



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eleanor Maxine Penningjack

54 IBIA 330 (04/18/2012)



# 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 ELEANOR MAXINE	)	Order Docketing and Dismissing Appeals
PENNINGJACK	)	
	)	Docket Nos. IBIA 12-086
	)	12-087
	)	12-088
	)	
	)	April 18, 2012

Natasha Cornpeach, Debra Penningjack, and Emmett R. Duncan, Sr., appealed to the Board of Indian Appeals (Board) from an Order Denying Reopening (Reopening Order), entered on February 15, 2012, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Eleanor Maxine Penningjack (Decedent).<sup>1</sup> We docket but dismiss these appeals because the ALJ provided accurate instructions for filing an appeal with the Board, and the appeals were not filed with the Board within the 30-day deadline following the ALJ's Reopening Order.<sup>2</sup>

An appeal from a probate judge's decision must be filed with the Board within 30 days from the date the decision was mailed with accurate appeal instructions. 43 C.F.R. § 4.321(a); *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010); *Estate of John Kenneth Flood*, 51 IBIA 225, 225 (2010). The effective date of filing a notice of appeal with the Board is

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<sup>1</sup> Decedent was a Ute Indian. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000066600IP.

<sup>2</sup> The ALJ's original probate decision (Decision), dated September 29, 2011, approved Decedent's June 14, 2004, will, which devised all of Decedent's trust estate to a private trust, the Eleanor Maxine Penningjack Trust (Trust). The ALJ's Decision explained that because the Trust is a non-Indian entity, the property at issue would pass out of Federal trust status and become subject to the jurisdiction of the state where the property is located. *See* Decision at 2. The ALJ's Reopening Order denied a petition for reopening from Appellant Penningjack (a trustee of the Trust), finding that the family members and trustees had known that the property going to the Trust would pass out of Federal trust status, and had agreed to that disposition. All three Appellants filed their appeals as heirs of Decedent, and apparently seek to have Decedent's property remain in Federal trust status.

the date of mailing (if sent by U.S. mail) or the date of personal delivery (if not mailed). 43 C.F.R. § 4.310(a). Untimely appeals must be dismissed. *Id.* § 4.321(a); *Estate of Franklin Porter*, 52 IBIA at 244; *Estate of John Kenneth Flood*, 51 IBIA at 225.

The ALJ's Reopening Order included accurate appeal instructions, and included a certification that it was mailed to the listed interested parties (including Appellants) on February 15, 2012. Therefore, the deadline for filing an appeal with the Board was March 16, 2012. Appellants mailed their appeals to the Board on March 27, 2012, which was after the appeal deadline had expired. *See* 43 C.F.R. § 4.310(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 docketed these appeals but dismisses them as untimely.<sup>3</sup>

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>3</sup> If real property that passes in unrestricted fee to the Trust is later conveyed from the Trust to individuals for whom the Bureau of Indian Affairs (BIA) may hold property in trust, those individuals may apply to BIA to have their interests returned to Federal trust status. *See* 25 C.F.R. Part 151; *Estate of Louis Richard (Paul) Tapio*, 50 IBIA 70 (2009). BIA's decision whether to grant such a request is discretionary. *City of Eagle Butte v. Acting Great Plains Regional Director*, 49 IBIA 75, 80 (2009).