



INTERIOR BOARD OF INDIAN APPEALS

Estate of Uriah "Red" Alexander

59 IBIA 159 (10/02/2014)



# 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 URIAH “RED”	)	Order Vacating Reopening Order and
ALEXANDER	)	Referring Inventory Dispute Back to
	)	the Bureau of Indian Affairs
	)	
	)	
	)	Docket No. IBIA 12-052
	)	
	)	October 2, 2014

The Bureau of Indian Affairs (BIA), appealed to the Board of Indian Appeals (Board) from a December 5, 2011 “Order Reopening” (Reopening Order) entered by Administrative Law Judge (ALJ) Richard D. Hines, in the probate case of Uriah “Red” Alexander (Decedent).<sup>1</sup> The Reopening Order modified the inventory for Decedent’s trust estate to include a house located on trust property known as Umatilla Allotment 526-A (Allotment 526-A). As relevant to our disposition of this appeal, BIA challenges the Reopening Order on the grounds that the ALJ reopened the case and modified the inventory without having received a decision from BIA to resolve an inventory dispute on the status of the house, which the ALJ had (properly) referred to BIA for resolution. Instead, after soliciting a modified inventory from BIA’s Northwest Regional Office, and receiving no response, the ALJ relied on a memorandum from the BIA Superintendent of the Umatilla Agency (Superintendent) to declare the inventory modified.

We vacate the Reopening Order because, as the ALJ implicitly appears to have recognized, at least initially, the Superintendent’s memorandum was not a BIA decision resolving the inventory dispute or amending the estate inventory—on its face, it failed to comply with BIA’s regulations for issuing a decision. Thus, the Superintendent’s memorandum could not be relied upon by the ALJ to reopen Decedent’s probate case and modify the inventory. Nor did the ALJ have authority to modify the inventory on his own accord. We do not address the merits of the parties’ positions regarding the trust status of the house because we, too, lack jurisdiction to do so in the context of this probate appeal from the ALJ’s decision. We refer the matter to the Regional Director for issuance of a

---

<sup>1</sup> Decedent was a Umatilla Indian. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000030084IP.

decision that complies with BIA's regulations for issuing a decision, if no such decision has yet been issued by BIA to resolve the inventory dispute.

## Background

Decedent died intestate (i.e., without a will) on December 29, 2004. Order Determining Heirs, Dec. 3, 2010 (Decision), at 1 (AR Tab 8). At death, Decedent owned trust property located on the Umatilla Reservation, including an interest in Allotment 526-A. *See id.* at 2; *see also* Consultation Report re: Allotment 526-A, Nov. 7, 2007 (AR Tab 8) (unnumbered). A day before the Decision was issued, Barbara Guerrero (Guerrero), Decedent's daughter, sent a letter to the ALJ, asserting that a house located on Allotment 526-A was wrongly omitted from BIA's inventory of the trust estate, and asking that the matter be referred to BIA for resolution pursuant to 43 C.F.R. § 30.128(b). Letter from Morgan to ALJ, Dec. 2, 2010 (AR Tab 7) (unnumbered). In relevant part, § 30.128 provides that "when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected[,] . . . [the probate judge] will refer the matter to BIA for resolution under [BIA's applicable substantive regulations] and [BIA's] appeal procedures at 25 CFR part 2." 43 C.F.R. § 30.128(a)&(b).

The ALJ treated Guerrero's request as a petition for rehearing and referred the inventory dispute to BIA pursuant to § 30.128(b). Decision on Petition for Rehearing, Jan. 26, 2011 (Rehearing Order) (AR Tab 7) (unnumbered). In the referral, the ALJ expressly noted that the matter was being referred to BIA for resolution in accordance with "the appeal procedures at 25 C.F.R. part 2." *Id.* at 1.

Part 2 of 25 C.F.R. requires that when a BIA official issues a decision, the decision must be sent to all interested parties and must include instructions for appealing the decision to the next level of BIA. 25 C.F.R. § 2.7. Failure to comply with § 2.7 tolls the deadline for filing an appeal, and the finality and effectiveness of a BIA decision is dependent upon the expiration of the appeal period. *Id.* §§ 2.7, 2.6(a)&(b).

On March 9, 2011, the ALJ received a memorandum from the Superintendent stating that the house located on Allotment 526-A "should be" considered part of the trust estate, and briefly stating his reasons for taking that position. Mem. from Superintendent to ALJ, Mar. 7, 2011 (Superintendent's Memorandum) (AR Tab 6). The Superintendent's memorandum was addressed only to the ALJ and did not include notice of appeal rights for interested parties. The ALJ construed the Superintendent's memorandum as a request to reopen the estate, and invited BIA to submit an amended certified inventory "[t]o the extent that the Northwest Region [of BIA] concur[red] with the Superintendent's determination." Order Disseminating Request to Reopen Estate, Mar. 17, 2011 (AR

Tab 6). After 3 months passed without receipt of “an amended certified inventory as requested,” the ALJ asked BIA to provide a status update within 14 days. Order Requesting Status Update, June 22, 2011 (AR Tab 6).

BIA was again nonresponsive. On October 6, 2011, after the Northwest Region had failed to respond to the ALJ’s order, Guerrero filed a Request to Issue Order Modifying Inventory and Close Estate. Letter from Morgan to ALJ, Oct. 6, 2011 (AR Tab 2). The ALJ then entered the Reopening Order at issue in this appeal. The Reopening Order quoted from the Superintendent’s memorandum, noted that the memorandum was construed as a request to reopen the estate, and stated that the Northwest Region of BIA was previously “ordered to submit an amended certified inventory which includes the decedent’s home on . . . Allotment 526-A, to the extent it concurred with the Superintendent’s determination.” Reopening Order at 1 (unnumbered) (AR Tab 2). The ALJ acknowledged that the Northwest Region “did not provide [the ALJ] with an amended certified inventory.” *Id.* at 1. The ALJ then stated:

In the absence of any response from the Northwest Region, this forum concludes that the Region has no objection to [the Superintendent’s] determination that the house at issue is trust property and should be considered a part of the decedent’s trust estate. This issue was specifically referred to BIA for resolution. [The Superintendent] issued his memorandum to this forum, [and] . . . [n]o party has objected . . . pursuant to the appeal procedures codified at 25 C.F.R. part 2. . . . [I]n the absence of any objection by any interested party to the Superintendent’s conclusions, I discern no authority on my part to offer a contrary conclusion.

*Id.* at 2. The ALJ reopened the case and declared that Decedent’s trust inventory “is modified” to include the house located on Allotment 526-A. *Id.*

BIA appealed to the Board. Guerrero filed an answer brief, and BIA filed a reply brief. On appeal, BIA argues that (1) the record does not support a determination that the house is held in trust by the United States; (2) the record does not establish the owner of the house, leaving uncertain whether Decedent even owned the house; and (3) the ALJ’s request for an amended certified inventory was ambiguous, BIA’s failure to respond cannot be construed as a decision that the house is part of the trust inventory, and the Superintendent’s memorandum did not comply with the requirements for issuing a decision in the inventory dispute. Notice of Appeal at 4. BIA’s last argument includes the dispositive issues: The Superintendent’s memorandum was not a final decision resolving the inventory dispute, and the Northwest Regional Office’s failure to respond to the ALJ could not make the Superintendent’s memorandum something that it was not. And to the extent the Reopening Order could be construed as modifying the inventory on the ALJ’s

own authority, he lacked jurisdiction to do so. Thus, we vacate the Reopening Order and refer the matter back to BIA to issue a decision in the inventory dispute.

### Discussion

As noted earlier, under the Department's probate regulations, inventory disputes that arise during a probate proceeding must be referred to BIA for a decision. *See* 43 C.F.R. § 30.128(b); *see also Estate of Eva Maria MacArthur*, 59 IBIA 22, 23 (2014); *Estate of William Earl Moore, Jr.*, 51 IBIA 98, 98-99 (2010). As relevant here, the regulations require that BIA resolve the matter and issue a decision in accordance with the appeal procedures in 25 C.F.R. Part 2. 43 C.F.R. § 30.128(b). If BIA fails to make a final determination before the judge issues a decision in the probate proceedings, § 30.128(b)(2) requires the probate decision to reference the pending inventory dispute, and note that the probate decision is subject to modification pending resolution of the dispute. *Id.* § 30.128(b)(2)(i)-(ii).<sup>2</sup>

When Guerrero objected to BIA's inventory following the initial probate decision, the ALJ properly referred the inventory dispute to BIA pursuant to 43 C.F.R. § 30.128(b). But instead of issuing a decision for the interested parties, the Superintendent responded to the ALJ with a memorandum stating that "the home of the decedent should be considered part of the trust estate." Superintendent's Memorandum (AR Tab 6). The memorandum does not comply with the requirement of 25 C.F.R. § 2.7(a), and it failed to advise interested parties of their right to appeal the memorandum to the next level within BIA, the Regional Director, pursuant to § 2.7(c). The ALJ appears to have implicitly acknowledged that the Superintendent's memorandum was not a final BIA decision in the inventory dispute, because he asked that the Northwest Regional Office of BIA submit an amended inventory "[t]o the extent [it] concurred" with the Superintendent's determination. Order Disseminating Request to Reopen Estate (AR Tab 6).<sup>3</sup>

---

<sup>2</sup> As relief, BIA seeks remand of the case to the ALJ with instructions for him to issue a probate decision that complies with 43 C.F.R. § 30.128(b)(2)(i)&(ii). We find it unnecessary to remand the case to the ALJ to issue such an order because it is sufficient for us to note in our final decision in this appeal the pendency of the dispute and the fact that the original probate decision is subject to modification upon resolution of the inventory dispute by BIA, i.e., if it is determined that the house is trust property.

<sup>3</sup> It would certainly have been advisable for the Northwest Regional Office of BIA to respond to the ALJ. But in light of the language used by the ALJ in his order, we understand BIA's argument that the Northwest Region's silence should not have been construed by the ALJ as its "nonobjection" to the Superintendent's memorandum, *see* Reopening Order at 2, rather than its nonconcurrence in that memorandum.

In a similar case, an Indian probate judge (IPJ) referred an inventory dispute to BIA, and received a memorandum from a BIA superintendent in response. *Estate of Celestus Arrowtopknot*, 54 IBIA 120, 121 (2011). Because it did not appear that the superintendent had complied with 25 C.F.R. § 2.7, the IPJ notified the superintendent that he would delay the probate decision until the superintendent complied with the regulation. *Id.* After waiting several months, with no response from BIA, the IPJ in that case issued a decision pursuant to 43 C.F.R. § 30.128(b)(2), which correctly noted that the inventory dispute was before BIA, and advised the parties that the estate could be reopened and modified upon resolution. *Id.*

The party challenging the inventory appealed the IPJ's decision to the Board, seeking our adjudication of the inventory dispute. In addition to finding the appeal untimely, we noted that we would otherwise lack jurisdiction to consider the inventory challenge in the context of a probate appeal. *Estate of Arrowtopknot*, 54 IBIA at 123. Instead, we observed that “the dispute must first be addressed through a decision by BIA, from which BIA’s appeal regulations provide an eventual right of appeal to the Board.” *Id.* A memorandum from the superintendent to the probate judge that failed to conform to 25 C.F.R. § 2.7 did not constitute a final determination as contemplated by 43 C.F.R. § 30.128(b). *See id.*

In the present case, the Superintendent’s memorandum plainly did not conform to the requirements of 25 C.F.R. § 2.7 for issuing a BIA decision, and thus could not be relied on by the ALJ as constituting a final determination by BIA to resolve the inventory dispute, under 43 C.F.R. § 30.128(b). And nothing in the record demonstrates that BIA has issued a final and effective decision. *See* 25 C.F.R. § 2.6.<sup>4</sup> The ALJ thus erred in relying on the Superintendent’s memorandum as grounds for reopening and modifying the trust estate. In the absence of a final BIA decision on the inventory dispute and an amended inventory from BIA, the ALJ did not have grounds to reopen the case, and he had no jurisdiction to modify the inventory on his own authority.

When Guerrero sought the assistance of the ALJ to prompt BIA to issue a decision, the proper response from the ALJ was to direct Guerrero to the remedies for BIA inaction contained in BIA’s administrative appeal regulations. *See* 25 C.F.R. § 2.8. Section 2.8 is an action-prompting mechanism that specifically affords a party who complies with its provisions to appeal the inaction of a BIA official to the next level within BIA, and

---

<sup>4</sup> BIA’s failure to comply with § 2.7 does not automatically render the decision invalid, *see* 25 C.F.R. § 2.7(b), but failure to provide appeal rights tolls the appeal period, thereby preventing expiration of the appeal period for purposes of rendering the decision final and effective, *see id.* § 2.6.

ultimately to the Board. The ALJ did not have authority to “supervise” BIA’s proceedings for the inventory dispute, and the proper remedy for any delay was found in § 2.8.

**Conclusion**

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 vacates the Reopening Order, and refers the matter to the Regional Director for issuance of a decision that complies with 25 C.F.R. § 2.7, if no such decision has been issued in the interim to resolve the inventory dispute.<sup>5</sup>

I concur:

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Thomas A. Blaser  
Administrative Judge

\_\_\_\_\_  
<sup>5</sup> The Board recommends that BIA issue a prompt decision on the inventory dispute, in accordance with 25 C.F.R. § 2.7.