



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lena Victor

58 IBIA 225 (03/24/2014)

Discussion

On December 3, 2013, the ALJ issued the Decision in Decedent's estate, in which he found that Decedent died without a will; unmarried; and without surviving issue, parents, or siblings. Therefore, the ALJ concluded that the Navajo Nation (Nation) inherited all of Decedent's estate. *See* Decision at 1; 25 U.S.C. §§ 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV). In the Decision, the ALJ also denied a request by Petitioner, as a co-owner of certain real property in which Decedent owned interests, to purchase Decedent's interests in that property. The ALJ denied Petitioner's request because the Nation had not consented to the purchase. Decision at 3; *see also* 43 C.F.R. § 30.163 (Is consent required for a purchase at probate?).

The notice of appeal rights accompanying the Decision informed interested parties that they had 30 days from the date of mailing to seek rehearing from the ALJ. *See* Notice to All Persons Having or Claiming an Interest in the Subject Matter of This Proceeding, Dec. 3, 2013; 43 C.F.R. 30.238 (petitions for rehearing may be filed within 30 days after the date the probate decision is mailed under § 30.237). The notice also stated that the Decision would become final unless a petition for rehearing was filed within that 30-day period. The Decision was mailed on December 3, 2013, as shown by a certification of mailing on the notice. Thus, interested parties had until Thursday, January 2, 2014, to file petitions for rehearing with the ALJ.

On December 31, 2013, before the 30-day period for filing petitions had expired, the ALJ issued the Order Denying Rehearing in response to petitions filed by Marlene Knotchapone, Kenneth Victor, and Rena Nez. For the most part, those individuals apparently contended that one or more individuals, including Marlene, had been adopted by Decedent and thus were Decedent's heirs—not the Nation. The ALJ denied the petitions for rehearing as not properly supported by evidence. Order Denying Rehearing at 3.

On January 6, 2014, the ALJ's office received Petitioner's January 2, 2014, letter seeking rehearing from the Decision with respect to the ALJ's denial of Petitioner's request to purchase real property interests from Decedent's estate at probate. The ALJ did not take action on Petitioner's letter, but through correspondence PHD staff responded, suggesting to Petitioner that the ALJ lacked authority to consider her petition for rehearing. Although not entirely clear from the PHD correspondence, it appears that PHD staff may have believed that Petitioner's January 2 request for rehearing could not be considered by the ALJ because it was *received* in PHD after the 30-day deadline for rehearing petitions had expired, and also that the ALJ could not consider it because he had already issued the Order Denying Rehearing. PHD staff suggested that Petitioner's only recourse was to file an

appeal with the Board from the Order Denying Rehearing. *See* Letter from PHD to Petitioner, Jan. 8, 2014. Appellant responded to PHD, objecting that the Order Denying Rehearing had been issued before the time period expired for filing petitions for rehearing, and reasserting Petitioner’s position that she should be able to purchase certain interests from Decedent’s estate. PHD then forwarded the correspondence to the Board for consideration as a possible appeal.

To the extent that Petitioner’s correspondence to PHD may be considered as an appeal, we dismiss the appeal as premature. The documents provided to the Board by PHD do not show whether Petitioner’s January 2 request for rehearing was timely, but assuming it was mailed to PHD on January 2, it would be timely. And at least under the facts of this case, where it is clear that Appellant intended to file a timely request for rehearing, it was for the ALJ to decide, in the first instance, whether the petition was timely and to issue an order accordingly. In addition, although the letter to Petitioner from PHD staff reflected a belief that her request was disallowed as a “successive” petition for rehearing, *see* 43 C.F.R. § 30.241 (May I submit another petition for rehearing?), we leave that issue for the ALJ to decide in the first instance in responding to Petitioner’s request for rehearing.

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 this matter as premature and remands it to the Probate Hearings Division for action on Petitioner’s January 2, 2014, request for rehearing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge