



INTERIOR BOARD OF INDIAN APPEALS

Estate of Dora Ann Varela, a.k.a. Dora Ann Means

51 IBIA 24 (12/16/2009)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF DORA ANN VARELA,	)	Order Docketing Appeal, Vacating
a.k.a. DORA ANN MEANS	)	Dismissal of Petition for Reopening,
	)	and Remanding
	)	
	)	Docket No. IBIA 10-021
	)	
	)	December 16, 2009

On November 19, 2009, the Board of Indian Appeals (Board) received an amended Disclaimer of Intestate Share (Amended Disclaimer) in the estate of Dora Ann Varela, a.k.a. Dora Ann Means (Decedent), deceased Pima Maricopa (Gila River) Indian, Probate No. P000020118IP. The Amended Disclaimer was executed by Decedent’s surviving spouse, Pedro Armengol Varela, Sr. (Varela). It was forwarded to the Board by the Phoenix, Arizona, office of the Probate Hearings Division, Office of Hearings and Appeals, as an appeal from an October 21, 2009, Order Dismissing Petition for Reopening (Order) entered by Administrative Law Judge (ALJ) Richard D. Hines in Decedent’s estate.<sup>1</sup>

The Order rejected a request from the Bureau of Indian Affairs (BIA), Southwest Land Title and Records Office (LTRO), dated August 1, 2009, to reopen a September 17, 2008, Decision (Decision) in Decedent’s estate. The LTRO sought reopening because the LTRO was uncertain whether or not Varela, whose original Disclaimer of Intestate Share (Original Disclaimer) had been accepted in the Decision, had intended to reserve a life estate in Decedent’s trust real property. The Decision tracked unequivocal language from one part of the disclaimer when it stated that Varela renounced and disclaimed “any rights, title or interests to the Decedent’s federal Indian trust property.” Decision at 1. But, as BIA advised the ALJ, the Original Disclaimer was, on its face, incomplete: Varela had failed to complete another portion of the form by affirmatively choosing whether or not his

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<sup>1</sup> The Amended Disclaimer was received by the ALJ’s office after the Order was issued, and thus the ALJ’s office construed it as a challenge to that Order. We agree that it may properly be construed as an appeal from the ALJ’s Order.

disclaimer was subject to any reservations of interest, including a life estate in Decedent's trust real property.<sup>2</sup>

The ALJ did not provide notice to Varela that BIA was seeking reopening based on the incomplete Original Disclaimer. In summarily dismissing BIA's petition, the ALJ concluded that because the language in the Decision describing the disclaimer was unequivocal, and because Varela had not sought to modify the Decision, "there is no basis for concluding that the Decision was made in error." Order at 1.

We vacate the ALJ's Order because Varela's Original Disclaimer was, on its face, incomplete. The Decision is silent on this fact, yet it appears to rely solely on the disclaimer as the basis for stating unequivocally that Varela had renounced and disclaimed any rights, title or interests to Decedent's estate, and impliedly finding that Varela had elected not to reserve any right to personal trust property or to a life interest in trust real property.<sup>3</sup> The Original Disclaimer does not support such a finding. Regardless of whether the Decision itself was unequivocal and unambiguous, the apparent foundation for the Decision was lacking, as BIA observed. At a minimum, BIA's petition for reopening had sufficient merit that the ALJ was required to give notice of the petition to Varela and other interested parties before deciding whether to grant or deny the petition. *See* 73 Fed. Reg. 67,256, 67,302 (Nov. 13, 2008), *to be codified at* 43 C.F.R. § 30.240(b). The fact that Varela had not sought to have the Decision modified might be a factor to consider in deciding whether to grant or deny BIA's petition, but it is not a fact from which it follows that "there is no basis for concluding that the Decision was made in error." Order at 1.

Because we conclude that BIA's petition for reopening appears to have merit, thus triggering a notice requirement under 43 C.F.R. § 30.240(b), and because the ALJ failed to provide notice to interested parties before summarily dismissing BIA's petition, we vacate the Order and remand for further proceedings. On remand, the ALJ shall reconsider BIA's

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<sup>2</sup> The disclaimer form includes a section that reads:

"The affiant (**reserves**) (**does not reserve**) the life use of [his] share.

The affiant (**reserves**) (**does not reserve**) the right to receive any trust personal property, if any there be."

Thus, the form requires that an affiant affirmatively choose one option or the other for trust real property and also for trust personal property.

<sup>3</sup> The Decision states that "[n]o appearances were entered" at the hearing, indicating that there was no testimony upon which the ALJ might have relied. Decision at 1.

petition for reopening in light of the incompleteness of the Original Disclaimer and Varela's Amended Disclaimer, and after providing interested parties with proper notice.<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, vacates the Order Dismissing Petition for Reopening, and remands the matter to the Probate Hearings Division.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>4</sup> Notice of the proceedings will also afford the children of Decedent and Varela an opportunity to state whether or not they object to reopening or to acceptance of Varela's Amended Disclaimer.