



INTERIOR BOARD OF INDIAN APPEALS

Estate of Albert Laducer

20 IBIA 186 (08/15/1991)



United States Department of the Interior

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

ESTATE OF ALBERT LADUCER : Order Docketing and Dismissing Appeal
:
: Docket No. IBIA 91-115
:
: August 15, 1991

Eugene Laducer, Roger Laducer, Sylvia Laducer Brien, Delores Laducer DeCoteau, Melvin Laducer, and Linus Laducer (appellants), seek review of a June 15, 1989, order denying petition to reopen issued by Administrative Law Judge Vernon J. Rausch in the estate of Albert Laducer, Turtle Mountain Chippewa #A01581, Indian Probate Nos. IP TC 251R 86 and IP TC 251R 86-1. The materials in which appellants indicate their intent to appeal were forwarded to the Board of Indian Appeals (Board) by the Acting Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs, and were received on August 12, 1991. The Superintendent indicated that the materials were being forwarded to the Board at the request of six of decedent's seven heirs.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

Judge Rausch issued his original probate order on September 18, 1987. Appellants were specifically informed through a notice attached to the order that if they wished to contest the order, a petition for rehearing was to be filed with Judge Rausch within 60 days from the date on which the decision was mailed. See 43 CFR 4.241(a).

Rather than filing a petition for rehearing, appellants filed a petition to reopen on December 12, 1988. On June 15, 1989, Judge Rausch denied reopening. Again, appellants were informed of their right to seek further review. Specifically, they were informed through a notice attached to the order that any appeal from the order was to be filed with the Board within 60 days from the date of the decision. See 43 CFR 4.320(a).

Appellants' appeal from Judge Rausch's June 1989 order is not timely. As appellants were informed, 43 CFR 4.320(a) provides that a written notice of appeal must be filed with the Board within 60 days from the date of the decision. Section 4.320(a) continues: "A notice of appeal not timely filed shall be dismissed for lack of jurisdiction." Because appellants' notice of appeal was not timely filed, it must be dismissed for lack of jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the interior, 43 CFR 4.1, this appeal from Judge Rausch's June 15, 1989, order is dismissed. Judge Rausch's order is final for the Department of the Interior.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge