



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joseph Rivera, a.k.a. Joseph Paul Rivera, a.k.a. Jo Paul Rivera

52 IBIA 324 (12/08/2010)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE JOSEPH RIVERA,	)	Order Docketing Appeal, Vacating
a.k.a. JOSEPH PAUL RIVERA,	)	Dismissal of Petition for Reopening,
a.k.a. JO PAUL RIVERA	)	and Remanding
	)	
	)	Docket No. IBIA 11-006
	)	
	)	December 8, 2010

On October 12, 2010, the Board of Indian Appeals (Board) received a notice of appeal from the Superintendent of the Rosebud Agency (Superintendent), Bureau of Indian Affairs (BIA), seeking review of a September 27, 2010, Order Denying Reopening issued by Indian Probate Judge (IPJ) R. Bryan M<sup>c</sup>Daniel in the estate of Joseph Rivera, a.k.a. Joseph Paul Rivera, a.k.a. Jo Paul Rivera (Decedent), deceased Rosebud Sioux Indian, Probate No. P000063406IP. The IPJ summarily denied a request by the Superintendent for a modification order to add omitted property to Decedent's estate inventory to include and distribute additional trust property owned by Decedent on the Pine Ridge and Rosebud Indian Reservations. The IPJ found that the Superintendent had not adequately described the property to be added, and found that the inventory attached to the Superintendent's request appeared to include some allotments that were already distributed pursuant to a February 12, 2009, decision in the case.

We vacate the IPJ's Order Denying Reopening because we conclude that it was error for the IPJ to summarily deny the Superintendent's request without affording him an opportunity to cure possible deficiencies in the request.

## Discussion

In the Order Denying Reopening, the IPJ summarily found that the Superintendent's request to reopen Decedent's estate failed to: (1) clearly identify the property to be added to Decedent's estate, (2) specify the reason for adding such property, and (3) explain why this property was not included in BIA's initial inventory submitted in conjunction with the IPJ's February 12, 2009, decision. Based upon these findings, and citing 43 C.F.R. § 30.243(a), the IPJ concluded that the Superintendent's petition did not present proper grounds for reopening and he summarily denied the petition. The Order

Denying Reopening provides no indication that the IPJ provided the Superintendent with an opportunity to clarify his request or to address the alleged deficiencies in his request for reopening.

After a probate decision becomes final, trust property that was omitted from a decedent's estate inventory in the previous proceedings is added through a modification order, which is appealable to the Board. *See* 43 C.F.R. § 30.126. Although a modification proceeding to add omitted property might be characterized as a type of "reopening," it is governed by the specific provisions of § 30.126. Those provisions do not specifically identify what must be included with or addressed in a request for a modification order to add omitted property. *Cf.* § 30.242(b)&(c) (what must be included in petition for reopening). It is, of course, self-evident that when BIA makes a request for a modification order to add omitted property, BIA should include all of the information necessary for the probate judge to issue a modification order. It does not follow, however, that when a BIA request appears to be deficient, an order summarily denying the request is appropriate. Instead, we think that the proper course is for the probate judge to request further information and clarification from BIA. Omitted property must be addressed in order to avoid leaving property interests undistributed.<sup>1</sup> Providing BIA with a reasonable opportunity to correct alleged deficiencies in a modification request will avoid unnecessarily triggering the appeal procedures in § 30.126(c)&(d).<sup>2</sup>

In the present case, the Superintendent requested a modification order, which the IPJ construed as a petition for reopening and summarily denied, apparently based on a finding that the petition was facially deficient.<sup>3</sup> In his appeal to the Board, the Superintendent has attempted to provide further information and clarification, which

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<sup>1</sup> Because the IPJ's order stated that it would become final for the Department in the absence of a properly filed appeal with the Board, BIA understandably may have believed that it could not resubmit an amended request for modification to the IPJ.

<sup>2</sup> Even if, on appeal, the Board were to sustain a probate judge's finding that a modification request was deficient, that would not resolve the matter because the omitted property would remain undistributed.

<sup>3</sup> The IPJ also found that the Superintendent's request had failed to state why the omitted property had not been included in the inventory originally submitted by BIA. Whether or not BIA's omission of property from a decedent's inventory is excusable, the property must still be distributed to the appropriate heirs or devisees. Thus, we fail to see how this omitted explanation could constitute grounds to deny BIA's request for modification.

presumably would have been provided to the IPJ had the Superintendent been afforded an opportunity to do so. Under the circumstances, we conclude that it was error for the IPJ to summarily deny the Superintendent's request without affording him a reasonable opportunity to cure deficiencies in the request.

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 this appeal, vacates the Order Denying Reopening, and remands the case to the Probate Hearings Division for further proceedings consistent with this decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge