



INTERIOR BOARD OF INDIAN APPEALS

Estate of Johnny Frank Loamie, a/k/a Frank Lumi

50 IBIA 152 (08/21/2009)



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

ESTATE OF JOHNNY FRANK)	Order Accepting Recommendation for
LOAMIE, a/k/a FRANK LUMI)	Escheat
)	
)	Docket No. IBIA 08-1
)	
)	August 21, 2009

On September 28, 2007, Administrative Law Judge (ALJ) Richard D. Hines (Judge Hines) issued a Decision entitled Determination of Heirs, Recommendation for Escheat and Notice to Superintendent and Parties in Interest (Decision) in the estate of Johnny Frank Loamie, a/k/a Frank Lumi (Decedent), deceased San Carlos Apache Indian, Probate No. P000022564IP. Judge Hines determined that Decedent died leaving no legal heirs, and recommended that the United States Congress designate Decedent's trust property for escheat to the United States to be held in trust for the San Carlos Apache Tribe (Tribe) of the San Carlos Reservation, Arizona (Reservation), as authorized by 25 U.S.C. § 373b. Because no interested party challenged the Escheat Recommendation Order, Judge Hines transmitted his recommendation to the Interior Board of Indian Appeals (Board) pursuant to 43 C.F.R. § 4.205(b). For the reasons discussed below, the Board now accepts the determination that the property should escheat to the United States to be held in trust for the Tribe.

Legal Framework

Section 373b of 25 U.S.C. governs the disposition of certain Indian trust or restricted property when the Indian owner dies without a will and without any heirs. It provides in relevant part:

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States . . . and the land shall become part of the public domain . . . *Provided, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed \$50,000, and*

in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate

(Emphasis added).

The applicable regulation, 43 C.F.R. § 4.205(b) (2007),¹ provides in relevant part:

An administrative law judge or Indian probate judge will determine whether any Indian holder of trust property died intestate without heirs and . . . [w]ith respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

Factual Background

Decedent was a San Carlos Apache Indian who was born on November 17, 1903, and died intestate on September 16, 1984, in the State of Arizona. At the time of his death, Decedent was not married, and he did not have any natural or adopted children.² Decedent had an Individual Indian Money account, with a \$0 balance at the time of death, and also a full interest (1/1) in Allotment No. 19876, comprised of 40 acres described as the SW¹/₄NE¹/₄ of Sec. 17, T. 6 S., R. 16 E., Gila and Salt River Meridian, Pinal County, Arizona. The allotment came into Decedent's ownership when Decedent was the sole heir of the original Indian allottee, Geezie (Perry Jefferson), who was Decedent's second cousin.

¹ The Department's probate regulations were amended effective December 15, 2008, to incorporate the provisions of the American Indian Probate Reform Act of 2004, *as amended*, primarily codified at 25 U.S.C. §§ 2201 et seq. *See* 73 Fed. Reg. 67,256 (Nov. 13, 2008). The regulations now authorize probate judges to issue final decisions in escheat matters. *See id.* at 67,303, *to be codified at* 43 C.F.R. § 30.254. The ALJ's recommended decision in this case was issued and transmitted to the Board under the 2007 rule, before probate judges were vested with the escheat decision making authority granted to them by the amended regulations.

² The record indicates that in 1935 Decedent married Della Ward, a woman significantly older than himself, and that Ward died in 1940. He possibly married, in a common law marriage, Alice Jones, also identified as Susie Alice Jones Wind, but she predeceased him by many years and the two did not have children, nor did he adopt her children by a prior relationship.

The allotment was originally transferred from the public domain by a patent issued November 26, 1920, to be held in trust for Geezie. Master Title Plats of the Bureau of Land Management show that the allotment is approximately one mile on its eastern border from the western border of the Reservation.³ The Data for Heirship Finding and Family History (OHA-7 Form), signed by the Acting Superintendent of the San Carlos Agency on May 2, 2006, estimated the value of the allotment at \$80,000. An inventory report for Decedent's estate, dated June 18, 2004, estimated the value of the allotment at \$50,000.

The ALJ conducted a hearing on December 8, 2006, with respect to the trust estate. Judge Hines explained that several persons appeared and testified at the hearing, claiming to be heirs of Decedent, but he made an express determination that these persons were not heirs entitled to distribution of Decedent's trust property because they were related to Decedent only by marriage. Based upon information in the record, the ALJ concluded that the parcel was allotted from the public domain and land on the San Carlos Reservation⁴ and, given that it was valued in excess of \$50,000, recommended that the United States Congress designate Decedent's trust property as escheating to the United States to be held in trust for the Tribe, as authorized by 25 U.S.C. § 373b.

This Board issued an "Order Defining Scope of Proceedings" on May 7, 2009, explaining that in the absence of a timely appeal from the determination that Decedent had died without heirs, the Board would take action on the recommendation that the property escheat to the United States to be held in trust for the Tribe, as authorized by 25 U.S.C. § 373b. In addition, on that same date we issued an "Order Directing [the Bureau of Indian Affairs] to Submit Valuation Information," regarding the value of the allotment at the time of Decedent's death.

The Board accepts Judge Hines' recommendation in part. The Board accepts the recommendation that the property should escheat to the United States to be held in trust for the benefit of the Tribe. 25 U.S.C. § 373b. We do not, however, accept his conclusion

³ For a 5-year period from 1872 until 1877, the allotment was a part of the Reservation. *See* Executive Order, Dec. 14, 1872, 1 C. Kappler, *Indian Affairs: Laws and Treaties* 812-13 (2d ed. 1904). It was returned to the public domain by a March 31, 1877, Executive Order of President Rutherford B. Hayes. *Id.* at 814. *See generally* *Boundary of San Carlos Indian Reservation*, 55 I.D. 560 (May 29, 1936).

⁴ As noted above, our research leads to the conclusion that the tract was allotted out of the public domain. *See* Patent No. 783802 for Allotment "Phoenix 19876" (Nov. 26, 1920); *Historical Index for Township 6 South, Range 16 East, Gila and Salt River Meridian, Arizona* (2009).

that, under the terms of that statutory provision, the matter must be transferred by recommendation to the United States Congress for Congressional action. The valuation reports employed by Judge Hines estimated the value of the property in 2004 and 2006. The appropriate date for valuation of property in a probate matter is the date of Decedent's death, and this holds true for estates subject to escheat under 25 U.S.C. 373b. *See Estate of Kin Nip Pah*, 43 IBIA 176, 183 (2006). Decedent died in 1984. We have no record evidence that the value at that time exceeded \$50,000. To the contrary, a Valuation Statement provided to this Board by the Office of the Special Trustee on July 16, 2009, states that the value of the allotment on the date of Decedent's death in 1984 did *not* exceed \$50,000. Accordingly, the appropriate action in that event is for the Board to accept the ALJ's recommendation that the land should escheat to the United States to be held in trust, but not his recommendation that Congressional action is required.

Finally, we note that Judge Hines' use of statutory language was imprecise. Under 25 U.S.C. § 373b, escheat is appropriate "if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes" Instead, Judge Hines found that the allotment was "within or adjacent to the San Carlos Indian Reservation" and that it may be advantageously used for Indian purposes. Decision at 1. While Judge Hines's language was imprecise, we find it to be harmless error. Judge Hines recommended escheat under the 25 U.S.C. § 373b, and we construe his point to be that the allotment's proximity to the Reservation was a sufficient basis for finding that it was within or adjacent to an Indian community within the meaning of the statute. We find no reason to reconsider that syllogism.

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 September 28, 2007, Escheat Recommendation Order is accepted in part to the extent it recommended that the allotment escheat to the United States to be held in trust for the benefit of the Tribe.

I concur:

// original signed
Lisa Hemmer
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.