment funds were not, strictly speaking, income “generated” by the allotments.

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<sup>8</sup> The revised probate regulations, promulgated in 2008, no longer include a definition of “trust cash assets,” *see* 43 C.F.R. § 30.101 (definitions), but nothing in the revised regulations purports to alter the general rule that funds due and owing to a decedent at the time of death constitute trust personalty.

Instead, they were attributable to the *interest* earned on that income. That distinction may be subtle, but it illustrates that, as applied to the judgment funds, the Probate Order's language on which Appellants rely is at best ambiguous.

To resolve any ambiguity in construing the Probate Order, we look to Decedent's will. Decedent made specific devises of her allotment interests to various individuals, but she devised all of her trust personalty to Wiegand through the residuary clause. As already noted, the judgment funds awarded to Decedent constituted trust personalty that was part of Decedent's estate at the time of her death. Given the clear intent in Decedent's will, we conclude that to the extent the Probate Order's language is ambiguous, the ambiguity should be resolved in a manner most consistent with Decedent's will. Thus, we reject Appellants' argument that the Probate Order rendered "null and void" the residuary clause. Instead, we conclude that the Probate Order fully effectuated that residuary clause, and provided that trust personalty, including subsequently identified judgment funds, passes to Wiegand. The Regional Director therefore was correct in concluding that the judgment funds properly were distributed to Wiegand and that Appellants were not entitled to any share of those funds.

We also note that were we to reach a contrary conclusion and accept Appellant's interpretation of the Probate Order, that would not be the end of the matter. Instead, given the unambiguous intent in Decedent's will to devise all trust personalty to Wiegand, our acceptance of Appellants' interpretation of the Probate Order would result in a direct conflict between the Probate Order and Decedent's will, as applied to the judgment funds. Under those circumstances, the proper course would not be to simply apply the Probate Order, and disregard Decedent's will. Instead, the proper course would be to reopen Decedent's estate to modify the Probate Order to make it consistent with Decedent's will. *See* 43 C.F.R. § 30.242. But because we find that any ambiguity in the Probate Order can be resolved as a matter of law, reopening the estate to modify the Probate Order is not necessary.

### **Conclusion**

When Appellants objected to the distribution of the judgment funds to Wiegand and argued that it was contrary to the Probate Order, BIA should have sought reopening of Decedent's estate to obtain clarification, and if necessary a modification, from a probate judge. Procedurally, this was an error which unnecessarily complicated this case and likely delayed its resolution. But on the merits, we conclude that the Regional Director's Decision that Wiegand was the proper recipient of Decedent's judgment funds did not conflict with the Probate Order (or with Decedent's will), and thus BIA's procedural error was harmless.

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 Regional Director's December 24, 2008, Decision.

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