



INTERIOR BOARD OF INDIAN APPEALS

Estate of Agnes Lopez

58 IBIA 275 (06/02/2014)



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 AGNES LOPEZ)	Order Docketing and Dismissing
)	Appeal, and Referring Matter to
)	Probate Hearings Division
)	
)	Docket No. IBIA 14-103
)	
)	June 2, 2014

Cheryl Lopez (Appellant) appealed from a Modification to Add and Distribute Property (Modification Order) entered on May 7, 2014, by Indian Probate Judge (IPJ) John R. Payne in the estate of Appellant’s mother, Agnes Lopez (Decedent).¹ We docket but dismiss this appeal, as premature, and refer the matter to the IPJ for consideration, as appropriate.

Relevant to this appeal, the Modification Order added to Decedent’s estate her ownership interest in Allotment No. 182-310 on the Nez Perce Reservation,² and ordered that, pursuant to the Act of September 29, 1972, Pub. L. No. 92-443, 86 Stat. 744 (hereinafter the Nez Perce Inheritance Act or NPIA), and 43 C.F.R. §§ 30.260 to 30.274 (Tribal Purchase of Interests Under Special Statutes), the Nez Perce Tribe (Tribe) would have the option to purchase the property interest—which would otherwise pass to Appellant.³

¹ Decedent, who was also known as Agnes Goudy Lopez, was a Yakama. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000034875IP.

² According to the Modification Order, Decedent owned a 40/12096 ownership interest in the allotment, and the value of Decedent’s interest was estimated at \$112.43. Modification Order at 1.

³ Under Decedent’s will, which was approved in an Order Approving Will and Decree of Distribution issued by Administrative Law Judge Steven R. Lynch on December 8, 2006, Appellant is the sole devisee of Decedent’s trust or restricted real and personal property. Appellant states that she is an enrolled Yakama and part Nez Perce, but “not enough to be enrolled at Nez Perce tribe.” Notice of Appeal. Under the NPIA, a person who is not an enrolled member of the Tribe “shall not be entitled to receive by devise or inheritance any

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Appellant's notice of appeal asserts that she "do[es] not want to sell [her] small piece of land for \$112 . . . [but is] willing to sell it for \$20,000," a figure that is apparently based on the price of an acre of land on the Yakama Reservation. Notice of Appeal. To the extent, as it appears to be the case, that Appellant is seeking to appeal the valuation of the property interest, and/or the Tribe's exercise of its purchase option, Appellant's appeal to the Board is premature and, thus, we lack jurisdiction to consider it at this time. The IPJ's Modification Order advised as follows:

Under the provisions of 43 C.F.R. § 30.268, any party in interest aggrieved by the exercise of the tribal option to purchase the interests, or aggrieved by the valuation of the interests as set forth in the valuation report, may, within 30 days from the date of this order, file *with the undersigned* a written demand for hearing . . . provided, however, that an aggrieved party will have at least 20 days from the date the tribe exercises its option to purchase available interests to file such a demand.

Modification Order at 2 (emphasis added). The IPJ also advised that the Tribe would have "60 days in which to exercise its purchase option, whereas any dispute concerning the valuation . . . must be raised *with this forum* within 30 days of the date of this decision." *Id.* at 2 n.1 (emphasis added). The phrases, "with the undersigned" and "with this forum" refer to the IPJ, not the Board.

The purpose of an appeal to the Board is for an appellant who has been adversely affected by a probate judge's final order to seek review by the Board in order to have errors in the judge's decision corrected. *See* 43 C.F.R. § 4.320. In the present case, the Modification Order advised parties of their right to seek a hearing before the IPJ, if they seek to challenge the Tribe's exercise of its purchase option or the valuation of the interest subject to tribal purchase, *or* to file an appeal with the Board, pursuant to 43 C.F.R. § 30.126(e), from any "remaining issues." Modification Order at 2. As Appellant appears to be seeking review of the valuation, and possibly the Tribe's exercise of its purchase option, without having first submitted a demand for hearing with the IPJ, and without raising any issues over which the Board might now have jurisdiction,⁴ this appeal to the

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interest in trust or restricted land within the Nez Perce Indian Reservation" if the Tribe pays fair market value for the interest. 86 Stat. 744.

⁴ To the extent, if any, that Appellant is appealing to the Board because she disagrees with the NPIA itself, the Office of Hearings and Appeals lacks authority to set aside an act of Congress.

Board is, at best, premature and must be dismissed. We refer Appellant's notice of appeal to the IPJ for consideration, to the extent 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, and refers Appellant's notice of appeal to the Probate Hearings Division.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge