



INTERIOR BOARD OF INDIAN APPEALS

Estate of Carl Moses-Hyipeer, Sr.

60 IBIA 281 (05/08/2015)

Background

Decedent died on October 31, 2007. Order Determining Heirs at 1 (unnumbered) (Decision) (Administrative Record (AR) Tab 4). On November 16, 2007, YNCE submitted a Claim Form (2007 Claim Form) for Loan No. S06/216395, bearing the date June 5, 2002, for the stated purpose of “Memorial Expenses” (memorial loan). 2007 Claim Form (AR Tab 6). The amount of that loan is listed as \$7,907.44 plus 8% interest. *Id.* On that same form, under the heading “INFORMATION ONLY,” are details regarding Loan No. S01/C03491, dated September 14, 1977, for the amount of \$6,532.50 plus 6% interest, for the purpose of “Land Mortgage” (land loan). *Id.* On a separate section of the form, the amount of the balance due for the land loan is stated as \$1,684.96, with the notation “Information Only.” *Id.* The balance due from the memorial loan is provided as \$10,069.98, which is also the amount provided as the “total sum” due and owing to claimant. *Id.*

YNCE submitted another claim form on October 20, 2011. 2011 Amended Claim Form (AR Tab 6). The 2011 Amended Claim Form repeated the information for each of the loans,² eliminated the references to “information only” related to the land loan, and increased the total sum due and owing to “\$12,795.43 + 6% Interest.” *Id.* As with the 2007 Claim Form, the CEO for YNCE signed the statement, swearing the claim was true and correct, stating there were no offsets against the claim, and identifying the amount due and owing. *Id.* The more notable difference between the 2007 Claim Form and the 2011 Amended Claim Form concerns the amounts reported as paid against the land loan.³ On the 2007 Claim Form, Decedent is shown as having paid \$14,404.63 against the land loan, leaving a balance due of \$1,684.96. 2007 Claim Form. On the 2011 Amended Claim

² There is a small discrepancy, an increase of \$6 to \$6,538.50, in the initial loan amount cited for the land loan on the 2011 Amended Claim Form. The 2007 Claim Form, Promissory Note, Application for Loan, and Mortgage each list the initial loan amount as \$6,532.50.

³ Decedent negotiated an extension of the repayment schedule for the land loan in January 1985, which provided for monthly payments of \$50.00 “until the loan is paid in full.” Endorsement to Promissory Note, Jan. 2, 1985 (AR Tab 6). The Loan Renewal Agreement, also dated January 2, 1985, shows the principal amount to be renewed as \$6,404.79. AR Tab 6. Both the Loan Renewal Agreement and the Endorsement stipulate that the agreement was to be renegotiated in 11 years, which would be in January 1996. There is no indication in the record that this took place, although it appears that Decedent continued to make the required monthly payments, because according to YNCE’s claim, at the time of death Decedent had paid \$14,404.63 on that loan, leaving a balance of just \$1,684.96. *See* 2007 Claim Form.

Form, the amount shown as repaid on the land loan is reduced to \$13,018.26, but the remaining balance due is not stated. 2011 Amended Claim Form.

The net increase from the amount owed in 2007 (including the balance due on the land loan which was marked “information only”) to the total amount claimed in 2011 is \$1,040.49. No explanation is provided for the increase in the total balance owed or for the discrepancy between that increase and the \$1,386.37 decrease in the amount repaid on the land loan, nor is the notation that the total sum claimed in 2011 is “\$12,795.43 + 6% Interest” explained. *Compare* 2007 Claim Form *with* 2011 Amended Claim Form. The account history spreadsheets offer no clarification; rather, they raise additional questions. *See* Account History, Loan 1-CO3491 [land loan], Jan. 1, 1992 to Nov. 16, 2007 (AR Tab 6). The balance shown as of July 3, 2007, when a \$100.00 payment was recorded, was \$1,362.86. *Id.* at 7 (unnumbered). Two more payments of \$100.00 were recorded for August 31, 2007, and October 4, 2007. *Id.* Two “advance loan checks” to YNCE’s legal counsel are also recorded, one for \$112.00 dated August 9, 2007, and the other for \$378.00 dated October 22, 2007. *Id.* While the Promissory Note entered into by Decedent and his then spouse, as co-signers, included a provision for payment of “reasonable attorney’s fee[s] and all other costs and expenses incurred” should the note be placed in the hands of an attorney for collection, *see* Promissory Note, Agreement No. 3491, Sept. 14, 1977 (AR Tab 6), the account information provided by YNCE indicates that Decedent was current in his payments under the terms of the 1985 Endorsement to Promissory Note. Thus, it is unclear from the record under what authority the “advance loan checks” were issued.

A hearing to determine the heirs and settle the estate of Decedent was held on October 26, 2011. Decision at 1 (unnumbered) (AR Tab 4). The ALJ noted that YNCE had timely submitted a claim in the amount of \$10,069.98 against Decedent’s estate, and that this claim was subsequently amended on October 20, 2011, to reflect that the sum of “\$12,795.43 + 6% Interest” was owed. *Id.* at 2 (unnumbered). The ALJ observed that “[a]s of the decedent’s date of death, his IIM account contained \$31.76. . . . Accordingly, the claim will be ordered paid in an amount not to exceed \$31.76, with the balance of the claim denied.” *Id.* Relying on regulations that became effective after Decedent’s death (and after the claims had been filed), the ALJ concluded that payment of Appellant’s claim was limited to the \$31.76 date-of-death balance. *Id.* (applying 43 C.F.R. § 30.146 (2011)).⁴

⁴ Henceforth, references to the probate regulations in effect at the time of the probate hearing are to the 2011 edition of title 43 of the Code of Federal Regulations.

Appellant filed a timely petition for rehearing, arguing that 43 C.F.R. § 30.146 did not apply to claims against Decedent's estate because the regulation did not go into effect until after Decedent's death. *See* Petition for Rehearing, Jan. 4, 2012, at 2 (AR Tab 2).

The ALJ denied rehearing, rejecting Appellant's contention that § 30.146 did not apply. In denying rehearing, the ALJ also clarified that both the 2007 Claim and the 2011 Amended Claim sought repayment of balances remaining on two separate loans, the memorial loan and the land loan. Order Denying Rehearing at 4. With regard to the memorial loan, the ALJ noted that Decedent had signed an Assignment of Trust Property and Power to Lease associated with the loan. *Id.* He concluded that the plain language of the Assignment did not express an intent on the part of Decedent to grant YNCE ownership rights to post-death income, although YNCE's claim would take priority over any claim submitted by an heir to funds in Decedent's IIM account as of the date of death. *Id.* at 6. Thus, the ALJ determined that application of the revised regulation governing claims payment, 43 C.F.R. § 30.146, would therefore have the same effect as application of the regulations in effect at the time of Decedent's death, 43 C.F.R. § 4.250 *et seq.* *Id.* at 7. The ALJ affirmed the holding in the Order Determining Heirs that the amount of funds available in Decedent's account as of the date of death, \$31.76, was the amount approved for payment to YNCE. *Id.* at 8.

In regard to the land loan, the ALJ noted that it was secured by a real estate mortgage approved by BIA. *Id.* at 10. The ALJ observed that it was unclear from YNCE's petition whether it sought payment of this claim from post-death income. *Id.* at 10. He noted that "the real estate loan is secured by a valid mortgage which granted to YNCE the rights, issues and profits from allotment 124-515-E." *Id.* at 11. He also concluded that the reference to the application of "leases, land sales, timber sales and/or any trust income" to loan repayment,⁵ was limited to income generated from activities arising from allotment 124-515-E. *Id.* Without expressly resolving whether the land loan claim was also subject to payment with funds available at probate, the ALJ noted that BIA confirmed that none of the \$31.76 in Decedent's IIM account at the time of death was generated from that allotment and that no income had been generated from the allotment as of the date of the Order Determining Heirs. *Id.* Appellant timely filed with the Board a notice of appeal of the Order Denying Rehearing.

⁵ These additional sources of security were incorporated in the Promissory Note dated September 14, 1977. They were removed from the agreement and note renegotiated in 1984. *See* Loan Renewal Agreement, Loan No. 3491, Jan. 2, 1985 (approved by Superintendent, Yakama Agency); Endorsement to Promissory Note, Jan. 2, 1985.

Standard of Review

On appeal to the Board, the Board reviews factual determinations by the probate judge to determine whether they are substantially supported by the record. *Estate of Edward Teddy Heavyrunner*, 59 IBIA 338, 346 (2015); *Estate of Dominic Orin Stevens, Sr.*, 55 IBIA 53, 62 (2012). We review legal determinations and the sufficiency of the evidence *de novo*. *Estate of Heavyrunner*, 59 IBIA at 346. The burden lies with Appellant to show legal or factual error in the ALJ's order. *Estate of Josephine J. Palone*, 59 IBIA 49, 52 (2014).

Discussion

For the reasons discussed in our recent decision, *Estate of Esther Bill*, 60 IBIA at 243, we agree with Appellant that our holding in *Estate of Watlamatt* applies here and that the regulations governing claims payment in effect at the time of Decedent's death allow the ALJ to access post-death income from trust lands to satisfy approved claims. We therefore vacate the Order Denying Rehearing, which improperly applied substantive regulations that took effect after Decedent's death and the filing of claims against the estate, and that would have, as applied by the ALJ, resulted in the impairment of rights that the lender, YNCE, held and which the borrower acknowledged up to the time of death.⁶

When Decedent died on October 31, 2007, 43 C.F.R. §§ 4.250-252 (2007)⁷ applied to the submission and consideration of claims at probate. The regulation that determined what property was subject to claims, 43 C.F.R. § 4.252, provided:

⁶ The ALJ also concluded that Appellant's memorial loan claim was "fatally deficient" and would need to be denied if, as Appellant contended, it was subject to the regulations in effect at decedent's death. Order Denying Rehearing at 9-10. This conclusion is incorrect. According to the ALJ, Appellant was a "general creditor" and had not submitted a statement as to whether it had filed a claim against Decedent's non-trust assets, as required by 25 C.F.R. § 15.202(b) (2005). *Id.* at 9. This characterization of the claim's status is contradicted elsewhere in the order where the ALJ recognized that the loan was backed by an Assignment which "assign[ed] to the lender as security for repayment of such loan" all of Decedent's trust property other than land and all trust income. *Id.* at 5 (quoting provisions in the Assignment). YNCE's claim would also be considered a priority claim, not a general claim, under the regulations because it was "[a] claim[] of an Indian tribe." 43 C.F.R. § 4.251(b)(4) (2007).

⁷ Citation to the regulations in effect at the time of Decedent's death will henceforth be to the regulations published in the 2007 edition of the Code of Federal Regulations unless otherwise noted.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title or interest that is taken by an heir or beneficiary remains in or passes out of trust.

43 C.F.R. § 4.252. As we held in *Estate of Watlamatt*, 43 C.F.R. § 4.252 allows for the payment of claims from post-death income generated from trust real property. 46 IBIA at 71-72.⁸

In *Estate of Floyd Bill*, 60 IBIA 268 (2015), we also found that applying revised regulation § 30.146 to a claim filed in the estate of a decedent who died when the regulations then in effect allowed estates to be held open for 7 years for payment of priority claims, was impermissibly retroactive, and that the regulations in effect when the decedent died governed. *Id.* at 274. The same principle holds true here as well.

In the present case, the regulations in force when Decedent died in 2007 allowed the probate judge to authorize payment of allowed claims from funds that had accrued in Decedent's IIM account "as of the date of the initial informal or formal hearing." 43 C.F.R. § 4.251(e)-(f); *see also* 66 Fed. Reg. 67652, 67654 (Dec. 31, 2001) (explaining that "§ 4.252 was never intended to limit the funds available for payment of claims to those accrued at the time of the decedent's death," and that "the [probate judge] should determine the amount of money available in the IIM account as of the date of the hearing, and base his or her determinations . . . on that amount"). It is this provision—not § 30.146—that must be applied to Appellant's claim.⁹

There appears to be no question that the memorial loan was in default and that the claim for the unpaid balance was an appropriate matter to be resolved at probate, irrespective of the existence of an approved Assignment. Further proceedings will be

⁸ The version of § 4.252 the Board applied to claims in *Estate of Watlamatt*, which involved decedents who had all died prior to the change of probate regulations in 2001, referred to the right, title, or interest taken by an "heir, devisee, or legatee." 43 C.F.R. § 4.252 (2000). This formulation was simplified in 2005 to "heir or beneficiary." *See* 70 Fed. Reg. 11804, 11822 (Mar. 9, 2005). No other changes were made in this provision.

⁹ It is not necessary to our decision to find, as Appellant argues, that the Assignments created a security interest that "survived the death of the decedent." Opening Br. at 11 (emphasis altered). As we concluded in *Estate of Floyd Bill*, the assignment does not, by its own terms, limit payment of the claim to the date of-death balance. *See* 60 IBIA at 276-77.

required, however, to clarify the remaining balance of the land loan at the time of Decedent's death, and the amount of any unpaid monthly installments, pursuant to the terms of the Loan Renewal Agreement approved by YNCE and BIA in January 1985, and which remained secured by the real estate mortgage. Thus we remand the case to address the amount of the land loan claim.

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 proceedings consistent with this decision.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge