



INTERIOR BOARD OF INDIAN APPEALS

Estate of Florence (Florentine) Lewis Corona

46 IBIA 102 (11/26/2007)



United States Department of the Interior

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

ESTATE OF FLORENCE)
(FLORENTINE) LEWIS CORONA) Order Docketing and Dismissing Appeal
)
) Docket No. IBIA 07-130
)
) November 26, 2007

On September 17, 2007, the Board of Indian Appeals (Board) received a letter from Phil Ray Lewis, joined by his brother Kenneth, (Appellants), regarding the estate of Florence Lewis.¹ The Board construed the letter as a notice of appeal seeking review of a Notice and Order Granting Reopening and Redetermination of Heirs (Order Granting Reopening) entered on September 24, 2004, by Indian Probate Judge George D. Tah-bone in the estate of Appellants' mother, Florence (Florentine) Lewis Corona (Decedent), deceased Three Affiliated Tribes Indian, Probate Nos. C-545-57, 17348-57, and IP-BI-27B-82(1).² The Order Granting Reopening reopened Decedent's estate, determined that Dorothy Bernido-Fraser f/k/a Dorothy Renet Bernido was the biological daughter of Decedent, and modified a December 16, 1957, Order Determining Heirs to add Dorothy as an heir. The Board docketed this appeal, but dismisses it for lack of jurisdiction because it is untimely.

Appeals from orders on reopening must be filed "[w]ithin 60 days from the date of the decision." 43 C.F.R. § 4.320(b). The 60-day deadline for filing an appeal is

¹ The text of the letter indicated that it was being submitted on behalf of both Phil and Kenneth, but it was only signed by Phil. In its pre-docketing notice, the Board noted the absence of any indication that Kenneth had authorized the appeal to be filed on his behalf, and therefore treated Phil as the only appellant. *See* Pre-Docketing Notice, Order to Show Cause, and Order Concerning Service, Sept. 18, 2007. On September 28, 2007, Appellants submitted a letter, identical in substance to the original appeal letter, which was signed by both.

² Appellants' letter requested a "a continuance or a rehearing" in this estate, but upon inquiry to the Bismarck, North Dakota, office of the Office of Hearings and Appeals, the Board determined that Judge Tah-Bone had issued the Order Granting Reopening in 2004, after which the proper avenue for further review would be an appeal to the Board.

jurisdictional and is not subject to extension by the Board. *Id.* § 4.320(b)(3) (untimely appeals will be dismissed for lack of jurisdiction); *see Estate of Mary Jo (Mosho) Estep*, 44 IBIA 18 (2006); *Estate of Edward Benedict Defender*, 44 IBIA 8 (2006); *Estate of Jesse James Lalor Kellerher*, 36 IBIA 206 (2001).

Because Appellants' letter was filed with the Board more than 60 days after the Order Granting Reopening was issued, the Board ordered Appellant Phil Lewis, *see* note 1, to show cause why this appeal should not be dismissed as untimely. *See* Pre-Docketing Notice, Order to Show Cause, and Order Concerning Service, Sept. 18, 2007. In its order to show cause, the Board noted that although the Order Granting Reopening had not included appeal rights, Phil had attached to his letter to the Board a copy of a subsequent Notice of Appeal Rights issued by Judge Tah-bone on November 8, 2004, for the Order Granting Reopening. As also noted by the Board in its order to show cause, the Notice of Appeal Rights had informed interested parties of their right to file an appeal of the Order Granting Reopening with the Board within 60 days from the date of the Notice and had provided correct instructions for sending an appeal to the Board, and the distribution list for the Notice showed that Phil was mailed a copy of the Notice at the address he identified as his current address.

On October 22, 2007, the Board received a response to its show cause order from Phil, through counsel. It is apparent from his response that Appellants did in fact intend to file an appeal from Judge Tah-Bone's September 24, 2004, Order Granting Reopening. Phil contends that the appeal should not be dismissed as untimely because the September 24 order failed to provide notice of appeal rights. He argues that "[t]he appeal deadline set forth in [43 C.F.R. § 4.320(b)] does not apply when orders fail to provide notice of appeal rights," and that Judge Tah-bone's failure to provide him with appeal rights in the Order Granting Reopening "is a violation of his procedural due process rights under the Federal and State Constitutions." Response to Order to Show Cause at 1. Phil contends that the Board has discretion to remedy the alleged failure by Judge Tah-Bone to provide notice of appeal rights.

Notwithstanding the Board's specific discussion in its show cause order of Judge Tah-Bone's November 8, 2004, Notice of Appeals Rights, Phil's response does not mention that notice.

As noted in the Board's show cause order, the November 8, 2004, Notice of Appeal Rights issued by Judge Tah-bone clearly informed interested parties that any appeal must be filed within 60 days with the Board and provided correct instructions for sending an appeal to the Board. Appellants did not file their notice of appeal until September 17, 2007 —

nearly three years after the November 8, 2004, Notice. Appellants do not deny that they were provided with notice of their rights and correct appeal instructions through the November 8, 2004, Notice.³ Even assuming that Phil is correct that the 60-day period for filing an appeal from an order on reopening does not begin to run until interested parties are provided appeal rights, Appellants' appeal is untimely because it was filed after that time period had expired.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it as untimely.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ Phil's response to the Board's show cause order was filed solely on his own behalf. The response indicates that Kenneth was hospitalized and would like to respond as well. The Board therefore waited several additional weeks to take this matter under consideration, and in that time has received neither a response nor a request for an extension from or on behalf of Kenneth.