



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frank Floyd Weinberger

59 IBIA 59 (07/30/2014)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ESTATE OF FRANK FLOYD)	Order Docketing and Dismissing
WEINBERGER)	Appeal
)	
)	Docket No. IBIA 14-063
)	
)	July 30, 2014

Arrow Weinberger (Appellant) seeks review by the Board of Indian Appeals (Board) of an Order Reopening Estate and Modifying Inventory (Reopening Order) issued by Administrative Law Judge R. S. Chester on January 31, 2014, in the estate of Appellant’s brother, Frank Floyd Weinberger (Decedent).¹ The original probate Decision, issued on November 12, 2010, approved Decedent’s 1993 will, in which Decedent devised his entire trust estate to James A. BigHorn (James). The Reopening Order granted a reopening petition by the Bureau of Indian Affairs (BIA) to delete Fort Peck Allotment 206-M956 from Decedent’s estate inventory, to which James did not object as the beneficiary under the will, and also granted a motion by James for BIA to promptly distribute to him the funds in Decedent’s Individual Indian Money (IIM) account (except for any monies generated by Allotment 206-M956).

Because it appeared that Appellant was not adversely affected by the Reopening Order, and therefore lacked standing to appeal that order to the Board, the Board ordered Appellant to show cause why his appeal should not be dismissed. *See* Pre-Docketing Notice and Order to Show Cause (OSC), Mar. 13, 2014. The Board set a deadline of April 21, 2014, for Appellant to comply with the Board’s order, and advised Appellant that if he failed to respond, his appeal might be dismissed without further notice.

Appellant submitted motions for, and the Board granted, two extensions of time to respond to the OSC, until July 10, 2014. *See* Order Granting Second Extension of Time for Appellant to Show Cause, June 4, 2014. On July 22, 2014, after the deadline for his

¹ Decedent, who was also known as Shirley Follows The Road and Frank Floyd Bets His Medicine, was a Fort Peck Indian. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000024810IP.

response, the Board received a letter from Appellant stating that he will not be filing any paperwork in regard to this appeal.²

The burden to establish standing rests with an appellant. *Third Legislature of the Cheyenne and Arapaho Tribes v. Acting Southern Plains Regional Director*, 54 IBIA 276, 277 (2012). Appellant did not respond to the order for him to explain why his appeal should not be dismissed for lack of standing. Appellant has thus failed to carry his burden of establishing standing and the Board will dismiss this appeal. See *Estate of Clayton Raymond LaCroix*, 56 IBIA 287, 288 (2013); *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Acting Southern Plains Regional Director*, 56 IBIA 267, 268 (2013); *Third Legislature*, 54 IBIA at 277.

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 demonstrate standing.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

² The letter was addressed to Janet A. Goodwin, who is the Director of the Office of Hearings and Appeals, and the Director's Office forwarded the letter to the Board.