



INTERIOR BOARD OF INDIAN APPEALS

Estate of Elmer A. Olney

8 IBIA 166 (10/23/1980)



United States Department of the Interior

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

ESTATE OF ELMER A. OLNEY

IBIA 80-12

Decided October 23, 1980

Appeal from order by Administrative Law Judge Robert C. Snashall denying petition by claimant Indian tribe for rehearing.

Affirmed in part and reversed in part. Remanded with instructions.

1. Indian Probate--Claim Against Estate: Proof of Claim

Failure by unsecured tribal creditor to appear at probate hearing coupled with filing by the tribe of an incomplete statement of account upon which the creditor's claim was based permitted the probate Administrative Law Judge to disallow the tribe's claim.

2. Indian Probate--Rehearing: Generally

A showing by creditor Indian tribe made in conformity to 43 CFR 4.241(c) that its creditor's claim was facially timely and valid and that there were unusual circumstances surrounding the presentation of the claim entitles the petitioner tribe to consideration on the merits of its argument for rehearing pursuant to 43 CFR 4.241(c).

APPEARANCES: Tim Weaver, Esq., and Louie Vargas, for appellant Yakima Indian Nation; George F. Velikanje, Esq., for appellee Peter Joe Olney.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On November 14, 1978, appellant Yakima Indian Nation (tribe), through Robert B. Strong, Jr., filed a creditor's claim in writing in the amount of \$11,364.28 against the estate of decedent Olney, stating:

I have reviewed the invoice files of the Yakima Indian Nation Tobacco Warehouse Enterprise with regard to the outstanding invoices for the White Swan Trading Post, account number 1861-1 and The Reservation Smokeshop, account number 1861-2 and find that the total of all invoices remaining partial [sic] or totally unpaid amounts to \$11,364.28. This includes invoices only up to the time prior to the transfer of the White Swan Trading Post to Gary Young, who has since paid for all of this [sic] purchases in cash. These records are available for inspection at our office.

At the probate hearing into decedent's estate held at Toppenish, Washington, on May 22, 1979, appellee (the principal beneficiary under decedent's will) objected that the tribe's claim was insufficiently stated to permit payment. No representative of the tribe appeared to present the claim. No evidence concerning the basis for the claim or the date of the transaction upon which the claim was based was offered; however, the record established that the persons present at the probate hearing were familiar with the operation of decedent's tobacco business, knew when the transfer of decedent's business took place, and knew of the business transaction between decedent and the tribe upon which the claim was based.

On June 1, 1979, the claim was denied as not proved. The June 1 order states: "The claim of the Yakima Indian Nation Tobacco Warehouse Enterprise, P.O. Box 186, Wapato, Wa 98951 in the amount of \$11,364.28 for outstanding invoices for the White Swan Trading Post is hereby denied as not supported in the record."

The claimant tribe made timely petition for rehearing contending, among other matters, its failure to appear to defend the claim at the probate hearing on May 22 was the result of circumstances amounting to an excusable neglect which should not be permitted to bar the otherwise valid tribal claim. The supporting documentation missing from, but referred to by the original statement of claim was supplied with the petition for rehearing and supporting affidavit. The amount of the claim was reduced, upon petition for rehearing, to \$10,764.28 to reflect payments made by decedent on July 10, 1978, and August 8, 1978, which had not been properly credited to the account prior to the filing of the original statement of the claim.

On September 26, 1979, the petition for rehearing was denied by an order reciting that, as a matter of law, the Administrative Law Judge lacked authority to reconsider the June 1, 1979, order, citing as authority therefor Estate of William Fills the Pipe, IA-1436 (1966), and Estate of Lawrence Ecoffey, 5 IBIA 85 (1976).

[1] The September 26 order denying petition for rehearing correctly points out the practical problems of proof that arise when heirs object to creditor's claims which are not defended by the creditor. The order, however, is in error when it goes on to conclude that the decision in Estate of Lawrence Ecoffey, above, deprives the probate Administrative Law Judge of the discretion needed to decide questions of fact which arise upon a petition for rehearing concerning a creditor's claim. Neither the holding in Ecoffey nor any of the prior decisions relied upon in that opinion has such draconian effect. Ecoffey establishes that, as an evidentiary matter, a creditor's claim may properly be disallowed where the creditor fails to appear to answer objections raised by the heirs to the claimed account. Also, the failure to adequately document a claim submitted in writing militates against approval of the claim where omission of the necessary evidentiary documents makes the claim incomplete or defective on its face. Estate of John Joseph Kipp, 8 IBIA 30, 87 I.D. 98 (1980). Thus, the probate Administrative Law Judge ruled correctly when, on June 1, 1979, he denied appellant's claim because it was not proved on the record as then constituted.

[2] The September 26 order denying the petition for rehearing, however, goes beyond the evidentiary rule stated in Ecoffey and assumes that rehearing cannot be ordered where, as here, the initial determination concerning the claim was correct on the record made at the probate hearing, regardless of any later offered showing by a petitioning creditor. This holding rejects without consideration the offer of proof by the tribe that the manner in which it presented the claim was the result of an excusable neglect which should entitle it to a rehearing. The order denying petition also ignores the effect of offered documents tending to show that the claim is valid. ^{1/}

Arguments concerning rehearing are addressed directly to the discretion of the Administrative Law Judge and should be considered, within the regulatory framework, with a view towards achieving a just result. Estate of Lucille Ireland, 1 IBIA 67, 78 I.D. 66 (1971). The tribe has followed the requirements of 43 CFR 4.241(c) by submitting affidavits to establish that personnel changes within the tribal organization occurring during the probate of decedent's estate so affected the prosecution of the tribal claim as to prevent adequate representation of the tribe's claim in the probate process. Since the arguments are addressed to the discretion of the officer conducting the probate of this estate, the provisions of 43 CFR 4.241(c) require that they

^{1/} In this connection, it is noted that the claim in Ecoffey had been held to be barred by the applicable statute of limitations. The offered documents in this case indicate the tribe's claim is based upon a current account.

be decided on their merits. The part of the September 26 order which denied the petition without consideration of the arguments advanced in support of the petition for rehearing was, therefore, also contrary to regulation.

The order dated September 26, 1979, denying the tribe's petition as beyond the authority of the deciding officer is reversed. The matter is remanded to the Administrative Law Judge with instructions that the arguments of the tribe in support of rehearing be considered on their merits and an appropriate order entered either denying the petition, ordering a rehearing into the matter of the tribal claim, or otherwise adhering to, modifying or vacating the order disallowing claim with or without a hearing.

On appeal appellant attempts to raise other issues based upon prior dealings involving Departmental employees in related probate matters concerning tribal purchase in order to demonstrate error in this case. Appellant also advances arguments directed to other probate matters pending before the agency in an effort to show that the proceedings here are tainted by similar conduct in other cases. The arguments are of questionable relevancy or merit and were not considered by the Board in reaching the decision announced in this opinion.

The decision to remand this matter to the Administrative Law Judge for the purpose described is final for the Department.

//original signed
Franklin Arness
Administrative Judge

I concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge