



INTERIOR BOARD OF INDIAN APPEALS

Estate of Winona Weinberger

55 IBIA 101 (06/07/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF WINONA WEINBERGER) Order Docketing and Dismissing Appeal
)
) Docket No. IBIA 12-076
)
) June 7, 2012

Nellie R. Baros (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Granting Reopening and Modifying Decision (Reopening Order) entered on February 7, 2012, by Administrative Law Judge (ALJ) R.S. Chester in the estate of Winona Weinberger (Decedent).¹ The Reopening Order amended the ALJ's October 24, 2011, Decision in Decedent's estate to apply the "single heir rule" to Decedent's trust real property interests on the Spirit Lake (Fort Totten) Reservation, all of which the ALJ found were less than five percent of the entire undivided ownership of the parcel of land in which each interest was a part. *See* 25 U.S.C. § 2206(a)(2)(D)(iii)(I). The effect of the Reopening Order was to remove Appellant and eight of her relatives as heirs to the Spirit Lake interests, and to name Decedent's oldest child as the sole heir for those interests.

As a preliminary matter, the Board ordered Appellant to complete service of her appeal on the interested parties in this matter (except the ALJ), as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that she had done so. The Board set a deadline of April 9, 2012, for Appellant to comply with the Board's order, and advised Appellant that if she failed to comply with or respond to the Board's order, her appeal might be dismissed without further notice.

The Board's order was mailed by certified U.S. mail to the address listed on Appellant's notice of appeal.² The certified mailing was returned to the Board by the Postal Service as "unclaimed," and on April 6, 2012, the Board, on its own motion, extended the deadline for Appellant to comply until April 24, 2012, and provided Appellant with another

¹ Decedent was a Fort Peck Indian. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000090289IP.

² The address listed on Appellant's notice of appeal is also Appellant's address of record in ProTrac.

copy of the order to complete service. The Board's April 6 order was sent to Appellant by certified and regular U.S. mail, and the copy sent by certified mail was again returned as "unclaimed." The copy sent by regular U.S. mail was not returned.

Appellant has not responded to or complied with the Board's order. Accordingly, the Board dismisses this appeal for failure to prosecute.³

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

³ In appealing from the Reopening Order, it was Appellant's responsibility to provide an address at which she would accept correspondence. *See Estate of William A. Hamilton, Sr.*, 52 IBIA 161, 162 (2010).