



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Gosaduk Johnson Tilden

39 IBIA 223 (01/02/2004)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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SUITE 300  
ARLINGTON, VA 22203

ESTATE OF MARY GOSADUK JOHNSON : Order Docketing and Dismissing  
TILDEN : Appeal  
:   
: Docket No. IBIA 04-23  
:   
: January 2, 2004

Appellants Mary F. Tilden, Anuska Tilden, Carol Luckhurst, and Beverly J. Heyano sought review of an October 17, 2003, order denying rehearing issued in the estate of Decedent Mary Gosaduk Johnson Tilden by Administrative Law Judge Harvey C. Sweitzer. IP SL 054H 01. Appellants' notice of appeal was forwarded to the Board of Indian Appeals (Board) by Judge Sweitzer, with whom it was filed. For the reason discussed below, this appeal is docketed but dismissed as untimely.

A notice accompanying Judge Sweitzer's denial of rehearing informed Appellants that any appeal was to be filed with the Board, and gave them the Board's correct mailing address. The notice further stated that the order denying rehearing would become final 60 days from the date it was mailed unless a written notice of appeal was filed with the Board.

The Board did not receive a notice of appeal from Appellants. An original notice of appeal was received in Judge Sweitzer's office on December 15, 2003, and was forwarded to the Board the same day. The Board received that notice of appeal on December 22, 2003. Sixty days from October 17, 2003, was December 16, 2003.

The Board has consistently held that an appellant fails to file a timely notice of appeal when that person is given correct appeal information, but chooses to file an appeal with an official other than the Board, resulting in receipt of the appeal by the Board outside of the time for filing an appeal. See, e.g., Estate of Cecil Robert Sees the Ground, 37 IBIA 162, recon. denied, 37 IBIA 168 (2002), and cases cited there. Appellants were given correct appeal information, including the Board's mailing address, but chose to file their notice of appeal with Judge Sweitzer, rather than with the Board. Despite the diligent efforts of employees in Judge Sweitzer's office to forward the notice of appeal to the Board, the appeal was not timely when it was received.

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 Sweitzer's October 17, 2003, denial of rehearing is docketed but dismissed as untimely.

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//original signed  
Kathryn A. Lynn  
Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge