



INTERIOR BOARD OF INDIAN APPEALS

Estate of Sandra G. Bodendick

55 IBIA 251 (09/07/2012)



# 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 SANDRA G.	)	Order Dismissing Appeal
BODENDICK	)	
	)	Docket No. IBIA 11-123
	)	
	)	September 7, 2012

This is an interlocutory appeal to the Board of Indian Appeals (Board) from a May 9, 2011, order by Administrative Law Judge (ALJ) Thomas F. Gordon approving the purchase at probate by the Tulalip Tribes (Tribe) of an undivided fractional interest in Tulalip Allotment No. 8-B (Allotment)<sup>1</sup> from the estate of Sandra G. Bodendick (Decedent).<sup>2</sup> Appellants are 14 individuals, including 4 siblings of Decedent, who claim ownership, or a right to ownership, of other undivided interests in the Allotment.<sup>3</sup> Appellants objected to the appraisals considered by the ALJ in determining that the Tribe was paying no less than fair market value for Decedent’s interest. Appellants contend that the appraisals undervalued the Allotment. The ALJ held that Appellants—who did not claim entitlement to Decedent’s interest in the Allotment as heirs or devisees, or to the proceeds from the sale, and who did not exercise their own purchase rights as co-owners—did not have standing, i.e., the right to challenge the appraisal. In the alternative, the ALJ concluded that even if Appellants had standing, they had not carried their burden of showing that the market value of the Allotment was higher than the amount that the Tribe offered to pay, and therefore the ALJ approved the sale to the Tribe.

We conclude that the ALJ correctly decided that Appellants did not have standing to object to the appraisal because they did not claim to be devisees, heirs, or potential heirs of

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<sup>1</sup> The Allotment is also known as the Katrina Jim Allotment, and consists of approximately 56.64 acres.

<sup>2</sup> Decedent, a.k.a. Sandra Gail Campbell, was a Tulalip Indian; the probate of the trust or restricted land and trust personalty in her estate was assigned Probate No. P000083006IP.

<sup>3</sup> Appellants are Joan (Maurice) Williams, Charles Campbell, Fay Zackuse, Jewel Baker, Elaine Maurice, Sabrina Daniels, Theresa Maurice Baker, John Campbell, Joan Duplessis, William Zackuse, Jr., Teri (Starr) Foulkes, Carma Moses, Walter Campbell, and Joanna Spencer. Appellants Walter, John, and Charles Campbell, and Joan Duplessis, are four of Decedent’s seven surviving siblings.

Decedent, and their status as co-owners of the Allotment did not give them standing. We also conclude that Appellants, having failed to argue to the ALJ that they are potential heirs, and having expressly disclaimed any intent to contest one of Decedent's wills, have no grounds to claim that they are "interested parties," as that term is defined in the probate regulations, for purposes of bringing this appeal. We therefore dismiss this appeal for lack of standing.

## Background

### I. Factual Background

Decedent died on November 16, 2009, and her estate includes an undivided 41/540 (approximately 7.593 percent) trust interest in the Allotment. The probate hearing was held on July 29, 2010. Prior to that, the ALJ's office sent notice of the hearing to Decedent's surviving spouse, James Bodendick (Bodendick), and to Decedent's siblings, among others. Notice of the hearing was also posted in public locations. The notice advised interested parties "that some or all of the trust or restricted property of the estate may be subject to purchase and sale by heirs, devisees, co-owners, a tribe or the Secretary." Administrative Record (AR) Tab 32 at 1.

At the probate hearing, the ALJ considered a will executed in 2008 by Decedent, which devised a life estate in Decedent's interest in the Allotment to Bodendick, with the remainder interest to a niece, Roselie Dudnick Holliday (Holliday).<sup>4</sup> Bodendick testified to the authenticity of Decedent's signature on the will and the circumstances of its execution. Transcript of July 29, 2010, Hearing (Tr.) at 9-11. Bodendick and four of Decedent's siblings who attended the hearing, Walter, Helen, John, and Charles Campbell, all testified that Decedent was of sound mind and understanding, and not subject to duress, fraud, or undue influence, when she executed the 2008 will. *Id.* at 11-12. No one objected to the 2008 will. *Id.* at 15-16.

At the hearing, the attorney for Bodendick discussed the Tribe's desire to purchase Decedent's interest in the Allotment, and mentioned an appraisal prepared in 2009 that valued the Allotment, as a whole, at \$9.26 million. Tr. at 57-66. One of Decedent's brothers mentioned that some of the co-owners of the property had formed a corporation to control and to make decisions concerning the Allotment, an effort which Decedent and

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<sup>4</sup> By its terms, the will devised all of Decedent's trust properties to Bodendick, a non-Indian, but provided that if the trust properties could only pass to an Indian, then to Holliday. Under 25 U.S.C. § 2206(b)(2)(A), the devise of Decedent's interest in the Allotment to Bodendick was limited to a life estate.

two other siblings had declined to join. *See* Tr. at 89.<sup>5</sup> Counsel for Bodendick stated that to his knowledge, the family had not approached Bodendick about purchasing Decedent's interest in the Allotment, and that if the family did not want the Tribe to have Decedent's interest, "the easy way out" would be for the family to negotiate to purchase it. *See* Tr. at 92.

On September 10, 2010, the Tribe submitted a request to the ALJ to purchase Decedent's interest in the Allotment from her estate.<sup>6</sup> AR Tab 20. As noted above, the Allotment had been appraised at \$9.26 million in a November 2009 appraisal prepared by the Department of the Interior's Office of the Special Trustee for American Indians (OST), at the request of the Bureau of Indian Affairs (BIA). Based on that appraisal, Decedent's proportional share had a value of \$703,074.07.<sup>7</sup> The Tribe made a cash offer of \$812,000 for Decedent's interest, which was approximately 15 percent above the value of the interest based on OST's 2009 appraisal, and slightly below the Tribe's appraisal of \$10.759 million in 2008. *See* AR Tab 20; *see also* AR Tab 26, Ex. E (copies of OST's 2009 appraisal and Tribe's 2008 appraisal).

The ALJ issued a Notice of Request to Purchase at Probate (Notice of Request), which was sent to, among others, Appellant-siblings Walter, John, and Charles Campbell, and Joan Duplessis. AR Tab 18. The notice was also publicly posted. *See* AR Tab 17. The notice stated that the Tribe had requested to purchase Decedent's interest in the Allotment, that it was offering \$812,000, and that any person who owns an undivided trust interest in the Allotment is also an eligible purchaser. In the notice, the ALJ recited the fact that OST's 2009 appraisal had valued the Allotment at \$9.26 million, and the ALJ found that based on that appraisal, the estimated value of Decedent's interest was \$703,074.07. The notice also stated that will devisees and potential purchasers could object to the appraised value, and that other eligible purchasers could also submit bids, in writing, to

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<sup>5</sup> The identity of which of Decedent's brothers was speaking was not ascertainable to the transcriber.

<sup>6</sup> Earlier, on July 23, 2010, the Tribe sent a letter addressed to "Trust Landowners and Interested Parties," offering to purchase other interests in the Allotment based on a total value of \$10.7 million. *See* AR Tab 23, Ex. K.

<sup>7</sup> When BIA requests an appraisal from OST, OST may conduct the appraisal in-house, or may hire a private appraiser to appraise the subject property. In either case, the appraisal is reviewed by an OST appraiser. If the appraisal is approved by OST, it is transmitted to BIA. *See* AR Tab 11; AR Tab 26, Ex. E.

purchase Decedent's interest within 30 days from the date of the notice. AR Tab 18 at 3. Appellants objected to OST's appraisal, arguing that it undervalued the Allotment.<sup>8</sup>

On March 31, 2011, the ALJ issued a Statement of Current Status and Request for Further Information (Request for Information), in which he raised the issue of whether Appellants had standing to object to the appraisal. AR Tab 13. Section 30.169(a)(1) of 43 C.F.R. provides that "[i]f you are the heir whose interest is to be sold or a potential purchaser and you disagree with the appraised market value, you may . . . [f]ile a written objection." The ALJ questioned whether Appellants had standing to object to the appraisal because none of them claimed that they were entitled to Decedent's interest as an heir or devisee, and none had made an offer to purchase Decedent's interest.

In the Request for Information, the ALJ also raised the possibility that Decedent's 2008 will might not be valid, in which case her 2004 will would come under consideration. Request for Information at 3.<sup>9</sup> The 2004 will also devised Decedent's interest in the Allotment to Bodendick, limited to a life estate, *see supra* note 4, but devised the remainder interest to another niece of Decedent, Wendy Ann Church (Church), instead of to Holliday. The ALJ enclosed for the parties a copy of the 2004 will, and found that the consent of Church was probably necessary to the proposed sale because she was named as a devisee in the 2004 will.

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<sup>8</sup> Eight of the Appellants (Charles Campbell, Fay Zackuse, Jewel Baker, Sabrina Daniels, Theresa Maurice Baker, Teri (Starr) Foulkes, Carma Moses, and Joanna Spencer), apparently in response to the Tribe's offer to them, *see supra* note 6, had sold their interests to the Tribe. *See* Opening Br. at 1 n.1; Memorandum from Superintendent to ALJ, Apr. 21, 2011, at 1 (AR Tab 11). But they subsequently sought to have BIA set aside their sales after the Tribe apparently declined to consent to a lease supported by Appellants. Appellants have separately appealed to the Board from a decision of the BIA Northwest Regional Director in that matter, in Docket No. IBIA 12-054. We express no opinion here regarding the validity of those conveyances.

<sup>9</sup> The ALJ noted that the 2008 will appeared to be defective because one of the will witnesses apparently was not a "disinterested witness," as required by 43 C.F.R. § 4.260(a) (2005). Request for Information at 3; *see also* 25 C.F.R. § 15.4.

The ALJ also noted, but did not discuss, a third will submitted by Bodendick dated April 16, 1980. *See* Request for Information at 3; AR Tab 25. It appears that Appellant John Campbell was named as a contingent beneficiary in the 1980 will, but the record indicates that the contingency for that devise failed because at least two other contingent devisees who would take before John survived Decedent by the requisite 30 days. *See* 1980 Will at 2 (AR 25); OHA-7 form, Data for Heirship Finding and Family History (Apr. 22, 2010) (AR Tab 34).

Addressing his doubts about Appellants' standing, the ALJ noted that four of the individuals objecting to the appraisal are siblings of Decedent, "and are therefore potential heirs of [Decedent's] interest in the Allotment . . . [i]f all of [Decedent's] wills were to be *disapproved*." Request for Information at 5 (emphasis added). In that case, the ALJ explained, the siblings, as heirs, could refuse to consent to the sale or could challenge the appraised value as too low. The ALJ stated that Appellants' interest in Decedent's estate, and in the proposed purchase, appeared tenuous at best because their real interest appeared to relate to their own, separate appeal from a BIA decision implicating their own sales to the Tribe. The ALJ observed that in his view, Appellants' interest "is not the type of interest that confers standing," but advised them that he would provide them "with the opportunity to establish their standing." *Id.* The ALJ specifically asked Appellants whether any of them "who are surviving siblings of [Decedent] intend to contest [Decedent's] 2004 will," and if so, to state the basis for such a contest. *Id.* at 8.

Appellants responded, through counsel, stating that they "do not contest [Decedent's] 2004 will." Objectors' Statement in Response, Apr. 29, 2011 (Objectors' Statement) at 1 (AR Tab 9A).<sup>10</sup> In a footnote, Appellants asserted that "they have standing to object to the conveyance of an undivided interest in [the] Allotment . . . per 25 U.S.C. 2204(a) and (b)." *Id.* at 1 n.1. Section 2204 authorizes an Indian tribe to purchase, subject to certain requirements and limitations, part or all of the interests in trust or restricted land within the boundary of the tribe's reservation or that is otherwise subject to the tribe's jurisdiction. Appellants argued that § 2204 grants co-owners a right to notification by and consultation with BIA regarding the sale of an interest in trust property to a tribe. Except for their nonobjection to the 2004 will, and assertion that they had standing based on § 2204, Appellants' statement was devoted to arguing the merits of their objection to any conveyance unless BIA reappraised the Allotment and fully consulted with the co-owners of the Allotment.

The ALJ concluded that Appellants lacked standing to object to the appraisal and the Tribe's purchase offer. Order Approving Purchase at Probate, May 9, 2011 (AR Tab 7). In response to Appellants' argument regarding § 2204, the ALJ held that § 2204 did not apply because a purchase at probate is governed by a more specific provision, 25 U.S.C. § 2206(o) (Purchase option at probate). *Id.* at 2-3. The ALJ also concluded that, even if Appellants had standing to object to the appraisal, they had failed to provide documentation showing that the market value of the Allotment should be higher than the value set forth in the ALJ's Notice of Request. *Id.* at 3-4. The ALJ approved the sale to the Tribe, to which

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<sup>10</sup> See Notice of Submission of Additional Document, June 30, 2011 (ALJ's submission of Objectors' Statement as part of administrative record, designated as AR Tab 9A).

Bodendick, Holliday, and Church had consented.<sup>11</sup> Appellants filed a timely objection to the ALJ's approval of the purchase and requested an interlocutory appeal, which the ALJ transmitted to the Board. *See* 43 C.F.R. § 30.170(b).

Appellants filed an opening brief, Bodendick filed an answer, and Appellants filed a reply.<sup>12</sup>

## II. Statutory Framework

Purchases at probate of interests in trust or restricted land from a decedent's (i.e., deceased person's) estate are authorized by 25 U.S.C. § 2206(o), and the implementing regulations are found at 43 C.F.R. §§ 30.160–30.175. Three classes of eligible purchasers may purchase an interest in trust or restricted land from a decedent's estate: (1) devisees or eligible heirs who will receive an interest in the same parcel of land from the decedent by devise or intestate succession; (2) other owners of undivided interests in the same parcel of land; and (3) the tribe with jurisdiction over the land (or the Secretary of the Interior on behalf of the tribe). *Id.* § 30.161. If an heir or devisee would otherwise have taken the interest that is to be purchased (or a life estate in it), and with an exception not relevant here, then that party must consent to the sale before it can be approved. *Id.* §§ 30.160(a)(2), 30.163(a). After a prospective purchaser notifies the judge that it wishes to purchase the interest, the judge notifies the heirs, devisees, tribe, BIA, and all eligible purchasers. *Id.* §§ 30.164, 30.165. The judge will approve a purchase at probate if the purchaser pays at least market value and has the requisite consent of the heirs or devisees. *Id.* § 30.167.

The probate regulations provide an opportunity for certain parties to raise objections to an appraisal of the market value of an interest that may be sold at probate, and to object to a purchase if it is approved by the probate judge. The regulations allow (1) an “heir whose interest is to be sold,”<sup>13</sup> and (2) a “potential purchaser,” to object to the appraisal

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<sup>11</sup> In response to the challenge to the appraisal, BIA obtained another appraisal from OST and submitted it to the ALJ. *See* AR Tab 11. The purpose of OST's second appraisal was to establish the market value of the Allotment as of July 27, 2010. OST's second appraisal estimated the fair market value of the Allotment, on that date, as \$9.235 million, which was below the 2009 appraised value and well below the Tribe's 2008 appraised value.

<sup>12</sup> Bodendick also filed a request for expedited consideration. Because this is an interlocutory appeal, the Board grants the motion for expedited consideration.

<sup>13</sup> The regulations expressly grant *heirs* the right to object to an appraisal, but do not mention *devisees* in the relevant subsection. *See* 43 C.F.R. § 30.169(a). An “heir” is one  
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within 30 days after the date of the probate judge's notice of a request to purchase. *Id.* § 30.169(a). The judge will then evaluate the objections, make a determination of the market value, determine whether to approve the purchase, and notify all "interested parties" that interested parties who are adversely affected may file written objections and request an interlocutory appeal to the Board. *Id.* § 30.169(b). Section 30.170 allows a request for interlocutory review "[i]f you are adversely affected by the judge's decision to approve a purchase at probate." *See also* 43 C.F.R. § 30.101 (defining "you" as an "interested party . . . with an interest in the decedent's estate").

The probate regulations define "interested party," in relevant part, to mean "(1) [a]ny potential or actual heir; (2) any devisee under a will; . . . and (5) any co-owner exercising a purchase option." 43 C.F.R. § 30.101; *see also* 43 C.F.R. § 4.201 (same).<sup>14</sup> The Board has construed the term "adversely affected" to mean that a party must have suffered "an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest." *See DuBray v. Great Plains Regional Director*, 48 IBIA 1, 19 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)); *see also Estate of Clifford Loudner, Sr.*, 55 IBIA 87 (2012) (dismissing probate appeal because appellant had no legally protected interest that was adversely affected by probate judge's decision); *Estate of Phillip Quaempts*, 54 IBIA 278 (2012) (same).

## Discussion

We conclude that Appellants have not shown that the ALJ erred in finding that they did not have standing to object to the appraisal, and we also conclude that they have failed to demonstrate that they are interested parties with an interest in Decedent's estate for purposes of appealing the ALJ's approval of the purchase. Nor have they shown that they are adversely affected by the ALJ's approval of the Tribe's purchase of Decedent's interest in

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who is entitled to inherit property in a decedent's estate by intestate succession (i.e., by the laws that govern inheritance when a decedent dies without a valid will). *See id.* § 30.101 (definition of "heir"). A "devisee" is one who is entitled to property pursuant to a will. *See id.* § 30.101 (definition of "devisee"). There is no apparent reason why heirs would be given a greater right to object to a purchase at probate than devisees, and the omission of a reference to devisees in § 30.169(a) may have been inadvertent. *Compare, e.g., id.* §§ 30.163(a)(1), 30.165(a) (grouping heirs and devisees together) *with id.* § 30.169(a) (no mention of devisees).

<sup>14</sup> The term "interested party" also includes a person or entity asserting a claim against an estate and a tribe having a statutory option to purchase the trust or restricted property interest of a decedent. 43 C.F.R. §§ 30.101, 4.201.

the Allotment. The right to appeal regarding a purchase at probate is limited to parties who are “adversely affected *by the judge’s determination to approve a purchase.*” 43 C.F.R. § 30.170(a) (emphasis added). No general right of appeal is given to co-owners who may be unhappy with an appraisal used by a probate judge to decide whether to approve a purchase at probate. We thus dismiss this appeal for lack of standing.

I. Appellants are Not Interested Parties with an Interest in Decedent’s Estate

A. Appellants’ Status as Co-owners of the Allotment

Appellants first contend that they have standing as co-owners of the Allotment to object to the appraisal and to bring this appeal. We disagree.

The regulations identify co-owners only as “*eligible purchaser[s]*” of property interests at probate. *Id.* § 30.161 (emphasis added). But, as relevant here, one must be a “*potential purchaser*” in order to have the right to object to an appraisal of property that is subject to a proposed purchase at probate. *See id.* § 30.169(a). As *eligible purchasers*, co-owners have a right to notice of a request to purchase at probate, and of their own right to submit a request for purchase and to bid on the interest. *See id.* § 30.165. The term “*potential purchaser*” is not defined in the regulations, but we construe the term to mean an eligible purchaser *who has submitted a written request to purchase* at probate. Only when a co-owner submits a timely request to purchase at probate does the co-owner’s status change from an “eligible purchaser” to a “potential purchaser” because it is the purchase offer that creates the potential that one might become the purchaser. None of the Appellants submitted a request to purchase Decedent’s interest, and thus they never became “potential purchasers,” within the meaning of § 30.169(a), before the time period for submitting purchase offers expired. Thus, the ALJ correctly concluded that Appellants did not have standing, as “potential purchasers,” to object to the appraisal.

Even if we construed the regulations as allowing *eligible purchasers* to submit an objection to the ALJ concerning an appraisal, without exercising their purchase option, Appellants would still lack standing, as co-owners, to bring this appeal to the Board. In order to appeal from a probate judge’s approval of a purchase at probate, an appellant must be an “interested party.” The term “interested party,” in relevant part, is plainly limited to “[a]ny co-owner *exercising a purchase option.*” 43 C.F.R. §§ 4.201 and 30.101. Appellants contend on appeal that they “have at all times sought to assert their right to purchase [Decedent’s] interest,” Opening Br. at 11, but they cite absolutely no evidence in the record to support the truth of that assertion. The Board’s own review of the record reveals no requests from any of the Appellants, written or otherwise, to purchase Decedent’s interest.

Apparently arguing in the alternative, Appellants appear to suggest that one or more of them would have exercised their own purchase option if they had been given notice of the Tribe's purchase option, and thus any failure on their part to do so (and the consequences of that failure) must be excused. But Appellants' own timely objection to the appraisal, in response to the Notice of Request, clearly demonstrates that they received notice of the Tribe's offer and notice of their own right to submit bids, in writing, to exercise their own purchase offer. *See* Appellants' Objection to Appraisal (AR Tab 15); Notice of Request (AR Tab 18). The record also shows that Appellants were given notice of the Tribe's purchase offer as required by § 30.165(d)<sup>15</sup> and that the notice included a solicitation for bids from all eligible purchasers. *See* AR Tab 17 (certifications of public postings of the notice of request); Notice of Request at 3 (AR Tab 18) ("Other eligible purchasers are hereby notified that they may also submit bids to purchase the [Allotment] within 30 days of the date of this Notice."). And Appellants Walter, John, and Charles Campbell were at the probate hearing, in which the Tribe's desire to purchase Decedent's interest was discussed. As counsel for Bodendick stated during the hearing, if Appellants did not want the Tribe to acquire Decedent's interest, "the easy way out" would have been for them to negotiate to purchase it, *see* Tr. at 92, or, of course, they could have submitted bids to counter the Tribe's purchase offer. They did neither.

Thus, we conclude that under the probate regulations applicable to the Tribe's purchase at probate, Appellants' co-ownership of the Allotment did not give them standing to object to the appraisal, and does not give them standing to appeal.

#### B. Appellant-Siblings' Standing as Heirs or Potential Heirs

Appellants Walter, John, and Charles Campbell, and Joan Duplessis, as siblings of Decedent, argue that they are interested parties, with standing to object to the appraisal and to appeal, as "potential heirs," under 43 C.F.R. § 30.101, because they would inherit a portion of Decedent's estate if all of Decedent's wills were disapproved. But Appellants did not raise this argument in the proceedings before the ALJ. The Board ordinarily does not consider new arguments raised for the first time on appeal, which could have been presented to the probate judge, and we see no reason to depart from that practice here. *See*

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<sup>15</sup> That regulation requires that notice of a purchase request be posted in at least six public locations. This fulfills the notice requirement for the class that includes Appellants as non-purchasing co-owners of the Allotment. The record contains certifications of the postings. AR Tab 17. Additionally, the four Appellants who are Decedent's siblings also received the Notice of Request by mail. Notice of Request at 5 (unnumbered) (AR Tab 18) (distribution list).

*Estate of Domenic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012); *Estate of Elbert W. Exendine, Sr.*, 54 IBIA 88, 90 (2011).

But, Appellants argue, the ALJ “explicitly found” that Appellant-siblings were “potential heirs,” and “nonetheless denied Appellants’ standing because of the existence of a will.” Opening Br. at 10. What Appellants fail to acknowledge is both the context and timing of the ALJ’s characterization of Appellant-siblings as “potential heirs.” The context was the uncertainty about whether Appellants might challenge the 2004 will, which had then come under consideration when an apparent defect was discovered in the 2008 will. If they did intend to question the validity of the 2004 will, Appellant-siblings could be “potential heirs” until any issues raised (and, if necessary, issues concerning prior wills) were resolved. The timing of the ALJ’s characterization is also relevant: it was made at the time he afforded Appellants an opportunity to show that they did have standing, and before he had considered their response. *See* Request for Information.

In the Request for Information, the ALJ questioned Appellants’ standing, explained that they would only become heirs if all of Decedent’s wills were disapproved, explicitly provided Appellants with an opportunity to demonstrate that they did have standing, and explicitly provided them with an opportunity to object to the 2004 will, if they so chose. Appellants responded by stating straightforwardly, and without elaboration, that they “do not contest the decedent’s 2004 will.” Objectors’ Statement at 1 (AR Tab 9A). Despite being given clear notice that the ALJ questioned their standing, Appellants made no arguments that Appellant-siblings nevertheless had standing as heirs or even as potential heirs. Appellants’ only direct reference to standing, in their response to the ALJ’s Request for Information, was to assert that they “have standing to object . . . per 25 U.S.C. 2204(a) and (b).” *Id.* at 1 n.1. Appellants’ argument that they had standing as co-owners was based on § 2204, but § 2204 has nothing to do with heirship. *See infra* at 263.

After considering this response from Appellants, the ALJ concluded that they had not demonstrated that they had standing to object to the appraisal. Whether the ALJ characterized Appellant-siblings as “potential heirs” in the Request for Information, when it remained unclear whether they intended to make any actual claim of heirship by challenging Decedent’s wills, or intended to assert some other grounds for standing, it was their responsibility to demonstrate their standing and to raise any and all arguments that they wished to have the ALJ consider.<sup>16</sup> Appellants made no arguments that Appellant-siblings

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<sup>16</sup> At the hearing, Bodendick suggested that he might have as many as ten wills executed by Decedent during her lifetime. *See* Tr. at 77. The ALJ requested, and Bodendick apparently provided, the three most recent ones, dated 2008, 2004, and 1980. As noted, the record

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had standing as heirs or potential heirs, and they cannot now argue, on appeal, that if the mere possibility exists that they might become heirs—i.e., if all of Decedent’s wills were to be disapproved—they have standing to object to the appraisal of the Allotment and to the ALJ’s approval of the Tribe’s purchase offer.<sup>17</sup>

Our conclusion that Appellants have not demonstrated standing to bring this interlocutory appeal is supported by the fact that the right to appeal from an order approving a purchase at probate is limited to an interested party “with an interest in the decedent’s estate.” 43 C.F.R. §§ 30.101 (definition of “You”); 30.170 (if “you” are adversely affected by a probate judge’s approval of a purchase at probate, “you” may object and request an interlocutory appeal). The failure by Appellant-siblings to argue to the ALJ that they are heirs or potential heirs, the absence of any will challenge by any party, and the apparent existence of other wills that would have to be disapproved before Appellant-siblings could inherit, makes any claim that they nevertheless have an “interest in the decedent’s estate,” for purposes of this interlocutory appeal, too tenuous to be cognizable.

What is apparent from Appellants’ pleadings is that they seek to use these proceedings in order to attack appraisals with which they disagree, in order to gain some advantage in a dispute involving their own undivided interests in the Allotment. As the ALJ observed, Appellants’ “real interest is to prevail in their own, separate appeal [from BIA action].” Request for Information at 5 (AR Tab 13). Appellants’ claim that the appraisal is too low is aimed not at obtaining any benefit from Decedent’s estate or from the sale of Decedent’s interest to the Tribe, but at undoing Appellants’ *own* sales agreements

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indicates that none of the Appellant-siblings would be devisees under any of the three wills. *See supra* at 254 & note 9.

<sup>17</sup> After the ALJ approved the Tribe’s purchase, Appellants Walter and John Campbell sent a letter to the ALJ stating that while the 2004 will “is likely to be valid,” they, as siblings, “could make a claim, which means that until the probate decision [regarding the will is issued], it is unclear who the heir is.” AR Tab 6 at 1. But they did not, in fact, make any claim of heirship or even potential heirship, choosing instead to expressly disclaim any intent to contest the will. What Appellants might have done is not relevant in the context of this appeal.

We are not suggesting that, in the apparently unlikely event that all of Decedent’s wills were disapproved, Appellant-siblings would be precluded from being determined to be heirs of Decedent and from receiving the proceeds from the sale. We only hold that Appellants, having failed to argue to the ALJ that they had standing to object to the appraisal as heirs or potential heirs, may not seek to assert standing on that basis in an interlocutory appeal from the order approving the purchase.

with the Tribe. We agree with the ALJ that “the [Appellants’] interest is not the type of interest that confers standing in a case.” *Id.* Appellants are not interested parties with an interest in Decedent’s estate, and thus they have no right to appeal from the ALJ’s determination to approve the Tribe’s purchase of Decedent’s interest in the Allotment.

## II. Appellants are Not Adversely Affected by the ALJ’s Determination to Approve the Purchase

Independent of whether Appellants could qualify as “interested parties” with “an interest in” Decedent’s estate, under the applicable probate regulations, we also conclude that Appellants have failed to show that the ALJ’s approval of the purchase by the Tribe adversely affected any legally protected interest held by Appellants. The ALJ’s approval of the purchase did not alter Appellants’ ownership of their fractional interests in the Allotment, nor does his determination of fair market value purport to bind Appellants in any related matters involving their own interests. Appellants cite no law for the proposition that a co-owner of property has legal standing to object to a voluntary sale of another co-owner’s interest, simply because the objecting co-owner believes that the property may be worth more than is reflected in the other owner’s sale.

As we understand Appellants’ position, *they do not wish to sell* their own interests in the Allotment, and thus the ALJ’s approval of the Tribe’s purchase of Decedent’s interest cannot be said to interfere with any sale by Appellants, even indirectly. And with respect to those Appellants who sold their own interests to the Tribe in 2010, the ALJ’s decision is wholly irrelevant because their sales occurred well before the ALJ’s decision, and were based on a higher appraised value by the Tribe. *See* Opening Br. at 4 (“By October 21, 2010, the Tribe[] had purchased a controlling 51.726% percent[sic] interest of the Allotment from individual interest holders – many of whom are Appellants herein and now object to the estimate of their properties and the sales [that BIA] approved.”). The ALJ’s *subsequent* approval of the Tribe’s purchase of *Decedent’s interest*, and his determination of fair market value for purposes of approving that purchase at probate, has no legal effect on any of the interests owned by Appellants, nor on any of their rights as co-owners of the Allotment.

Appellants claim that because the Tribe is seeking to purchase an interest in trust property, they had a broad right as co-owners, under 25 U.S.C. § 2204, and under Federal case law, to be consulted by BIA regarding the appraisal, and that they were adversely affected when BIA failed to do so. But whatever procedural rights or interests co-owners may have under § 2204 are not relevant here because, as the ALJ correctly concluded, a purchase at probate is governed by 25 U.S.C. § 2206(*o*), and not by § 2204. Section 2206(*o*) contains a comprehensive and specific scheme for purchases at probate. Neither § 2204 nor § 2206(*o*) references the other, and each provides its own procedures. There is no indication that the procedures in § 2204 were intended to apply to purchases at

probate, and we conclude that the more specific provisions of 2206(o) apply. *See Peoria Tribe of Indians v. Muskogee Area Director*, 27 IBIA 113, 119 (1995). Thus, the ALJ's decision to approve the Tribe's purchase did not violate any procedural rights that Appellants may or may not have in the context of a purchase outside of probate.

Moreover, it is not clear how § 2204 would aid Appellants, even if it applied. Section 2204(a) provides general authority for Indian tribes to purchase, from consenting owners, and for not less than fair market value, interests in trust or restricted land within the boundary of the tribe's reservation or that is otherwise subject to the tribe's jurisdiction.<sup>18</sup> An Indian owner who has been in actual use and possession of the land for at least 3 years preceding the tribal initiative has a right to match the tribe's offer. 25 U.S.C. § 2204(b). In the present case, the interest being purchased is not owned by Appellants, and thus their consent is neither relevant nor required under § 2204. And as noted earlier, none of the Appellants sought to exercise a purchase option at probate, let alone match the Tribe's offer.

Appellants' argument is further undercut by the fact that they rely on § 2204(c)(2)(F) as the source of their right to notice and consultation regarding the appraisal. *See* Opening Br. at 18. But § 2204(c) only applies—as Appellants acknowledge—when BIA appraises highly fractionalized Indian allotments *for partition*. The Tribe's purchase of Decedent's interest does not involve an action to *partition* the Allotment, nor do Appellants even contend that BIA has taken action to partition the Allotment. Appellants gloss over the actual language of § 2204 in arguing that BIA's *appraisal* (which was not, in fact, BIA's appraisal, but one prepared by OST) violated Appellants' statutory and common law rights to consultation.

Appellants' attacks on BIA in this appeal are simply misplaced. BIA does not probate Indian trust property, nor is it responsible for implementing the regulations applicable to purchases at probate.<sup>19</sup> The right to appeal from a probate judge's approval of a purchase at probate, including any underlying determination of fair market value, must be

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<sup>18</sup> With the consent of the owners of at least 50 percent of the interests in a tract, a tribe may purchase the entire tract, including the interests of nonconsenting owners.

<sup>19</sup> Appellants devote a considerable amount of their argument to claiming that BIA violated their rights before BIA approved sales of their interests in the Allotment to the Tribe. Even more telling is the fact that, as relief, Appellants ask that the Board “void the Tribe's purchases of undivided interests . . . and reverse the arbitrary and capricious *Superintendent's* Decision.” Opening Br. at 21 (emphasis added). There is no decision by the Superintendent that is at issue in this appeal; it is the ALJ's decision that is the subject of this interlocutory appeal.

based on a showing that *the judge's determination* to approve the purchase adversely affected the appellant's interest. Whether or not BIA, using the same OST appraisal, made a decision regarding Appellants' interests in the Allotment, is simply not relevant to whether Appellants were adversely affected by the ALJ's decision to approve the Tribe's purchase of *Decedent's interest* in the Allotment.<sup>20</sup>

Appellants cite several cases to support their contention that Federal common law required BIA to consult with Appellants before approving "the sales" of interests in the Allotment. See Opening Br. at 16 (citing, e.g., *Klamath Tribes v. U.S.*, No. 96-0318, 1996 WL 924509 (D. Or. Oct. 2, 1996); *Yakima Nation v. U.S.D.A.*, No. 10-3050, 2010 WL 3434091 (E.D. Wash. Aug. 30, 2010)). But as we have explained, BIA did not approve the sale at issue in this appeal. In any event, assuming Appellants would also argue that these cases impose a duty on the ALJ, the cases they rely upon concern the Federal government's responsibility to consult with *tribes* on a *government-to-government basis*. The cases *do not* create some generalized common law duty for the Federal government to consult with *individual Indian co-owners* of an allotment in which an Indian decedent owned an interest, concerning a purchase offer from another co-owner, including a co-owner tribe.

The implementing regulations for § 2206(o) determine what procedural rights co-owners of property have when a decedent's fractional interest in the same property is the subject of a purchase request at probate. Appellants received notice from the ALJ of the Tribe's purchase request, and were afforded an opportunity to submit bids, in accordance with the regulations implementing § 2206(o). That section imposes no additional obligations on the probate judge, and gives rise to no additional right, for co-owners to be "consulted" regarding a purchase at probate. Appellants have failed to demonstrate that they have any procedural rights that the ALJ violated or which were adversely affected by the ALJ's approval of the Tribe's purchase of Decedent's interest in the Allotment.

In their objection to the appraisal in the proceedings before the ALJ, Appellants argued that the ALJ "must determine if the BIA has ensured that [the] Estate of Sandra Bodendick, vis-à-vis [Appellants] and other undivided interest owners, would receive fair market value" under the Tribe's purchase offer, and that "BIA has not ensured that the Estate would receive fair market value." AR Tab 15 at 3. Leaving aside the fact that BIA has no decision making role in the probate of Decedent's estate or the approval of the Tribe's purchase at probate, Appellants have no right to represent Decedent's estate, separate and apart from asserting interests that they would receive from the estate, which, as

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<sup>20</sup> The ALJ is part of the Office of Hearings and Appeals in the Office of the Secretary, which is independent and separate from BIA (and, for that matter, from the Office of the Assistant Secretary – Indian Affairs).

we have discussed, they do not claim. Nor may they assert the rights or interests of the devisees. *See Biegler v. Great Plains Regional Director*, 54 IBIA 160, 164 (2011) (citing *Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005)) (a party may not rest its claim for relief on the rights and interests of others). Thus, they cannot establish standing by attempting to assert the rights of Decedent's estate, when they make no claim of entitlement to a share in the proceeds from the sale.<sup>21</sup>

### Conclusion

Appellants have not demonstrated that they are "interested parties" with "an interest in Decedent's estate," or that they have any legally protected interest that was adversely affected by the ALJ's approval of the Tribe's purchase of Decedent's interest in the Allotment. Because Appellants have failed to demonstrate these necessary elements for establishing a right to appeal from the ALJ's approval of the purchase, we dismiss the appeal for lack of standing.

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 dismisses the appeal and returns the case to the ALJ to complete the probate of Decedent's estate.

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>21</sup> It is far from clear that Appellants' challenge to the Tribe's purchase is consistent with Decedent's own wishes. Several months before her death, Decedent wrote a letter to the Tribe expressing her interest in selling her share of the Allotment to the Tribe. *See* AR Tab 23, Ex. M. Of course, that was before the 2009 appraisal was completed, and the record does not indicate whether Decedent had formed any opinion about the value of her interest.