



INTERIOR BOARD OF INDIAN APPEALS

Estate of James H. Bunny, Sr.

51 IBIA 250 (05/04/2010)



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 JAMES H. BUNNY, SR.) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 10-060
)
) May 4, 2010

David R. Bunny (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Rehearing, Lifting Stay and Affirming Order of April 10, 2009 (Order Denying Rehearing), entered on February 12, 2010, by Indian Probate Judge (IPJ) Roberta Dee Joe in the estate of Appellant's father, James H. Bunny, Sr. (Decedent), deceased Navajo Indian, Probate No. P000047722IP. The Order Denying Rehearing affirmed an Order Determining Heirs and Decree of Distribution (Decree), which distributed Decedent's Indian trust estate pursuant to the intestate provisions of the American Indian Probate Reform Act of 2004. *See* 25 U.S.C. § 2206. In denying rehearing, the IPJ declined to apply a 1959 Navajo probate code approved by the Secretary of the Interior.¹ Appellant's notice of appeal to the Board raised a new issue, contending that Decedent had said he had made a will to distribute his estate equally among his spouse and children.²

Because Appellant's notice of appeal raised a new issue that did not appear to have been presented to the IPJ, the Board ordered Appellant to show cause why his appeal should not be dismissed as outside the scope of an appeal from the Order Denying Rehearing. *See* 43 C.F.R. 4.318 (Board's scope of review generally limited to issues that were before the probate judge). In addition, the Board ordered Appellant to serve copies of

¹ The petition for rehearing was filed by two other children of Decedent, Hazel A. Largo and Jared Bunny. They argued that the Navajo probate code required that a decedent's property be placed in a Navajo customary trust, and that it should be applied in this case pursuant to 25 U.S.C. § 2205. Section 2205 authorizes tribes to adopt tribal probate codes, subject to Secretarial approval. The IPJ concluded that the Navajo probate code, by its express terms, did not apply to trust property subject to the jurisdiction of the United States.

² Appellant acknowledged, however, that no will had been located.

his notice of appeal on the IPJ and interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323, and to notify the Board that he had done so. The deadline for Appellant's responses was March 26, 2010, and the Board advised Appellant that if he failed to comply with the order, his appeal might be dismissed without further notice.

The Board has received no response from Appellant.

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 but dismisses this appeal for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Sara B. Greenberg
Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.