



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clotilda Stone

57 IBIA 1 (05/02/2013)



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 CLOTILDA STONE)
) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 13-053
)
) May 2, 2013

Bernadette M. Stone (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing (Rehearing Order), entered on January 8, 2013, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Clotilda Stone (Decedent).¹ Appellant faxed a copy of her appeal to the Department of the Interior’s Probate Hearings Division in Albuquerque, New Mexico, which transmitted the appeal to the Board.

Upon receipt of the appeal, the Board ordered Appellant to: (1) submit her original, signed notice of appeal to the Board and complete service of the appeal on the interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323; (2) show cause why her appeal should not be dismissed as untimely because it was received by the Board on February 12, 2013, which was more than 30 days after the Rehearing Order was mailed with accurate appeal instructions, *see id.* § 4.321(a); and (3) in the alternative, show cause why the Rehearing Order should not be summarily affirmed, if as the ALJ found, Appellant’s petition had stated no reasons for granting rehearing.² *See* Pre-Docketing

¹ Decedent was an Alaska Native. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000081825IP.

² The ALJ found that Appellant provided no reasons for seeking rehearing from the ALJ’s September 25, 2012, Decision. The Decision determined that Decedent’s trust or restricted property was inherited in equal shares by Decedent’s eight children, including Appellant. One of those heirs, Davis Stone, died after Decedent but before the Decision was issued, and thus the Decision names his estate to receive his share. Appellant contends that a parcel of Decedent’s land on which Decedent’s house is located should pass in full to Appellant, in order to avoid any interest passing to a nonblood relative, i.e., Davis’s surviving spouse. The Board takes notice that probate proceedings for Davis’s trust and restricted estate are still in the preliminary stages: The case has not yet been referred by BIA to the Probate Hearings Division for probate.

Notice, Order for Appellant to Serve Interested Parties, and Order for Appellant to Show Cause (OSC), Feb. 20, 2013.

The Board set a deadline of March 22, 2013, for Appellant to comply with the Board's order, and advised Appellant that if she failed to respond to the Board's OSC, her appeal might be dismissed without further notice.

The Board did not receive a response directly from Appellant, but did receive the original notice of appeal and a response, both of which Appellant sent to the ALJ, who transmitted them to the Board. In her response, Appellant does not address why her appeal should not be dismissed as untimely or why the Rehearing Order should not be summarily affirmed. The Board concludes that Appellant has failed to demonstrate that her appeal is timely, and thus we dismiss the appeal for lack of jurisdiction. Because the appeal is untimely, we need not address whether summary affirmance would otherwise be appropriate.

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 lack of jurisdiction.³

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge

³ In her response, Appellant asserts that "all interested parties" have agreed that she should receive the parcel of property at issue, but she does not identify whom she includes within that characterization. As noted, *supra* note 2, the heirs or devisees of Davis's estate have not yet been determined, and thus it remains uncertain what party or parties would have authority to consent on behalf of Davis's interest in the parcel.