



INTERIOR BOARD OF INDIAN APPEALS

Estate of Walter Sydney Howard

32 IBIA 51 (02/06/1998)



# United States Department of the Interior

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

ESTATE OF WALTER SYDNEY HOWARD : Order Dismissing Appeal  
:  
: Docket No. IBIA 96-60  
:  
: February 6, 1998

Appellants Herbert Hope (Hope) and the Sitka Tribe of Alaska (Tribe) seek review of an Order Denying Rehearing entered on February 28, 1996, in the estate of Decedent Walter Sydney Howard by Administrative Law Judge William E. Hammett. The denial of rehearing let stand Judge Hammett's December 13, 1995, Order Determining Heirs. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

Decedent died on January 27, 1982. It appears that the estate was submitted to Judge Hammett in March 1992. The family history information presented to the Judge indicated that Decedent had no surviving spouse or children. The inventory of Decedent's restricted lands showed that, at the time of his death, Decedent owned an interest in Native Restricted Townsite Lot 17, Block 1, U.S. Survey 2542 A and B, Townsite of Sitka, Alaska. The inventory noted that Decedent had inherited this interest through David P. Howard, Sr. (David), who was his father. <sup>1/</sup>

After several abortive attempts, a hearing was held in this estate on September 18, 1995. Genevieve Guanzon and Hope testified. Although no transcript was made of the hearing, Hope's position is set forth in letters to Judge Hammett. In a September 16, 1995, letter, Hope indicated that he was David's nephew, and stated that the residence on the Townsite lot "is known as the Point House and is the clan home of the Point House people." He continued:

[David] was the Kiks.adi "care-taker" of the Point House. Such designation is usually for life. Upon the death of the "care-taker" the next clan member in line takes over that responsibility. That person is me.

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<sup>1/</sup> The Board requested the probate records for both Decedent and David. On Feb. 11, 1976, Judge Hammett entered an order approving David's will. David devised equal interests in the Townsite lot to Decedent and to each of two grandsons, John Charles Howard and David Phillip Howard III. Judge Hammett's order held that the will devised equal shares to three individuals. The Mar. 18, 1992, inventory of Decedent's restricted estate stated that he owned a 1/2 interest in the Townsite lot as of the date of his death. Decedent acquired a 1/3 interest in the lot under David's will. Nothing in the materials before the Board indicates how or when Decedent acquired an additional interest in the lot.

Before distributing this estate, the tribal contractor should verify Decedent's ownership interest.

My name once appeared on [David's] will. Just before his death he changed it by putting [Decedent] in my place. He feared his handicapped son [Decedent] would become homeless otherwise. I did not object because I knew [Decedent] had agreed to willing the house back to a Point House "care-taker."

His untimely death ended that agreement because he never got around to making a will. Had he lived the promised arrangement would have taken place. [Decedent] knew he was a member of the wrong clan and could not become the official "care-taker."

This letter was accompanied and supported by a statement from Ellen Hope Hays and Margaret Hope McVay, who identified themselves as "the senior members of the Point House in the matriarchal Tlingit Society."

Judge Hammett issued his decision on December 13, 1995. He concluded that Decedent's heirs at law were five nieces and nephews. The Judge rejected Hope's claim that he was Decedent's heir under Tlingit Tribal law on the grounds that the Department is required by Federal law to apply Alaska laws of intestate succession.

Hope petitioned for rehearing. On February 28, 1996, Judge Hammett denied the petition, holding that Hope lacked standing and again denying Hope's substantive argument that the Point House and Townsite lot should have descended according to Tlingit law.

The Notice of Appeal filed with the Board was signed by both Hope and an attorney for the Tribe. After describing the significance of a clan house in Tlingit culture, the Notice of Appeal states at pages 2-4:

Because of its place in the community and ultimate importance within Tlingit government, a clan house is not owned by any one person - it is property shared by the entire clan. The laws of ownership and succession are very particular and well established. The Clan Elders select a hit s'aati (keeper of the house), a caretaker to live in the clan house, and take care of it for the benefit of the clan. This caretaker is selected based on a number of factors, with some variation from clan to clan. Genealogy is an important factor as well as the knowledge and character attributes of a caretaker. A hit s'aati would ideally have spent time with the previous caretaker and clan leaders, being educated about clan history and tradition, as well as the responsibilities of handling the clan house property. The caretaker would also have participated in ceremonies and is chosen for leadership qualities, responsibility, diplomacy, and ability to work with people. When a clan house caretaker dies or becomes unable to fulfill these responsibilities to the clan, the Clan Elders hold council to determine who will be the next hit s'aati of the clan house.

Therefore, a person who "inherits" a clan house under Tlingit law does not become the sole owner but is the custodian of property owned by the clan at large. The person who inherits the responsibility for the clan house as a hit s'aati is under a general

responsibility to ensure that it is not sold for personal gain or to resolve personal or clan debt.

In this case, [David] was the last appointed caretaker for the Point House. At the time the Sitka Indian Village was surveyed and subdivided in accordance with the Alaska Native Townsite Act of 1926, [David], as the occupant of the Point House, applied for and was granted a restricted fee townsite deed to the Point House - Lot 17, Block 1 in the Sitka Indian Village. [David] became ill \* \* \* and as his health deteriorated, he made a weighty decision to break from traditional Sitka Tlingit tribal law. Out of concern for the well-being of [Decedent] who was mentally retarded, he changed his will and named [Decedent] as the main inheritor of the Native townsite on which the Point House sits. [David] assumed personal rights over the Point House in an effort to insure a place for [Decedent] to stay. In accordance with Tlingit exogamy, [Decedent] is not of the Point House clan and was not appointed by the Point House Elders to take care of the clan house. Before this situation could be addressed by the Point House Elders, [Decedent] died intestate \* \* \*.

The Department of the Interior, through the application of the State of Alaska laws of intestate succession to the Point House, has declared the nieces and nephews of [Decedent] (none of whom are of the Point House clan) as the new owners of the clan home of the Point House people. Such a result is in contradiction with Sitka Tlingit tribal law \* \* \*. We now appeal to the [Board] to allow Sitka Tlingit tribal law \* \* \* to be applied to the estate of [Decedent] and the probate of the Point House.

(Footnotes omitted.)

By order dated May 2, 1996, the Board noted that there were questions concerning whether either Hope or the Tribe had standing to bring this appeal. However, it suggested the possibility that this matter might be amenable to a settlement with the individuals found by Judge Hammett to be Decedent's heirs under Alaska law. At that time, it was not clear to the Board that Decedent did not own the entire interest in the Townsite lot at the time of his death.

Pursuant to a request from the Tribe, on June 6, 1996, the Board stayed proceedings in this matter pending settlement discussions. On December 17, 1996, the Tribe notified the Board that settlement negotiations had broken down. Based on this filing, the Board lifted the stay on December 18, 1996, and established a briefing schedule. Only Appellants filed a brief. 2/

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2/ On Sept. 16, 1997, the Board received a copy of a letter from the Tribal Trust Resources Coordinator to Decedent's heirs. The letter notified the heirs that the foundation of the Point House had given way and the house had begun to fall into the adjoining street. It stated that the Tribe had demolished the house in order to abate a safety hazard and that "[t]he cost of the demolition will be absorbed by the Native community of Sitka.

Appellants do not dispute that David held title to the Townsite lot, or that title passed to Decedent, among others, through a Departmental probate decision issued by Judge Hammett on February 11, 1976. They do not contend that they contested the probate of David's estate. Instead, the substance of their argument is that David and Decedent (and presumably the other individuals who were devised interests in the lot under David's will) held the Point House and the Townsite lot as trustees for the Point House people.

The Board and Administrative Law Judges of the Department of the Interior have limited jurisdiction. Although the Board and Judges have jurisdiction to hear claims that property was incorrectly included in a decedent's estate, <sup>3/</sup> Appellants' argument here goes far beyond that authority. In essence, Appellants seek a determination that the original Townsite deed to David was invalid to the extent it showed David as the owner of the lot, rather than as a trustee for the Point House clan.

Assuming inter alia that the Tribe and/or Hope have standing to bring this appeal, and that their contention concerning ownership of the property at issue here is not time-barred, the Board lacks authority to determine the validity of a deed to trust or restricted property. See, e.g., Cherokee Nation v. Acting Muskogee Area Director, 29 IBIA 17 (1995); Tsosie v. Navajo Area Director, 20 IBIA 108 (1991); Noyo River Indian Community v. Acting Sacramento Area Director, 19 IBIA 63 (1990). As that rule applies here, the Board lacks authority to declare that the Point House and Townsite lot were, under Tribal law, held in trust for the Point House clan by David and/or Decedent.

Alternatively, the Board would affirm Judge Hammett's December 13, 1995, determination of heirs and February 28, 1996, denial of rehearing because those decisions properly apply Alaska State laws of intestate succession in accordance with 25 U.S.C. § 348 (1994).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Hammett's February 28, 1996, Order Denying Rehearing is dismissed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge

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fn. 2 (continued)

These steps will ensure against possible liability from injury to others and will increase the viability of the land for construction of a new and stable house."

<sup>3/</sup> See Estate of Douglas Leonard Ducheneaux, 13 IBIA 169, 92 Interior Dec. 247 (1985), rev'd on other grounds, Ducheneaux v. Secretary of the Interior, 645 F. Supp. 930 (D.S.D. 1986), rev'd, 837 F.2d 340 (8th Cir. 1988), cert. denied, 486 U.S. 1055 (1988).