



INTERIOR BOARD OF INDIAN APPEALS

Loretta Oliver and Gail Romo v. Western Regional Director, Bureau of Indian Affairs

39 IBIA 23 (03/18/2003)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

LORETTA OLIVER and GAIL ROMO,	:	Order Docketing and Dismissing
Appellants	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 03-69-A
	:	
WESTERN REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 18, 2003

On March 13, 2003, the Board of Indian Appeals (Board) received a letter from Loretta Oliver and Gail Romo (Appellants), appearing pro sese. The letter was addressed to the Director, Office of Hearings and Appeals, and seeks the correction of inheritance records for Francis Johnson. The Director referred the matter to the Board because the issues raised fall within the authority delegated to the Board by the Secretary of the Interior. 43 C.F.R. § 4.1. For purposes of this order, the Board treats Appellants' letter as a notice of appeal.

From the materials included with Appellants' notice of appeal, it appears that they are objecting to the inclusion of Henry West and his daughter, Edith Elaine West Sheriff, in the title records for Walker River Allotment No. 454, Jennie Snider. On January 9, 2003, the Superintendent, Western Nevada Agency, Bureau of Indian Affairs (Superintendent; BIA), issued a decision in this matter. The Superintendent stated that the determination of individuals entitled to a share in a deceased Indian's trust estate is not made by BIA, but instead is made by an Administrative Law Judge. He therefore declined to alter or modify the records for the allotment unless directed to do so by an Administrative Law Judge or other official with equivalent authority. The Superintendent informed Appellants that they could appeal his decision to the Western Regional Director, BIA (Regional Director).

Appellants filed a notice of appeal, dated January 29, 2003, with the Regional Director. The notice of appeal states that it was sent due to "the inaction of an official." This phrase appears to have been taken from BIA's appeal regulations in 25 C.F.R. § 2.8, where it is used to allow a person adversely affected by a BIA official's inaction to elevate the matter to the next appeal level.

It does not appear that Appellants used “inaction of an official” in the same manner in their notice of appeal to the Regional Director as it is used in 25 C.F.R. § 2.8. Instead, it appears that they are actually bringing a normal appeal from a Superintendent’s decision to the Regional Director. The Regional Director is the proper official to review the Superintendent’s decision. Because of this, Appellants’ present notice of appeal must be dismissed as premature.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Superintendent’s January 9, 2003, decision is docketed but dismissed without prejudice as premature. 1/

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge

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1/ The Board offers the following as a comment for the Regional Director’s consideration if he finds it appropriate. From the limited materials before it, the Board is not clear as to whether Appellants are arguing that no person named Henry West should be entitled to a share in the relevant estate (which appears to be how the Superintendent viewed their request), whether they are arguing that BIA listed the wrong Henry West when it implemented the probate decision, or whether they are arguing some combination of both. If the Regional Director were to conclude that Appellants are actually challenging a determination of the persons entitled to a share in an estate, he has the authority to refer the matter to the appropriate Administrative Law Judge for consideration as a petition to reopen that estate.