



INTERIOR BOARD OF INDIAN APPEALS

Estate of Wahwersee R. Werqueyah

3 IBIA 28 (08/19/1974)

Related Board case:

5 IBIA 169

Dismissed, *Wahwersee v. Kleppe*, No. CIV-76-0845-E  
(W.D. Okla. Apr. 3, 1978)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF WAHWERSEE R. WERQUEYAH  
(Comanche Allottee No. 1574, Deceased)

IBIA 74-23

Decided August 19, 1974

Appeal from Judge's decision denying petition for rehearing.

Reversed in Part and Remanded.

Indian Probate: Rehearing: Generally

A rehearing will be granted where the original hearing did not conform with the standards of a full opportunity to be heard embodied in the Administrative Procedure Act. (5 U.S.C. §§ 554 and 556 (1970)).

APPEARANCES: Mattie Wahwerseer, pro se.

## OPINION BY ADMINISTRATIVE JUDGE SABAGH

The probate of the Estate of Wahwersee R. Werqueyah, Comanche Allottee No. 1574, was the subject of a hearing on March 7, 1973. The Administrative Law Judge, Indian Affairs, issued an Order on April 10, 1973, approving last will and testament dated September 28, 1971, and decreeing distribution. Objection was made to certain general creditor claims that pertain to Comanche Allotments described as SE 1/4 of Section 35, Township 1 North, Range 14 West of the I.M., in Oklahoma, and SW 1/4 of Section 36, Township 1 North, Range 14 West of the I.M., in Oklahoma.

The decedent and his two brothers each owned an undivided 1/3 interest in the allotments in question. The brothers predeceased the decedent, Wahwersee, and their interests passed to their survivors. The decedent was survived by his spouse, Mattie Wahwerseer.

It appears that the decedent reserved the above-described allotments to his own use for several years prior to his demise because he was never able to induce his brothers to agree to a lease. Subsequent to Wahwersee's demise, claims were filed by the

heirs of decedent's brothers for rental for the use of their respective interests in the properties referred to supra. The decedent's widow, Mattie Wahwerseer, testified that rent was paid to the brothers by the decedent through 1967, but that no further rent was paid because the brothers and their survivors refused to accept it.

The transcript shows that the Judge interrupted Mattie Wahwerseer while she was testifying with respect to the claims for rental, by saying, "Well, now I think that will be all just now." (Tr. 10). The Judge also interrupted Bert Werqueyah, Jr. stating, "this case will be continued at some future date and all the parties will be duly notified of the supplemental hearing. In the meantime, I want you to think about this a little bit and see if we can't work this out." (Tr. 16).

No supplemental hearing was ever held. But instead an Order approving Will and Decreeing Distribution was issued by the Judge on April 10, 1973.

Mattie Wahwerseer petitioned for rehearing on the following grounds:

- 1) That a continuance was granted to Bert Werqueyah, Jr. to submit evidence in support of claims;
- 2) The petitioner was not asked if she approved or disapproved of claims of Pearl Werqueyah et al.;
- 3) The claimants should have filed suits in the state courts to collect their claims;
- 4) That the decedent did not occupy Comanche # 1570 in 1970 and 1971.

The petition for rehearing was denied on August 8, 1973, and Mattie Wahwerseer filed a timely appeal.

Although the Judge concluded the petition for rehearing set forth insufficient grounds to justify a rehearing, we cannot agree that the petition for rehearing should not have been granted.

A rehearing will be granted where the original hearing did not conform with the standards of a full opportunity to be heard embodied in the Administrative Procedure Act. (5 U.S.C. §§ 554 and 556 (1970)).

We find that full opportunity to be heard was not afforded Mattie Wahwerseer and Bert Werqueyah, Jr. with respect to the creditor claims involving rental.

A rehearing should have been granted in any event to complete the record, and to examine in depth, beyond the extent of the examination conducted on March 7, 1973, as to the actual circumstances surrounding the claim for rental of Comanche Allotments described, supra.

Therefore, we REMAND this case to the Administrative Law Judge for further hearing consistent with the views and finding set forth, supra, which shall include inter alia, proper notification to all interested parties, a transcript incorporating all relevant testimony and documentary evidence admitted at the hearing and a decision including therein, findings of fact and conclusions of law. See U.S.C. § 557(a)(3) (1970).

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, we REVERSE the Order Denying the Petition for Rehearing and REMAND the matter to the Administrative Law Judge for further hearing with respect to creditor claims involving rental of Comanche Allotments referred to supra.

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Mitchell J. Sabagh  
Administrative Judge

I concur:

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//original signed  
Alexander H. Wilson  
Administrative Judge