



INTERIOR BOARD OF INDIAN APPEALS

Estate of Darnell Steven Chase In Winter

62 IBIA 256 (03/07/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF DARNELL STEVEN) Order Dismissing Appeal
CHASE IN WINTER)
) Docket No. IBIA 16-029
)
)
) March 7, 2016

Darlene Chase In Winter (Appellant), on her own behalf and purportedly on behalf of her sister Genevieve Cora Chase In Winter (Genevieve), appealed to the Board of Indian Appeals (Board) from a Modification to Add and Distribute Omitted Property (Modification Order) entered on December 11, 2015, by Administrative Law Judge (ALJ) Larry M. Donovan in the estate of Appellant’s brother, Darnell Steven Chase In Winter (Decedent).¹ The Modification Order accepted the Bureau of Indian Affairs’ (BIA) addition to Decedent’s estate inventory of trust real property interests located on the Rosebud Reservation in the State of South Dakota. The ALJ ordered that the additional property be distributed, in equal shares to Decedent’s surviving siblings, pursuant to the American Indian Probate Reform Act (AIPRA), 25 U.S.C. § 2206(a)(2)(B)(iv). In her appeal, Appellant contended that only she and Genevieve should receive the property because they were the only siblings who did not receive land from their mother.²

Upon receipt of the appeal, the Board ordered Appellant to complete service of her notice of appeal on the ALJ and interested parties, as required by 43 C.F.R. §§ 4.310(b) and 4.323, and as advised by the ALJ, and to notify the Board that she had done so. The Board set a deadline of February 19, 2016, 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, her appeal might be summarily dismissed without further notice.

In addition, the Board noted that before issuing the Modification Order, the ALJ had issued an order allowing objections to the proposed modification, but, according to the Modification Order, had received no responses. Thus, it appeared that Appellant would be

¹ Decedent was Oglala Sioux (Pine Ridge), and his probate was assigned No. P000103651IP in the Department of the Interior’s probate tracking system, ProTrac.

² The interests had been inherited by Decedent from his (and Appellant’s) mother, Martha Chase In Winter, Probate No. P000110787IP.

precluded from objecting for the first time on appeal. The Board also noted that the Modification Order appeared to correctly apply AIPRA to the additional trust real property. The Board ordered Appellant to show cause, on or before February 19, 2016, why her appeal should not be dismissed or the Modification Order summarily affirmed. The Board advised Appellant that if she failed to comply with or respond to the Board's order, her appeal might be summarily 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 January 21, 2016. A copy of the Board's order was also sent to Genevieve.

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 the appeal for failure to prosecute.³

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

³ On February 17, 2016, the Board received a letter from Genevieve, the timing of which suggests that it was filed in response to the Board's order to complete service and order to show cause. Genevieve's letter states that she is "appealing" the distribution of Decedent's estate, but as a separate appeal it would be untimely because it was filed on February 12, 2016, as shown on the postmark, which is beyond the 30-day deadline for filing appeals from the Modification Order. *See* 43 C.F.R. § 4.321(a). In her letter, which itself does not appear to have been served on the ALJ or interested parties, Genevieve contends that only she and Appellant should inherit from Decedent because they are his only full biological siblings. Although we conclude that Appellant's failure to complete service warrants dismissal of the appeal, we note that Genevieve's response would not be sufficient to withstand our order to show cause: she does not explain the apparent failure of any party to object to the ALJ's proposed modification order, nor does her letter provide any legal basis for finding that the ALJ incorrectly applied AIPRA.