



INTERIOR BOARD OF INDIAN APPEALS

Estate of Molly Mary Kuneki

60 IBIA 319 (05/18/2015)

November 5, 2007, YNCE submitted a claim against Decedent's estate for \$64,961.77 for payment of the balance remaining on Loan No. S06/205716, entered into by Decedent on August 14, 2000, for the purpose of refinancing multiple prior loans (refinance loan). Claim Form, Nov. 5, 2007 (2007 Claim Form) (AR Tab 8). The refinance loan was in the amount of \$41,792.88, with an interest rate of 8%. *Id.*; *see also* Note and Disclosure, Aug. 14, 2000 (Note) (AR Tab 8). The term of the loan was 1 year, with a finance charge of \$3,343.43, bringing the total of payments due on August 14, 2001, to \$45,136.31. *See* Note.

Decedent also executed an Assignment of Trust Property and Power to Lease (Assignment) on August 14, 2000, wherein Decedent agreed to "assign to the lender as security for repayment . . . : (a) All property, except land, which is now or may in the future be held in trust for me by the United States; (b) all income from trust land in which I now have or may in the future acquire an interest; (c) any income from any source and any funds [*sic*] any source accruing to my individual Indian account." *See* Assignment, Aug. 14, 2000, ¶ 3 (AR Tab 8). The Assignment was recorded on Bureau of Indian Affairs (BIA) Form 5-4720 and approved by the BIA Superintendent on that same date. *Id.* The Assignment also provides that "[i]t is understood that in the case of my death, this assignment and power to lease shall constitute a claim against trust funds, income, or trust property superior to that of my heirs." *Id.* ¶ 6.

According to the claim and loan records submitted by YNCE, Decedent paid a total of \$400.00 on the loan, *see* 2007 Claim Form, while the unpaid interest was listed as \$23,168.89, *see* Loan Information, Balance/Payments/Loan Dates at 1 (unnumbered) (Loan Information) (AR Tab 8). The "Current Delinquent Date" for the refinance loan provided by YNCE was September 13, 2001. *Id.* at 2 (unnumbered). Four transfers from Decedent's account of \$100.00 each were recorded on May 3, June 6, July 3, and August 31, 2007, respectively, three of which bear the notation "Payment from 1377-3 1." *See* Account History (AR Tab 8). Decedent's account number assigned by YNCE is 1377-3. *See* Loan Information at 1 (unnumbered).

YNCE amended its claim on October 14, 2011. 2011 Amended Claim Form (AR Tab 8). The 2011 Amended Claim Form contains generally the same information as the 2007 Claim Form, with an increase in the amount paid on the loan from \$400.00 to \$862.38, and a corresponding reduction in the balance due and owing to \$64,499.39. *Id.* The account history submitted with the 2011 Amended Claim Form reports four transfers from Decedent's account with the same dates as provided in the account history submitted in 2007, and a fifth payment made from the account on April 28, 2008, 6 1/2 months after Decedent's death, in the amount of \$462.38. *See* Account History, Account 1377-3, From: 08/14/2000 to 10/26/2011 (AR Tab 8).

A hearing was held on October 26, 2011, to determine the validity of the will and settle Decedent's trust estate. Decision at 1. The ALJ determined that a will executed on December 11, 1981, was properly made and executed, and approved the will. *Id.* He also noted that "BIA reports [that] no income [was] due or payable as of the decedent's date of death." *Id.* n.1. He acknowledged that a claim in the amount of \$64,961.77 was filed against Decedent's estate by YNCE but, because Decedent's IIM account had a zero date-of-death balance, denied the full amount of the claim, relying on regulations that went into effect after the date of Decedent's death and after YNCE had filed its claim. *Id.* (applying 43 C.F.R. § 30.146 (2011)).² The ALJ concluded that this regulation, supported by language related to that rule in the preamble to revised probate regulations that went into effect on December 15, 2008, "constitute[d] a jurisdictional bar to the use of post-death income to pay the claim." *Id.*

Appellant timely filed a 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 4). Instead, Appellant argued, the rules in effect at Decedent's death, 43 C.F.R. §§ 4.251 and 4.252 (2007),³ permitted the use of post-death income to satisfy claims. *Id.* at 2-3. In particular, Appellant contended that § 4.251 contemplated that the probate judge would pay claims based on priority, using the funds available as of the date of the hearing. *Id.* at 3. Appellant also argued that YNCE's Assignment constituted a priority claim, superior to that of Decedent's heirs.⁴ *Id.* 6-8.

The ALJ denied rehearing, rejecting both Appellant's argument that the regulations governing claims payment in effect at the time of death applied, *see* Order Denying Rehearing at 7-8 (AR Tab 3), and that, even if 43 C.F.R. § 30.146 did apply, it did not

² 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.

³ The regulations in effect at the time of Decedent's death became effective March 9, 2005, *see* 70 Fed. Reg. 11804, 11804 (March 9, 2005). References to the regulations in effect at Decedent's date of death will henceforth be to the 2007 issue of title 43 of the Code of Federal Regulations.

⁴ One such heir, a grandson of Decedent, submitted a letter to the ALJ urging that he deny YNCE's petition for rehearing. *See* Letter from Leon Jamie Kuneki to ALJ, Jan. 18, 2011 (AR Tab 3). In his letter, he notes that the Decision "granted the claims of my aunts[,] uncles[,] and cousins but rejected that made by Yakama Nation Credit Enterprise." *Id.* In fact, YNCE's claim was the only claim brought against the estate, although the relatives referenced in his letter were devisees under Decedent's will. *See* Decision at 2.

preclude use of post-death income to pay priority claims secured by the Assignment of trust income, *see id.* at 8-9. The ALJ affirmed the holding in the Decision denying YNCE's claim because only funds on hand or accrued at the Decedent's date of death were available for the payment of claims. *Id.* at 9 (applying 43 C.F.R. § 30.146).

Appellant filed a notice of appeal with the Board from the Order Denying Rehearing. *See* Notice of Appeal, Sept. 17, 2012 (AR Tab 2). Appellant's opening brief was filed on March 25, 2013. Opening Brief of YNCE (Appellant's Opening Brief (Br.)). An answer brief in support of the Order Denying Rehearing and opposing Appellant's claim against Decedent's estate, was filed with the Board on April 22, 2013, on behalf of Bobby Rochelle Johnson, birth name Clara Kuneki, who is a devisee under Decedent's will. Reply Brief in Support of the [ALJ's] Order Denying Rehearing (Johnson Reply Br.). Appellant subsequently filed a reply brief addressing arguments raised by Johnson. Reply Brief of YNCE, May 9, 2013 (Appellant's Reply Br.).

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 greater detail in our recent decision, *Estate of Esther Bill*, 60 IBIA at 243-44, we agree with Appellant that our holding in *Estate of Watlamatt* applies here, and that the regulations governing claims payment in effect when Decedent died in September 2007 authorize the ALJ to apply post-death income in and accruing to Decedent's estate account as of the date of the initial probate hearing to the payment of any allowed claim.⁵ As we explained in *Estate of Floyd Bill*, 60 IBIA 268 (2015), the retroactive

⁵ We acknowledge that the Board erred in hypothecating in *Estate of Marvin Lee Tissidimit*, 51 IBIA 211 (2010), that, had the matter been presented and decided, the Board would have summarily affirmed an ALJ's denial of rehearing on the grounds that 43 C.F.R. § 30.146 limited payment of claims to funds on hand or accruing at the date of death. 51 IBIA at 215-16. In that case, the decedent died in June 2008, *id.* at 212 n.1, while the regulation at issue became effective on December 15, 2008, *see* 73 Fed. Reg. 67256, 67256 (Nov. 13, 2008). This error was brought to our attention by the respondent, who saw this

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application of 43 C.F.R. § 30.146 would diminish YNCE's substantive rights under the Assignment by limiting its ability to access trust funds that would otherwise be available to Appellant under the regulations in effect at the time of Decedent's death. 60 IBIA at 276-78. We reject as well the ALJ's conclusion that the revised regulation is jurisdictional in nature and would bar the use of post-death income to satisfy allowed claims against Decedent's estate. *See id.* We therefore vacate the Order Denying Rehearing. Because we find that the regulations governing claims payment in effect at the time of death apply to this case, we also remand for further proceedings to clarify the record concerning the application of the state statute of limitations governing enforcement of claims against contracts of this nature to Appellant's claim, pursuant to 43 C.F.R. § 4.250(e). *See Estate of Floyd Bill*, 60 IBIA at 278-80.⁶

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as a departure from our position in *Estate of Watlamatt*. Johnson Reply Br. at 4-5. As noted by Appellant, this statement was dicta in an opinion that concerned the ALJ's jurisdiction to consider a matter involving a decedent's non-trust assets. Appellant's Reply Br. at 3. Moreover, as Appellant observed, the Board noted, without negative comment, in that same opinion that claims secured by assignments were paid from post-death trust income available at the time of the hearing. *Id.* (citing *Estate of Tissidimit*, 51 IBIA at 213 n.2).

⁶ The ALJ also concluded that Appellant's claim would be denied as "fatally deficient" under the regulations in effect at decedent's death for failure to include with its claim a statement as to whether it had filed a claim against Decedent's non-trust assets, pursuant to 25 C.F.R. § 15.202(b) (2005). Order Denying Rehearing at 9. As we explained in other recent decisions, this conclusion is incorrect. *See, e.g., Estate of Carl Moses-Hyipeer, Sr.*, 60 IBIA 281, 285 n.6 (2015). The ALJ acknowledged that the Assignment executed by Decedent, and approved by the BIA Superintendent, assigned to YNCE, "as security for repayment" of the loan, all Decedent's property, except land, held in trust by the United States, both present and future, and all income from trust land, both present and future, as well as any income from any source accruing to Decedent's IIM account. Order Denying Rehearing at 5 (quoting provisions from Assignment). Moreover, under the applicable regulations, YNCE's claim would be considered a priority claim, not a general claim as stated by the ALJ, *see id.* at 9, because it was a "[c]laim[] of an Indian tribe," 43 C.F.R. § 4.251(b)(4). We do not agree that failure to submit a statement concerning whether a claimant has filed a claim against a decedent's non-trust assets was a fatal defect, at least where, as here, the claim is secured by an assignment of trust income from trust assets. *See also Estate of Esther Bill*, 60 IBIA at 245 n.7.

When Decedent died on September 13, 2007, 43 C.F.R. §§ 4.250-252 (2007) 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:

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 Esther Bill*, 43 C.F.R. § 4.252 authorizes the payment of claims from income generated after decedent's date of death from trust real property. 60 IBIA at 241-42. In explaining the revisions to the regulations made in 2001 that defined the sources of trust resources available for claims payment at probate, and which also applied at the time of Decedent's death, the Department noted that "it is clear that § 4.252 was never intended to limit the funds available for the payment of claims to those accrued at the time of the decedent's death." 66 Fed. Reg. 67652, 67654 (Dec. 31, 2001).

The duration of the period during which the pool of funds available for claims payment is allowed to accumulate is also determined by the regulations, in this case, by 43 C.F.R. § 4.251(e)-(f). See *Estate of Moses-Hyipeer*, 60 IBIA at 286. While the 2001 revisions reduced the period that estates could be held open for payment of priority claims (up to 7 years) and general claims (up to 3 years) under earlier regulations, they did not deny access to post-death income. See *id.*; see also *Estate of Floyd Bill*, 60 IBIA at 275 (applying regulations in effect at the time of that decedent's death in February 2000). Rather, the time period during which trust income available for claims payment could accrue was shortened by the 2001 revised regulations to the date of the initial probate hearing. See 66 Fed. Reg. at 67654 ("[T]he [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 under § 4.251(e)-(f) on that amount.").

The refinance loan entered into by Decedent in August 2000 was secured by income from property held by the United States in trust for Decedent and by other income accruing to Decedent's IIM account. If otherwise allowed, the claim may be paid from funds in the IIM account as of the date of the initial informal or formal hearing. It appears from loan information provided by Appellant, that the loan may have been in default when Decedent failed to repay the full amount owed on the August 14, 2001, due date. It is not clear whether Decedent authorized any loan payments after that time. Further proceedings

will be required to clarify the record concerning the status of the loan and whether YNCE's claim would be barred by the applicable state statute of limitations.

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