INTERIOR BOARD OF INDIAN APPEALS

Estate of Mabel Ellen Roberts

50 IBIA 134 (08/14/2009)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ESTATE OF MABEL ELLEN ROBERTS	)	Order Docketing and Dismissing Appeal
	)	
	)	Docket No. IBIA 09-127
	)	
	)	August 14, 2009

On August 10, 2009, the Board of Indian Appeals (Board) received a "petition for rehearing or technical correction" (Petition), from Sherri J. Roberts (Appellant), seeking review of an Order Adding Inventory entered on June 24, 2009, by Administrative Law Judge (ALJ) Steven R. Lynch in the estate of Mabel Ellen Roberts (Decedent), deceased Nooksack Indian, Probate No. P 00000 0345 IP (formerly IP SA 254 N 04). The order granted a request from the Bureau of Indian Affairs (BIA) to add an interest in trust real property to Decedent's estate, and decreed that the property should pass in accordance with the residuary clause in Decedent's will as approved in a January 20, 2006, Order Approving Will and Decree of Distribution. Appellant contends that the property interest — a 2.34-acre tract — had not been omitted from the estate, and was already included in a June 9, 2006, Order Amending Order Approving Will and Decree of Distribution, as part of the distribution of an 11.72-acre parcel distributed to her, consisting of the 2.34-acre tract and a 9.38-acre tract.[1]

Appellant's Petition is directed to the ALJ, but it is addressed to the Board. Because it is addressed to the Board and clearly seeks review of the Order Adding Inventory — an

[1] Based on documents submitted by Appellant, it appears that the property subject to BIA's request and the Order Adding Inventory is identified as Nooksack Allotment No. 3904 (Robert Sulkanon), suffix "30," consisting of 2.34 acres. Another portion of Nooksack Allotment No. 3904 consists of 9.38 acres and is designated with the suffix "-D." Appellant contends that the combined acreage was already included in and distributed to her by the June 9, 2006, order, which identified the property as Allotment No. "3904-D," but which also contained a specific metes and bounds description of the property and described it as containing a total of 11.72 acres, which is the sum of 9.38 and 2.34.

appealable order — we docket the Petition as an appeal to the Board, but we must dismiss it as untimely because it was not filed within the 30-day deadline for filing appeals.[2]

An appeal to the Board from an order regarding modification of the inventory of a trust estate must be filed within 30 days from the date that the order and correct appeal instructions are mailed, *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. §§ 4.320(d) and 4.321(a). The Order Adding Inventory was mailed on June 24, 2009, as evidenced by the certification on the Notice accompanying the order. The Notice provided correct appeal instructions, and therefore the 30-day deadline for filing an appeal expired on July 24, 2009. Appellant filed her appeal with the Board on August 5, 2009, as shown on the postmark. *See* 43 C.F.R. § 4.310(a) (date of filing is date of mailing or personal delivery). Because Appellant filed her appeal with the Board after the 30-day deadline expired, it must be dismissed as untimely. *See* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a).

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 dockets this appeal, but dismisses it as untimely.[3]

I concur:

// original signed	// original signed
Steven K. Linscheid	Debora G. Luther
Chief Administrative Judge	Administrative Judge

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[2] Appellant's Petition does not indicate that it was served on interested parties and on the ALJ, as required by 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 4.323. Because we summarily dismiss this appeal as untimely, we have not required Appellant to complete this service requirement. A copy of the Petition is being transmitted to the BIA Puget Sound Agency Superintendent, with a copy of this decision, *see infra* note 3.

[3] Although the Board lacks jurisdiction to review this appeal, it may be appropriate for BIA to review the property description in the June 9, 2006, order to determine whether BIA erred in identifying the 2.34-acre parcel as having been omitted from the estate inventory, *see supra* note 1, and whether further action for this probate is appropriate.

In addition, we note a discrepancy between the ALJ's Order Adding Inventory, which decreed that the property should pass pursuant to the residuary clause in Decedent's will, and the original Order Approving Will and Decree of Distribution, at 2, which states that Decedent's will "does not contain a residuary clause."