



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alice W. Holyan

49 IBIA 253 (06/17/2009)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF ALICE W. HOLYAN            )    Order Docketing and Dismissing Appeal  
  )    )  
  )    Docket No. IBIA 09-089  
  )    )  
  )    June 17, 2009

On May 26, 2009, the Board of Indian Appeals (Board) received a letter from Clifford Holyan (Appellant), which we construe as a notice of appeal. Appellant seeks review of an Order to Show Cause and an Order to Reopen Probate (Show Cause Order), issued on November 3, 2008, by Indian Probate Judge (IPJ) Roberta Dee Joe in the estate of Appellant's mother, Alice W. Holyan (Decedent), deceased Navajo Indian, Probate No. P000046185IP. We docket the appeal but dismiss it as premature because the IPJ's Show Cause Order is not a final order that is appealable of right.

The Board's legal assistant contacted the IPJ's office and obtained a complete copy of the Show Cause Order as well as the underlying Order Determining Heirs and Decree of Distribution, which was issued on February 26, 2008, by IPJ P. Diane Johnson. The Show Cause Order explained that the Bureau of Indian Affairs (BIA) had submitted a petition to reopen Decedent's estate, explained that the IPJ intended to grant BIA's petition to reopen, explained the reasons for reopening the estate, and advised the parties of the *proposed* redistribution of Decedent's estate. Importantly, the Show Cause Order included the following notice:

You may answer and show cause why this case should not be reopened and why Decedent's children, [Appellant] and [Appellant's sister,] should not equally share the funds that [were] in Decedent's [Individual Indian Money (IIM)] account at the date of [Decedent's] death, by filing a written response [with the IPJ] pursuant to 43 C.F.R. 4.242 stating all your reasons within 60 days of the date of mailing of this order . . . . You may consult an attorney. *If good cause is not shown* why this case should not be reopened to distribute said funds to Decedent's children, [Appellant] and [Appellant's sister,] in equal shares, *the relief requested will be granted* without a hearing and **this Order will become the final decision in this estate.**

Show Cause Order at 2 (italics added; bold in the original). Appellant represents that on November 10, 2008, he sent a written response to the Show Cause Order by facsimile (fax) to the IPJ.<sup>1</sup> It appears that Appellant believes that he may be entitled to all of the funds in his mother's IIM account because the funds were income earned by his mother's land interests, which he inherited in their entirety.<sup>2</sup> In addition, he appears to argue that his sister renounced her interest in their mother's estate, and therefore he is entitled to all of the funds in the IIM account.

There has been no decision yet by the IPJ after her Show Cause Order.

By its terms, the Show Cause Order appears to be an interim order: It offered the parties the opportunity to respond to BIA's petition to reopen the estate, following which the requested relief "will be granted" in the absence of a party showing good cause to the contrary. See *Estate of Wallace Bruce Armstrong*, 48 IBIA 212, 212-13 (2009).<sup>3</sup> Pursuant to 43 C.F.R. § 4.320, 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008), and relevant to this appeal, the Board has jurisdiction over appeals only from final decisions, e.g., on reopening. *Estate of Armstrong*, 48 IBIA at 212; cf. 43 C.F.R. § 4.28 (governing interlocutory appeals

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<sup>1</sup> Appellant does not inform us whether he also mailed his written response to the IPJ.

<sup>2</sup> The Order Determining Heirs and Decree of Distribution states that Decedent died intestate and her estate was distributed in accordance with 25 U.S.C. § 2206(a)(2)(D)(iii), which became effective on June 20, 2006, the day before Decedent's mother died. Section 2206(a)(2)(D)(iii)(I) provides that any interests in trust lands that are less than 5% of the entire undivided ownership may only be distributed in intestacy proceedings to the eldest surviving child of the decedent. Appellant is Decedent's eldest surviving child, and apparently Decedent's estate consisted entirely of interests that were less than 5% of the entire undivided ownership (the Show Cause Order did not identify Decedent's trust real property or her ownership interests therein).

<sup>3</sup> Admittedly, there is an inconsistency in the Show Cause Order. On the one hand, the order states that if no good cause is shown in response to BIA's petition to reopen, "the relief requested will be granted." Show Cause Order at 3. This language contemplates the issuance of a subsequent order. On the other hand, the order also states that if no good cause is shown, "this Order will become the final decision in this estate," *id.* at 2, which suggests that no further order will be issued if no objections are received or, if objections are received, good cause is not shown. But in the absence of another order, it would be difficult, if not impossible, for an objecting party to ascertain when the time starts to run for filing an appeal.

from a ruling by an administrative law judge). Therefore, the Board lacks jurisdiction over appeals from interim orders, such as the Show Cause Order in Decedent's estate, for which reason we conclude that Appellant's appeal is premature. Once the IPJ issues a final decision and provides appropriate appeal rights, the decision will then be appealable to the Board.<sup>4</sup>

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 premature.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>4</sup> When a final decision on a petition to reopen is made, it must include a notice to the parties of their appeal rights to the Board. See 43 C.F.R. §§ 30.243(a), 30.244(a), 73 Fed. Reg. at 67,302. However, if a proposed decision on a petition to reopen purports to become a final decision without further action by the probate judge, the parties do not receive notice of their appeal rights to the Board or notice of the date on which the decision becomes final for purposes of determining when the appeal period commences.

Assuming that the IPJ *sub silentio* concluded that Appellant failed to show good cause to deny the petition to reopen or that Appellant's faxed objection need not be considered as a proper filing, and that the IPJ therefore intended for her Show Cause Order to become the final decision in Decedent's estate without further action, there was no notice to the parties that the IPJ's decision had, in fact, become final for purposes of an appeal to the Board, and there was no notice to the parties of their appeal rights.