



INTERIOR BOARD OF INDIAN APPEALS

Estate of Edward Q. Boyer

38 IBIA 146 (10/24/2002)

Related Board case:  
25 IBIA 230



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF EDWARD Q. BOYER : Order Affirming Order Denying  
: Reopening as Modified  
:  
: Docket No. IBIA 02-27  
:  
: October 24, 2002

This is an appeal from an October 31, 2001, order issued by Administrative Law Judge James H. Heffernan, which denied a petition for reopening filed by Theodore L. Means, Jr., a.k.a. Deynon Means (Appellant) in the estate of Edward Q. Boyer (Decedent). IP RC 324Z 90. 1/ For the reasons discussed below, the Board affirms Judge Heffernan's order as modified herein.

Decedent executed a will on May 31, 1979, in which he devised all of his interest in Fort Hall Allotment 1213 to Appellant. On October 21, 1986, Decedent signed a deed for his interest in Allotment 1213. The deed, which conveyed Appellant's interest to the United States in trust for the Shoshone-Bannock Tribes of the Fort Hall Reservation (Tribes), was approved by the Acting Superintendent, Fort Hall Agency, Bureau of Indian Affairs (BIA), on February 9, 1988. 2/

Decedent died on December 28, 1989. On December 16, 1991, Administrative Law Judge Elmer T. Nitzschke issued an order approving Decedent's will. Judge Nitzschke stated in that order that Decedent's bequest to Appellant failed because Decedent had sold his interest in Allotment 1213 prior to his death.

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1/ This is the second appeal the Board has received in this estate. The first appeal was filed by Devon Owl Boyer and challenged a Sept. 8, 1993, modification order issued by Administrative Law Judge Robert A. Yetman. In Estate of Edward Q. Boyer, 25 IBIA 230 (1994), the Board affirmed Judge Yetman's order.

2/ Documents in the record indicate that the Tribes purchased Appellant's interest under a deferred payment contract and that the Superintendent did not approve the deed until all payments were completed.

On May 31, 1996, Appellant filed a petition to reopen Decedent's estate, stating that he had no notice of the original proceedings and was not on the reservation or otherwise in the vicinity at the time public notices of the hearing were posted. He argued that the deed by which Decedent conveyed his interest in Allotment 1213 was invalid. He also argued that Decedent had exchanged his interest in Allotment 1213 for a tribal land assignment and that, if Appellant was not entitled to inherit Decedent's interest in Allotment 1213, he was entitled to inherit Decedent's tribal land assignment. In his October 31, 2001, order, Judge Heffernan rejected all of Appellant's arguments. 3/

The Judge did not discuss Appellant's standing to seek reopening. However, it appears from the record that, as Appellant argued, he was not given notice of the original proceedings and was not on the reservation or otherwise in the vicinity at the time public notices of the hearing were posted. It therefore appears that he met the standing requirements of 43 C.F.R. § 4.242 (1996). There is nothing in the record which shows whether Appellant exercised due diligence in pursuit of his claim, as required by Board decisions. *E.g., Estate of Woody Albert*, 14 IBIA 223 (1986). However, for purposes of this decision, the Board gives Appellant the benefit of any doubt and assumes that he began pursuit of his claim as soon as he became aware of it.

On appeal to the Board, Appellant makes numerous complaints about BIA, the Tribes' Business Council, and the Tribes' Housing Authority. These complaints concern a land exchange which Appellant contends took place before 1986 and under which, Appellant further contends, Decedent received a tribal land assignment in exchange for his interest in Allotment 1213. Most of Appellant's complaints and arguments are beyond the scope of this probate. 4/

Appellant continues to argue, however, as he did before Judge Heffernan, that he is "entitled to inherit allotment 1213 or the exchange assignment." Appellant's Opening Brief at 4.

Appellant asserts that the 1986 deed for Appellant's interest in Allotment 1213, and/or the Superintendent's 1988 approval of the deed, were fraudulent or otherwise invalid. However, he produces absolutely no evidence in support of that assertion. The Board finds that he has failed to show that the deed is invalid.

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3/ Nothing in the record shows why Appellant's petition for reopening was not addressed for nearly five and one-half years after it was filed.

4/ Further, most of Appellant's complaints and arguments are made for the first time in this appeal. The Board has a well-established practice of declining to consider arguments made for the first time on appeal. *E.g., Estate of Rufus Ricker, Jr.*, 29 IBIA 56 (1996), and cases cited therein. Therefore, even if Appellant's new arguments were relevant here, the Board would not consider them.

As Judge Nitzschke and Judge Heffernan held, Decedent's interest in Allotment 1213 was not in his estate at the time of his death. Because Decedent did not own the interest at his death, Appellant cannot inherit the interest from Decedent.

Inheritance rights in tribal land assignments are a matter of tribal law. <sup>5/</sup> Appellant made that argument to Judge Heffernan and makes it again to the Board. Appellant's argument was rejected by Judge Heffernan, who stated: "[T]he Secretary is not bound by the [Tribes' Constitution]. The Departmental Regulations only authorize a tribe to regulate property within its jurisdiction. Restricted property is within the Federal jurisdiction, and is therefore under the exclusive control of the Secretary." Order Denying Reopening at 2. As applied to tribal land assignments, this statement is erroneous in all respects and is hereby disapproved. <sup>6/</sup>

Assignments of tribal land, and inheritance rights to such assignments, are clearly within the Tribes' jurisdiction. More importantly, as relevant to this appeal, they are not within the Department's probate jurisdiction. Appellant seems to be contending that the Department should probate Decedent's alleged exchange assignment under tribal law. It appears that he is taking this approach in an attempt to bypass the Tribes, which evidently do not recognize Decedent as having held an exchange assignment. <sup>7/</sup> As the Constitutional provision quoted by Appellant makes clear, however, jurisdiction over exchange assignments is vested in the Tribes' Business Council. Appellant must present his claim under tribal law to the Business Council and pursue it, if necessary, in whatever tribal appellate forums may be available to him.

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<sup>5/</sup> As quoted by Appellant in his notice of appeal, Article VIII, section 8, of the Tribe's Constitution provides:

"Inheritance of exchange assignments. Upon the death of the holder of any exchange assignment, such interests shall be reassigned by the Business Council to his heirs, or devisees, subject to the following conditions: [conditions omitted]."

No copy of the Tribe's Constitution is presently before the Board.

<sup>6/</sup> It is conceivable that Judge Heffernan did not understand that the exchange assignments referred to in the Tribes' Constitution are assignments of tribal land.

<sup>7/</sup> Appellant argues: "Presently the Tribes are under the impression that they purchased the interests in Allotment 1213 rather than recognizing the land was exchanged prior to the purported sale and that [Appellant] is entitled to inherit under the [Tribes' Constitution]." Appellant's Appeal and Answer to Order Denying Petition for Reopening at 3.

As indicated in footnote 2 above, materials in the record show that the Tribes did indeed purchase Decedent's interest in Allotment 1213.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Heffernan's October 31, 2001, order denying reopening is affirmed as modified by deletion of the above-quoted statement from that order and substitution of the analysis in the paragraph preceding this one.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge