



INTERIOR BOARD OF INDIAN APPEALS

Estate of Gertrude M. Clay

59 IBIA 354 (01/30/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ESTATE OF GERTRUDE M. CLAY)	Order Vacating Order Denying
)	Rehearing and Remanding
)	
)	Docket No. IBIA 12-075
)	
)	January 30, 2015

Alvina C. Webster (Appellant) appealed to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered on January 31, 2012, by Indian Probate Judge (IPJ) Ange Aunko Hamilton in the estate of Appellant's sister, Gertrude M. Clay (Decedent). The Order Denying Rehearing left in place the IPJ's March 11, 2011, Decision (Decision) ordering the distribution of Decedent's real property trust interests, including an interest in one trust parcel that constituted less than 5% of the undivided ownership of that parcel. It is the distribution of Decedent's less-than-5% interest in Allotment 380-794 (Property) to the Omaha Tribe of Nebraska (Tribe) pursuant to provisions of the American Indian Probate Reform Act (AIPRA) governing the intestate descent of small fractional interests of land, 25 U.S.C. § 2206(a)(2)(D)(iii)(IV), that is the subject of this appeal. Appellant contends that the Tribe has renounced its interest in the Property and that the Tribe's renunciation should be given effect.¹

For the reasons discussed below, the Board vacates the Order Denying Rehearing and remands the case for further proceedings. The IPJ erred in denying rehearing, without proper explanation, after stating that she would accept a tribal council resolution transferring the property interest to Appellant, and grant the request for rehearing during a supplemental evidentiary hearing held to resolve ownership of the Property in light of the Tribe's resolution to transfer its interest in Decedent's property to Appellant. Moreover, the IPJ erred by failing to follow Departmental procedures governing purchases at probate after the filing of a request to purchase by Appellant and receipt of the tribal council

¹ On November 28, 2012, the Board issued an order granting a request for partial distribution of Decedent's estate, which authorized and directed the Bureau of Indian Affairs (BIA) to distribute all of Decedent's estate, both trust real property and personalty, pursuant to the Decision, with the exception of Decedent's interest in Allotment 380-794, which is at issue in this appeal.

resolution confirming the Tribe's consent to transfer its inherited interest to Appellant. On remand, the Probate Judge should consider the effect of the Tribe's subsequent renunciation of any interest in the Property in favor of Appellant and, in the alternative, allow Appellant the opportunity to purchase the interest in the Property at probate.

Background

Gertrude M. Clay died intestate on April 5, 2007. Decision at 1 (Administrative Record (AR) Tab 9).² She was unmarried, had no children, and was survived by her three sisters, Eunice C. Cline, Alvina C. Webster (Appellant), and Bernice C. Stevens.³ Data for Heirship, June 5, 2008, at 1 (AR Tab 24). At the time of her death, Decedent owned interests in various trust parcels, including a 0.025 interest (2.5%) in Allotment 380-794 on the Omaha Tribe of Nebraska Reservation. Decision at 1.

Under the AIPRA revisions of the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2201 *et seq.*, an interest that constitutes less than 5% of the undivided ownership of trust or restricted property descends to the tribe with jurisdiction over the land in the absence of other designated heirs. 25 U.S.C. § 2206(a)(2)(D)(iii)(IV). The line of intestate succession defined by statute for such small fractional interests places the tribe with jurisdiction over the land after certain family members who are eligible to inherit and before co-owners of trust or restricted interests in the same land. *Id.* § 2206(a)(2)(D); *see Estates of Wallace J. Cook, et al. (Tribal Heirship of Interests in Absentee Shawnee Allotments)*, 58 IBIA 87, 95 (2013). Full siblings, such as Appellant and her sisters, are not included in the line of intestate succession for these less-than-5% interests.⁴ This appeal stems from the efforts of Appellant and her sisters to acquire Decedent's small fractional interest in the Property prior to its distribution to the Tribe under AIPRA. Appellant expressed her intent to purchase the fractional interest in the Property at the initial probate hearing held September

² Decedent was a member of the Omaha Tribe of Nebraska. The probate number assigned to Decedent's case in the Department of the Interior's probate tracking system, ProTrac, is No. P000060721IP.

³ Decedent also had a brother, Nelson E. Clay, who predeceased her on December 12, 1986. AR Tab 24 at 1 (unnumbered).

⁴ *Compare* § 2206(a)(2)(D) (placing a surviving spouse, child, grandchild, great grandchild, who are also eligible heirs, in the line of succession prior to the tribe with jurisdiction over the land for small, less than 5%, fractional interests), *with* § 2206(a)(2)(A)-(C) (adding decedent's surviving parents and siblings to the line of succession prior to the tribe with jurisdiction over the land for ownership interests constituting 5% or more of the undivided interests of a trust or restricted parcel of land).

22, 2008. Initial Hearing Transcript (Tr.), Sept. 22, 2008, at 18 (AR Tab 23). Family members also raised the possibility of the Tribe giving the fractional interest back to the family, in effect renouncing its interest in inheriting the Property in favor of the family. *Id.* at 20. The IPJ advised the family that the probate process would be held open for 20 days to give the family time to submit a request to purchase at probate, if that was their intent. *Id.* at 21-22. The family was also informed that it would take several months for an appraisal to be conducted once a request to purchase at probate was submitted. *Id.*

On September 23, 2008, the IPJ issued an Order to Submit Request to Purchase the less-than-5% interest in the estate, specifying that requests were to be submitted on or before October 14, 2008. Order to Submit Request to Purchase, Sept. 23, 2008 (AR Tab 22). Appellant's request to purchase at probate the less-than-5% interest was received by the Office of Hearings and Appeals (OHA) on October 9, 2008. Letter from Appellant to OHA, Oct. 7, 2008 (AR Tab 19). Decedent's niece, Tamara Clay, also filed a request on her own behalf and that of Decedent's sisters for a 30 day extension from the October 14 deadline to allow the family to discuss a compromise settlement agreement, which could include distribution of some part of Decedent's trust estate to the niece and her siblings. Letter from Clay to IPJ, Oct. 10, 2008, at 1 (unnumbered) (AR Tab 17). Tamara Clay is one of three surviving children of Nelson Clay, deceased brother of Appellant and Decedent. In lieu of granting the requested extension, the IPJ set a pre-settlement conference for November 6, 2008. Notice of Pre-Settlement Conference, Oct. 15, 2008, at 1 (unnumbered) (AR Tab 15); Decision at 2.

At the pre-settlement conference, the IPJ learned that the family had yet to meet with the Tribe and was still discussing options for obtaining the Tribe's fractional interest in the Property and distributing the larger estate. Pre-Settlement Conference Tr., Nov. 6, 2008, at 8 (AR Tab 13). In response to comments indicating the family's discomfort with paying the Tribe for land that belonged to their parents, the IPJ suggested that instead of purchasing the interest, the family could contact the Tribe for a resolution waiving the Tribe's interest, as tribal heir, to the Property. *Id.* at 13, 15. The IPJ also advised the family that it would simplify the probate process if the Tribe named one of Decedent's siblings to receive its inherited interest in the Property.⁵ *Id.* at 16-17. The IPJ explained

⁵ Under the "single heir rule" established by AIPRA's amendments to ILCA, intestate inheritance of fractional interests smaller than 5% of the total undivided interest of a trust or restricted parcel are limited to a single heir. *See* 25 U.S.C. § 2206(a)(2)(D)(iii). Similarly, renunciation of such interests may be made in favor of no more than one eligible heir, Indian related to the heir by blood, co-owner of another interest in the same parcel of trust or restricted land, or the tribe with jurisdiction over the land. *Id.* § 2206(a)(2)(D)(iv).

that “I could hold off on the order [distributing the estate] until you find out” the position of the Tribe. *Id.* at 14. The IPJ also explained that “there’s no hurry” and “we don’t have to do this case now.” *Id.* at 16. Summarizing the discussion from the pre-settlement conference, the IPJ advised the family to “approach the Tribal Council and then have them pass the resolution that they will give up the land and the money coming off that land . . . back to the family.” *Id.* at 26.

On October 16, 2009, more than a year after receipt of Appellant’s request to purchase at probate, the IPJ issued an Order for Appraisal, confirming that “[t]his office has received a request to purchase interest(s) in trust or restricted property from an eligible purchaser” and instructing BIA to prepare an appraisal of the fair market value of the trust property to be purchased. Order for Appraisal, Oct. 16, 2009 (AR Tab 10). On that same day, the IPJ received a copy of a letter from Bernice Stevens, one of Decedent’s sisters, to the Chairman of the Omaha Tribe of Nebraska. Letter from Stevens to Tribe, Oct. 14, 2009 (AR Tab 11); Decision at 2. In that letter, Ms. Stevens recounts the history of meetings and telephone calls with the Tribal Council and restates the family’s request for a tribal resolution transferring the Property to Decedent’s sisters. AR Tab 11 (“The [l]ast meeting we had with your staff was February, [2009], at which time you all agreed and approved that the 5% would go back to Eunice Cline, Alvina Webster, and myself and you would do an approved Tribal Resolution, which we need in order to proceed with the probate.”).

On March 11, 2011, the IPJ issued the Decision distributing Decedent’s estate, including distributing Decedent’s interest in the Property to the Tribe. Decision at 2. The Decision acknowledged that the IPJ had previously agreed to allow the family to pursue a “tribal resolution relinquishing inheritance rights to the co-owners, and if that tact failed the Court would order appraisal of the lands for purchase.” *Id.* The Decision also noted that “the parties were exercising diligence in their request for [a] tribal resolution,” and that the IPJ had requested an appraisal from BIA. *Id.* However, with “no further submissions [having] been received” after over a year, the IPJ decided to distribute the estate, concluding that “the parties may accomplish their goals through [BIA] purchase or land transfer procedures.” *Id.*

Appellant filed a timely request for rehearing, informing the IPJ that she had at last obtained a resolution from the Tribe. Letter from Appellant to IPJ, Apr. 6, 2011 (Petition) (AR Supp. Tab 8). The resolution, which was attached to the petition, declared that the Property “be transferred to [Appellant], Omaha Tribal Member and Sister to the

Deceased.” Resolution No. 11-56, Apr. 1, 2011, at 2 (AR Supp. Tab 10).⁶ The IPJ held an evidentiary hearing on June 9, 2011, and accepted the resolution into evidence, explaining that she “approved . . . the resolution [and] will issue an order granting the rehearing.” Evidentiary Hearing Transcript, June 9, 2011, at 9, 15 (AR Tab 8). The IPJ further stated, “I’ll memorialize [my approval] in writing when I get back to my office.” *Id.*

However, on January 31, 2012, over 6 months after the evidentiary hearing, the IPJ issued an Order Denying Rehearing. The order concluded that Decedent’s “less than five percent interest correctly escheated to the Omaha Tribe in the original decision entered on March 11, 2011.” Order Denying Rehearing at 2. The IPJ found that “Petitioner’s request to recognize the tribal council’s resolution provides no basis for finding an error in the [Decision] and evidence of the tribal council’s resolution is not relevant to the ALJ’s determination of heirs or her conclusion that the less than five percent interests escheat to the tribe under AIPRA.” *Id.* Ultimately, the IPJ concluded that “Petitioner has failed to satisfy her burden of showing any substantive error in the [Decision] and does not allege evidence of sufficient weight to cause a possible change in the original decision,” and denied Appellant’s request for rehearing. *Id.*

Appellant appealed to the Board. Appellant argues that, following extensive efforts by Decedent’s sisters, the Tribe renounced its interest in the Property in favor of Appellant and the Tribe’s resolution should be honored. Notice of Appeal at 1 (unnumbered) (AR Tab 6). Appellant explains that numerous meetings with the tribal council resulted in verbal agreement “to ‘give’ the land to Alvina” but the verbal agreement was not recorded in a tribal resolution until after issuance of the Decision distributing decedent’s estate. *Id.* at 1-2 (unnumbered). As noted, the IPJ conducted an evidentiary hearing to consider the tribal resolution, *see* Notice of Supplemental Hearing, May 11, 2011 (AR Supp. Tab 10), which was presented as “new evidence” in Appellant’s petition for rehearing, *see* Petition at 2 (unnumbered) (AR Supp. Tab 8). At the hearing, the IPJ repeatedly represented that the Tribe’s resolution transferring its interest to Appellant was approved and that an “order granting the rehearing” would be promptly issued. Evidentiary Hearing Tr. *passim* (AR Tab 8). In the appeal to the Board, Appellant argues that despite “[a]n extension of the [p]robate [p]rocess . . . to resolve the issue of ownership,” and the family’s success “in

⁶ The Tribe later determined that tribal law limited the tribal council’s authority to sell or transfer trust land once it was held by the Tribe, and thus rescinded Resolution No. 11-56 and issued a second resolution renouncing the Tribe’s interest as heir to the Property in favor of Appellant. Notice of Appeal, Feb. 24, 2012, at 2 (unnumbered) (AR Tab 6); Resolution No. 12-55, Feb. 23, 2012 (AR Tab 7). The second resolution was passed after the Order Denying Rehearing was issued, but the timing of the second resolution has no effect on the Board’s decision.

finally accomplishing this task[,] the Office of Hearings and Appeals is ‘not’ recognizing the tribal resolution; they denied it as newly discovered evidence.” Opening Brief (Br.) at 1 (unnumbered). In a separate filing, Appellant explains the gravamen of the appeal in the following terms.

I feel strongly I have been wronged in some way. The [IPJ] requested the family and the Omaha Tribe reach a settlement. We did, in fact, reach a settlement. I requested a rehearing based on the Tribal Resolution No. 11-56. During the rehearing, we . . . were assured that I would inherit the land. . . . [W]e were very relieved by [the IPJ’s] encouraging words. However, the [Order Denying Rehearing] dated January, 2012[,] dismissed this rehearing. The decision stated we were timely; and met all other necessary criteria; but the rehearing was still dismissed.

Addendum to Appellant’s Notice of Appeal, March 5, 2012 (AR Tab 5) (internal paragraph structure omitted).

Appellant also argues that she was further wronged because she attempted to exercise her option to purchase the Property prior to issuance of the Decision, yet the appraisal ordered by the IPJ was allegedly cancelled when Appellant advised the IPJ that she had obtained the requested tribal resolution. Opening Br. at 2 (unnumbered). Appellant urges the Board to recognize the Tribe’s Resolution No. 11-56 renouncing its interest and to expedite an appraisal. *Id.* Appellant had also underscored the importance of pressing forward with the appraisal of fair market value of the Property in a letter referenced in and attached to the Petition for Rehearing. Letter from Appellant to Eunice C. Cline, Mar. 23, 2011 (AR Supp. Tab 8).

Appellant further contends that the order denying rehearing and keeping in place the Decision distributing the Property to the Tribe is unjust because the distribution of the Property would have the effect of blocking any subsequent transfer of the Property to Appellant. Opening Br. at 1 (unnumbered). Appellant explains that “[t]he [Tribe’s] Constitution and By-Laws limit[] the Tribal Council’s power to sell any land” Notice of Appeal at 2 (AR Tab 6). “Therefore, Resolution No. 11-56 was rescinded [and] replaced by Resolution No. 12-55 dated February 23, 2012, ‘renouncing’ their interest in favor of [Appellant].” *Id.* In essence, Appellant claims that the only way to obtain the Property is through the probate process, as the Tribal Council has no authority under the Tribe’s Constitution to sell land outside of probate and after ownership has transferred to the Tribe. Appellant therefore refutes the IPJ’s conclusion in the Decision that Appellant could acquire the land from the Tribe after the close of probate through BIA’s land purchase procedures. Opening Br. at 1 (unnumbered); Decision at 2. Appellant urges the Board to “recognize the Omaha Tribe’s Resolution 11-56 renouncing their interest” and to

“expedite an appraisal” of the Property. Opening Br. at 2. No answer brief was filed by any opposing party.

Standard of Review

Factual determinations by a probate judge are reviewed to determine whether they are substantially supported by the record. *Estate of Josephine J. Palone*, 59 IBIA 49, 52 (2014); *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298, 303 (2007). Legal determinations and the sufficiency of the evidence are reviewed *de novo*. *Estate of Palone*, 59 IBIA at 52; *Estate of Laberta Stewart*, 54 IBIA 198, 203 (2012). Appellant bears the burden of showing error in the probate judge’s order. *Estate of Palone*, 59 IBIA at 52.

Discussion

I. The IPJ Erred in Denying Rehearing After Accepting Appellant’s Tribal Resolution and Committing to Grant the Request for Rehearing

In response to Appellant’s request for rehearing, the IPJ held an evidentiary hearing on June 9, 2011. AR Tab 8. At the hearing, the IPJ accepted into evidence the tribal resolution transferring the Tribe’s interest in the Property to Appellant, and stated that the request for rehearing was “approved,” and that an order to that effect would be drafted following the conclusion of the hearing. *Id.* at 9, 15. Yet with insufficient explanation, the IPJ subsequently denied Appellant’s request for rehearing on the grounds that Appellant had not met her burden of showing error in the original decision. Order Denying Rehearing at 2.

The Board has previously found that a probate judge’s failure to abide by a previous commitment could be legal error. *See Estate of Theresa Underwood Dick*, 50 IBIA 279, 292 (2009) (failure to consider evidence developed as a result of commitment to reopen evidence would constitute legal error). Although the IPJ was under no obligation to hold a hearing to consider a petition for rehearing, the IPJ chose to do so, accepted new evidence, and made certain representations to the parties during the evidentiary hearing that she later retreated from without adequate explanation. Therefore, in this case, the IPJ’s sudden reversal of course and lack of explanation in the Order Denying Rehearing constituted error *per se*. The Board vacates the Order Denying Rehearing and remands for further proceedings.

II. The IPJ Erred by Not Addressing the Effect of Tribal Resolution No. 11-56 on Appellant's Properly Filed Request to Purchase at Probate

Appellant timely submitted a request to exercise an option to purchase Decedent's fractional interest in the Property at probate.⁷ *See* AR Tab 19. In response to Appellant's request, the IPJ ordered BIA to conduct an appraisal of the Property. AR Tab 10. The IPJ acknowledged in the Decision that she had allowed Appellant to seek a tribal resolution relinquishing its inheritance rights in favor of the co-owners, with the understanding that if the resolution effort failed, Appellant's request to purchase the Property would move forward. Decision at 2. The IPJ also acknowledged in the Decision that "as with all purchase options, a fair market value appraisal is required." *Id.* at 1; *see also* 25 U.S.C. § 2206(o)(4); 43 C.F.R. § 30.167. Nevertheless, and without explanation, the IPJ issued the Decision that would distribute Decedent's estate, including the fractional interest in the Property to the Tribe, without implementing the prescribed steps of the purchase process during the probate period or explaining why it was no longer necessary to do so. Decision at 2-3. The Decision did not expressly terminate or deny Appellant's properly filed purchase option. Rather, the IPJ simply suggested that Appellant could later acquire Decedent's interests in the Property from the Tribe through BIA's land purchase procedures. *Id.* at 2.

Appellant grounded her request for rehearing on the issuance of a tribal council resolution "which transfers [the Property] to Alvina Webster." Petition at 1 (unnumbered) (AR Supp. Tab 8). Tribal Council Resolution No. 11-56, attached to Appellant's petition for rehearing, clearly relates back to Appellant's timely filed request to purchase at probate. Appellant explained that "the [Tribe] is waiving [25 U.S.C. §] 2206(o)(3) procedures by transferring the interest, rather than having someone purchase the undivided interest." *Id.* In the resolution, included as "new evidence" in the Petition, the Tribe acknowledges that "under the provisions of [AIPRA], the Omaha Tribe of Nebraska would inherit the land under the 'Single Heir Rule'" and determines that "the 'Single Heir Rule' would be complied with by having the above described land transferred to Alvina C. Webster, thereby

⁷ Section 2206(o) authorizes the Secretary to sell trust or restricted interests in land at fair market value to an "eligible purchaser," which includes "persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding." 25 U.S.C. § 2206(o)(2)(B). Eligible purchasers must submit a written request to purchase the property interest prior to distribution, and must obtain the consent of the heirs or devisees. *Id.* § 2206(o)(3)(A). Appellant is a co-owner of an undivided interest in Allotment 380-794, of which the Property is a part, and submitted her request to purchase the property prior to issuance of the Decision. *See* Conveyance Document, Mar. 16, 1984 (AR Tab 43); AR Tab 19.

waiving . . . 25 U.S.C. 2206(o)(3).” Resolution No. 11-56 at 2 (unnumbered) (AR Supp. Tab 10). The IPJ erred by failing to consider the legal effect of the Tribe’s resolution consenting to transfer of the Property to Appellant in light of Appellant’s unresolved purchase option for the Property.

The intent, as well as the legal effect, of the tribal resolution is unclear;⁸ it could be read as a formal statement of consent to the purchase of the Property by Appellant, as required by 25 U.S.C. § 2206(o)(3)(A)(ii), or as a renunciation of the Tribe’s interest, as heir, in favor of Appellant, pursuant to 25 U.S.C. § 2206(a)(2)(D)(iv)(I)(aa). In either case, the statute requires, for either a purchase at probate or a renunciation of a right of inheritance, that certain measures be taken prior to issuance of the probate decision. In the case of a properly filed request to purchase at probate, OHA is required to appraise the fair market value of the interest in trust or restricted land and provide written notice to eligible heirs, devisees and the tribe that the interest is available for purchase. *Id.* § 2206(o)(4); *see also* 43 C.F.R. §§ 30.165-30.167. The procedural requirement for an appraisal of fair market value was recognized by the IPJ during the course of the initial probate hearing when she advised the family of the steps she would be required to follow if they filed a request for purchase at probate. AR Tab 23 at 19 (“I’m not going to issue a decision if you purchase. . . . I will have to wait [until] the fair market value appraisal is in and then you . . . give me a money order for it”); *see also* Decision at 1. The eligible purchaser must also obtain the consent of the heirs or devisees of the interest, as well as that of the surviving spouse, if any, receiving a life estate. 25 U.S.C. § 2206(o)(3)(A)(ii). In this instance, the heir is the tribe, which by tribal resolution selected Appellant, an eligible purchaser under the statute, to receive its interest in the Property.

Resolution No. 11-56 could also be read reasonably as the Tribe’s imperfect attempt to renounce the interest in the Property that it would receive as a tribal heir pursuant to the statutory authority governing the intestate descent of small fractional interests in trust or restricted land. References in Resolution No. 11-56 to the Tribe’s inheriting the interest in the Property under the “Single Heir Rule,” *see* 25 U.S.C. § 2206(a)(2)(D)(iii), and to complying with the rule’s purpose of “eliminat[ing] fractional interests . . . by having the [Property] transferred to [Appellant],” Resolution No. 11-56 at 2 (unnumbered) (AR Supp. Tab 10), are consistent with an intent to renounce its interest in favor of Appellant. The statute governing the renunciation of small fractional interests in land, including the Property at issue here, expressly provides that “the heir of an interest under [the single heir rule] . . . may agree in writing entered into the record of the decedent’s probate proceeding

⁸ The Tribe clarified its intent and the legal basis of its disposition of the inherited interest in the property by issuing Resolution No. 12-55 and expressly renouncing its interest in favor of Appellant, pursuant to 25 U.S.C. § 2206(a)(2)(D)(iv).

to renounce such interest” in favor of no more than one eligible heir or Indian related to the heir by blood, one co-owner of another interest in the same trust or restricted property, or the tribe with jurisdiction over the interest at issue. *Id.* § 2206(a)(2)(D)(iv)(I)(aa). Assuming the Resolution is read as a relinquishment of an inherited interest, it must be acknowledged and acted upon prior to issuance of the probate decision. *Id.* § 2206(a)(2)(D)(iv)(I)(bb) (mandating that “the Secretary shall give effect to such agreement in the distribution of the interest *in the probate proceeding*” (emphasis added)).

In the Order Denying Rehearing, the IPJ erred in concluding that “the less than five percent interest correctly escheated⁹ to the Omaha Tribe in the original decision entered on March 11, 2011 in accordance with [AIPRA]” Order Denying Rehearing at 2. While the identification of heirship was not in error, the IPJ erred in issuing the Decision prior to resolving a valid purchase option. 43 C.F.R. § 30.160(b) (“A purchase option must be exercised *before* a decision or order is entered *and must be included as part of the order in the estate.*” (Emphasis added)). This error could have been rectified during the rehearing phase, as, indeed, the parties believed, and the record supports, had happened. The IPJ also erred in concluding that “the parties may accomplish their goals through the [BIA’s] purchase or land transfer procedures” and outside of the probate process. Decision at 2. Whether that may be correct in other cases, it was not correct here, where the Tribe is the heir. Moreover, once an eligible purchaser timely submits a written request to purchase at probate, the purchaser is entitled to have the procedural requirements for a purchase-at-probate followed. *See* 43 C.F.R. § 30.160(b); *see also* 73 Fed.Reg. 67256, 67265 (Nov. 13, 2008) (“The purchase at probate process, as established by AIPRA, may occur only during adjudications of an estate by OHA.” (responding to a comment suggesting that, to avoid delay in the probate of an estate, the BIA Realty office, instead of OHA, handle purchase options)).

The Order Denying Rehearing is vacated. On remand, the Probate Judge should consider the effect of Resolution No. 12-55, recording the Tribe’s renunciation of its inheritance of the Property in favor of Appellant, on probate and distribution of Decedent’s remaining estate. If the Tribe’s renunciation does not resolve the matter, the IPJ should proceed with the purchase at probate process.

⁹ The references in the Order Denying Rehearing to interests “escheating” to the Tribe are incorrect. Revisions to ILCA following United States Supreme Court decisions invalidating a prior escheat provision in ILCA, place the tribe with jurisdiction over trust or restricted interests in land in the line of intestate succession, thereby authorizing the tribe, under defined circumstances, to inherit such interests. *See generally* 25 U.S.C. § 2206(a).

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 Order Denying Rehearing and remands for further processing.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge