



INTERIOR BOARD OF INDIAN APPEALS

Estate of Harry Bowechop

16 IBIA 167 (07/07/1988)



United States Department of the Interior

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

ESTATE OF HARRY BOWECHOP : Order Reversing Escheat
:
: Docket No. IBIA 87-29
:
: July 7, 1988

By order dated January 16, 1987, Administrative Law Judge Robert C. Snashall approved the will of decedent Harry Bowechop. In accordance with that will, decedent's trust or restricted land holdings were ordered distributed to Leonard, Sidney, and Charles P. Bowechop, except for three fractional interests. Judge Snashall found those three interests were subject to escheat to the Quileute Indian Tribe under 25 U.S.C. § 2206, as amended (Supp. II, 1984). The Quinault Indian Nation filed an appeal from the Judge's decision.

During the briefing period for this appeal, the United States Supreme Court held that the original version of 25 U.S.C. § 2206 (Supp. 1, 1983) was unconstitutional. Hodel v. Irving, 481 U.S. 704, 107 S.Ct. 2076 (1987). The status of the amended version of the section was left in doubt. Pursuant to a directive of the Director of the Office of Hearings and Appeals, final disposition of the present case, and other similarly situated cases then before the Department of the Interior, was delayed pending receipt of advice from the Justice Department concerning treatment of cases arising under the amended version of § 2206. That advice has been received and the Board is free to dispose of this case. 1/

On appeal, all parties have agreed that the portions of decedent's estate which Judge Snashall found subject to escheat should have passed to Leonard Bowechop. The three interests passed under the residuary clause of decedent's will which left all of the rest and residue of his property to Leonard Bowechop. The amended version of § 2206 provides that "[n]othing in this section [concerning escheat of small fractional interests] shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land." There is no dispute that Leonard Bowechop owned other fractional interests in the three parcels of trust property in this estate that were subject to § 2206. Under the amended version of § 2206, these interests should, therefore, have passed to Leonard Bowechop. Because all parties agree that this is the proper disposition of these interests, there is no dispute remaining in this appeal.

1/ On February 25, 1988, the Board allowed distribution of those portions of decedent's estate that were not in dispute in accordance with Judge Snashall's January 16, 1987, order. Accordingly, the only issue remaining before the Board is the proper disposition of the three interests that the Judge found should escheat.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 16, 1987, decision of Judge Snashall is reversed in part. Decedent's interests in the three parcels of trust or restricted property previously ordered to escheat to the Quileute Indian Tribe should pass to Leonard Bowechop.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge