



INTERIOR BOARD OF INDIAN APPEALS

Estate of Daniel Eugene Rosander

63 IBIA 36 (04/29/2016)

We summarily affirm the IPJ's dismissal of Appellant's petition for reopening, because he correctly concluded that he lacked jurisdiction to consider the inventory dispute raised in Appellant's petition. *See Estate of Harrison H. Yazzie*, 51 IBIA 307, 311 (2010) (affirming the probate judge's dismissal of the reopening proceedings, because the "[a]ppellant's contention that BIA should approve [the d]ecedent's purported gift deed conveyance . . . constitutes an inventory dispute" over which the judge lacked jurisdiction, and referring the dispute to BIA).⁴

In her notice of appeal, Appellant complains about alleged inactions by a BIA superintendent relating to the purported gift deed application. Specifically, she refers to a letter that the Taholah Agency Superintendent (Superintendent) submitted to the IPJ in response to his May 13, 2015, Notice of Petition for Reopening and Order Requesting Written Statements, which asked BIA whether it had received the purported gift deed application and "[i]f so, what action did the Agency take in response to the letter?" As quoted in the Order Referring Inventory Dispute, the Superintendent's response of June 12, 2015, stated that BIA "did not find a letter or correspondence requesting a gift conveyance during our search. We also did not act on a gift conveyance because there were so many conflicting issues concerning the requests." Order Referring Inventory Dispute at 2. Appellant may be seeking relief from the Board against the Superintendent under 25 C.F.R. § 2.8.⁵ She cites footnote 8 of the Board's decision in *Estate of Yazzie*, where we stated that "BIA's administrative appeal regulations contain specific provisions for appealing inaction by a BIA official. *See* 25 C.F.R. § 2.8."

Assuming that the Superintendent has not taken action on the purported gift deed application, the Board would lack jurisdiction to review that purported inaction. The Board does not have jurisdiction over an appeal from alleged inaction by a BIA superintendent. *See Elem Indian Colony of Pomo Indians v. Central California Agency Superintendent*, 63 IBIA 34, 35 (2016), and cases cited therein. Before Appellant may file an appeal with the Board regarding alleged inaction by BIA, Appellant must first appeal the Superintendent's alleged inaction to the Northwest Regional Director. *See* 25 C.F.R. § 2.8(b) ("the official's inaction shall be appealable to the next official in the process

⁴ Because we are summarily deciding this appeal, we have not ordered the probate record. Our discussion of the facts is based on the procedural history provided in the Order Referring Inventory Dispute and the materials (including several probate orders and the purported gift deed application) attached to Appellant's notice of appeal.

⁵ Section 2.8 is an action-prompting mechanism that allows a party, following certain procedural requirements, to request action from a BIA official. 25 C.F.R. § 2.8(a). If the BIA official fails to respond in accordance with § 2.8, the official's inaction becomes appealable to the next level in the administrative appeal process. *Id.* § 2.8(b).

established in this part”); *see also id.* § 2.4(e) (the Board may decide appeals from decisions made by area directors (now regional directors) and certain higher-level officials).

On the other hand, assuming that the Superintendent intended his June 12, 2015, letter to the IPJ to constitute a decision,⁶ the Board would still lack jurisdiction to review that decision. With exceptions not relevant here, a decision by a superintendent is not appealable to the Board; instead, it is appealable to the appropriate regional director. *See* 25 C.F.R. § 2.4; *Estate of Yazzie*, 51 IBIA at 309. Thus, to the extent that Appellant seeks review by the Board of inaction or a decision by the Superintendent, the Board would lack jurisdiction to do so, and we would summarily dismiss that portion of the appeal.

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 affirms the IPJ’s March 23, 2016, Order Referring Inventory Dispute.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

⁶ If the Superintendent’s letter is treated as a decision, the time period for filing an appeal would have been tolled unless the Superintendent also complied with 25 C.F.R. § 2.7 by advising Appellant of her appeal rights. *See Estate of Yazzie*, 51 IBIA at 309 n.5.