



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rose Mae Martinez

56 IBIA 209 (03/14/2013)



# 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 ROSE MAE MARTINEZ	)	Order Docketing and Dismissing
	)	Appeal
	)	
	)	Docket No. IBIA 13-025
	)	
	)	March 14, 2013

Conrad M. Martinez (Appellant) objected to a Modification to Correct Distribution of Estate (Reopening Order), entered on August 15, 2012, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Appellant’s deceased spouse, Rose Mae Martinez (Decedent).<sup>1</sup> Appellant sent a statement of his objections to the Department of the Interior’s Probate Hearings Division office in Albuquerque, New Mexico, which transmitted the statement to the Board of Indian Appeals (Board). The Board treated Appellant’s statement as a potential notice of appeal, but ordered Appellant (1) to serve copies on interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323; (2) to show cause why his appeal should not be dismissed as untimely because it was received by the Board more than 30 days after the Reopening Order was mailed with accurate appeal instructions, *see id.* § 4.321(a); and (3) to submit a statement of alleged errors in the reopening order. *See* Pre-Docketing Notice and Order, Nov. 30, 2012.<sup>2</sup> The Board set a

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<sup>1</sup> Decedent, who was also known as Rose Mae Garcia, was a Navajo. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000045067IP.

The Reopening Order was issued in response to a reopening request from the Bureau of Indian Affairs to correct the distribution of Decedent’s estate in the January 29, 2010, Decision (Decision) issued in this matter. The Decision accepted and applied a disclaimer by Appellant of his 1/4 interest in Decedent’s trust real property by dividing the property, including income and interest thereon, equally among Decedent’s four children, and dividing Appellant’s 1/4 share of Decedent’s Individual Indian Money account equally (i.e., 1/8 share each) between the two sons of Decedent and Appellant, Conrad J. Martinez and Conrad C. Martinez. The Reopening Order interpreted the income disclaimer language as providing 1/8 life estate interests to Conrad J. and Conrad C. in income from Decedent’s trust real property.

<sup>2</sup> Appellant’s statement appeared to be objecting to the ALJ’s notice of BIA’s request for reopening, and to the original Decision. *See supra* note 1. Because the ALJ received the (continued...)

deadline of December 28, 2012, for Appellant to comply with the Board's order, and advised Appellant that if he failed to comply with or respond to the Board's order, his appeal might be dismissed without further notice.

The Board's November 30 order was returned by the U.S. Postal Service (USPS) as "not deliverable as addressed." The Board re-sent its order to Appellant using a second address referenced in his appeal, and extended the deadline for Appellant to comply, to January 25, 2013. *See* Order, Dec. 21, 2012.<sup>3</sup> The USPS Track-and-Confirm service on its website indicates that the Board's December 21 order was delivered on January 16, 2013.<sup>4</sup>

Appellant has not responded to or complied with the Board's order. Accordingly, the Board dismisses this appeal for failure to prosecute.<sup>5</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 but dismisses this appeal for failure to prosecute.

I concur:

                  // original signed                    
Steven K. Linscheid  
Chief Administrative Judge

                  //original signed                    
Debora G. Luther  
Administrative Judge

\_\_\_\_\_  
(...continued)

statement after the Reopening Order had been issued, his office transmitted it to the Board as a possible appeal.

<sup>3</sup> The second address provided by Appellant in his notice of appeal, apparently as his current address, was "General Delivery," Durango, Colorado 81301.

<sup>4</sup> The USPS apparently forwarded the re-sent December 21 order from Durango, Colorado to Aztec, New Mexico, where certified mail delivery for Appellant was accepted. (Copy of USPS website print-out added to record). The USPS website does not provide the specific address to which the order was forwarded and delivered.

<sup>5</sup> The Board notes that in his notice of appeal, Appellant objected to the use of an Aztec, New Mexico, address for sending mail to him. The Board makes no finding on whether, in fact, Appellant received its orders, but having attempted to contact Appellant at the only addresses he provided, and having received no response, the Board concludes that dismissal is appropriate.