



INTERIOR BOARD OF INDIAN APPEALS

Estate of Josephine M. Umtuch

59 IBIA 332 (01/29/2015)



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 JOSEPHINE M. UMTUCH) Order Docketing and Dismissing
) Appeal
)
) Docket No. IBIA 15-025
)
) January 29, 2015

Mary K. Umtuch (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Reopening entered on October 16, 2014, by Administrative Law Judge (ALJ) Earl J. Waits in the estate of Appellant’s paternal grandmother, Josephine M. Umtuch (Decedent).¹ In her notice of appeal, Appellant alleged that she “sent proof” her late mother, Patricia L. Umtuch (Patricia), was “a non[-I]ndian and . . . cannot inherit [I]ndian lands or moneys” Notice of Appeal at 2-3 (unnumbered).²

On receipt of the appeal, the Board ordered Appellant to clarify whether she is seeking to appeal the Order Denying Reopening, and if so, to show cause (i.e., explain)

¹ Decedent was a Warm Springs Indian. Her probate case is assigned Probate No. P000026224IP in the Department of the Interior’s probate tracking system, ProTrac.

The Order Denying Reopening denied a petition for reopening filed by Appellant’s brother, Chief George Michael Umtuch.

² In a prior appeal by Appellant in the probate of Patricia’s estate, *see* Docket No. IBIA 08-46, Appellant asserted that Patricia was a non-Indian, apparently based on the belief that if the Board were to so find, then interests in lands on the Warm Springs Reservation that passed down from Decedent to Patricia’s husband, George Umtuch, Jr. (George), could not have been purchased from George’s estate by the Confederated Tribes of the Warm Springs Reservation (Tribe). The Board dismissed that appeal as it pertained to the separate probate of George’s estate and, in so doing, noted that the Tribe’s purchase option turned not on whether Patricia was an Indian or non-Indian, but on whether she was a member of the Tribe. *Estate of Patricia Louise Umtuch*, 50 IBIA 76, 80 (2009), *pet. for recons. dismissed*, 50 IBIA 251 (2009). The proceeds from the sale of the lands to the Tribe went into Patricia’s estate to be distributed in equal shares among her seven heirs, including Appellant. *Id.* at 79.

why it should not be summarily affirmed for failure to identify any error by the ALJ in the Order Denying Reopening. Pre-Docketing Notice and Order for Clarification and to Show Cause, Nov. 19, 2014, at 2-3. The Board also ordered Appellant to clarify whether she intended for her notice of appeal to be treated, instead, as a petition for reconsideration of the Board's decision in *Estate of Patricia Louise Umtuch*, and if so, why the petition should not summarily dismissed for lack of jurisdiction. *Id.* at 3 (citing 43 C.F.R. §§ 4.312 (unless otherwise stated in the decision, rulings by the Board are final for the Department), 4.315(b) (a party may file only one petition for reconsideration)). The Board set a deadline of December 31, 2014, for Appellant to comply with the Board's order, and advised Appellant that if she failed to comply with or respond to the Board's order, this appeal might be dismissed without further notice.

The U.S. Postal Service's Track-and-Confirm service on its website indicates that Appellant received the Board's order on November 22, 2014.

The Board has received no response from Appellant.

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 prosecute.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge