



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alexander Steele or Alexander Yellow Bird

4 IBIA 154 (10/08/1975)



United States Department of the Interior

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

ESTATE OF ALEXANDER STEELE OR ALEXANDER YELLOW BIRD

IBIA 75-44

Decided October 8, 1975

Appeal from an order denying petition for rehearing.

Reversed and Remanded

APPEARANCES: Marvin Amiotte, Esq., for Appellants, Ruth Yellow Bird Sieler and Harry Yellow Bird or Steele; Michael B. De Mersseman, Esq., for Appellee, Esther Rodriguez.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The above-entitled matter comes before the Board on an appeal from an order denying petition for rehearing.

The appellants contend in essence that they were denied due process because they were not afforded the opportunity of being represented by counsel at the hearing held on October 29, 1973.

Opportunity to be represented and to be present and cross-examine witnesses is all that the law requires as prerequisites of full administrative hearing. Freight Consolidators Co-op Inc. v. U.S.D.C. N.Y. 1964, 230 F. Supp. 692.

It appears from the record that appellants retained counsel who entered his appearance and advised the Administrative Law Judge on or about September 26, 1973, that "we are contesting the will on the grounds of incompetency and undue influence."

The hearing was scheduled for October 29, 1973. Counsel failed to appear after assuring his clients that he would. An oral request for postponement was made immediately prior to the hearing because of counsel's apparently being out of state. The Judge denied the request for postponement but reserved any further ruling as to whether or not a supplemental hearing might be necessary.

We believe that the request for continuance should have been granted. Counsel's failure to appear was due to no fault of the appellants.

We find that the rights of the appellants were prejudiced and that the original hearing did not conform with the standards of a full opportunity to be heard embodied in the Administrative Procedure Act. See 5 U.S.C. § 556 (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 hearing de novo to determine heirs, and to approve or disapprove the will of February 1, 1972, and for determination of attorneys' fees.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Chief Administrative Judge