



INTERIOR BOARD OF INDIAN APPEALS

Estate of Carol Leota Heard

55 IBIA 109 (06/12/2012)



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 CAROL LEOTA HEARD)	Order Docketing and Dismissing
)	Appeal as Premature and Remanding
)	
)	Docket No. IBIA 10-094
)	
)	June 12, 2012

The Yakama Nation Credit Enterprise (YNCE) filed an appeal with the Board of Indian Appeals (Board) from an April 13, 2010, “Order Reopening Case and Modifying Probate Decision” (Order) by Administrative Law Judge Thomas F. Gordon (ALJ) in the estate of Carol Leota Heard (Decedent).¹ In his Order, the ALJ granted a request from YNCE to withdraw a claim it had filed against Decedent’s estate and which had been allowed by Indian Probate Judge Janette C. Elliott (IPJ) in a Summary Order Determining Heirs and Decree of Distribution (Summary Order) dated December 16, 2009. We docket but dismiss this appeal because the appeal is premature and thus we lack jurisdiction. The ALJ’s order was not, in fact, a reopening order because the estate was not closed. Therefore and contrary to the ALJ’s instructions, YNCE was first required to seek *de novo* review before appealing to the Board. Thus, we dismiss this appeal and remand this matter to the Probate Hearings Division for further proceedings consistent with our decision.

Background

Decedent, who was born on January 15, 1960, died on October 19, 1991. Her estate was submitted for probate in October 2009. The record does not contain any indication that Decedent owned any trust land interests and, according to the OHA-7 Data for Heirship Finding and Family History form (OHA-7 form), Decedent had no funds in her Individual Indian Monies (IIM) account on the date of her death. Subsequently, however, the data provided by the Office of the Special Trustee, shows that \$150 was deposited into the IIM account for Decedent’s estate on October 30, 1991, and another \$300 on December 17, 1991. Thereafter, interest income accrued to the account. The balance, as of October 11, 2009, was \$1,395.32.

¹ Decedent was a Yakama Indian whose probate is assigned no. P000000847IP in the probate docket system maintained by the Department of the Interior.

On October 7, 1992, YNCE's Credit Program Manager executed a sworn claim form stating that Decedent had taken out a loan from YNCE in the amount of \$2,013.80 and further stating that no payments were ever made on the loan. YNCE sought the principal amount plus interest at the rate of 10% to Decedent's date of death. The supporting documents show that the loan was approved on August 27, 1987, and included an assignment in favor of YNCE of "all per capita or any distribution of tribal funds" to which Decedent was entitled. The loan was a 210-day note due in full plus 10% interest on or before March 27, 1988. YNCE's claim apparently was submitted to the Yakama Agency, Bureau of Indian Affairs (BIA), and transmitted with the OHA-7 form and other supporting documents for probate.

On December 16, 2009, the IPJ issued a Notice of summary probate proceeding (Notice), which included a copy of the Summary Order signed by the IPJ. The Summary Order allowed YNCE's claim up to \$2,013.80. The Notice explained that, for 30 days from the date of mailing of the Notice, which was December 16, 2009, eligible heirs could renounce or disclaim an interest in the estate, submit a claim against Decedent's estate, and any interested party could request formal probate proceedings. The Summary Order itself stated that it would become final 30 days from the date of the decision unless a request for *de novo* review was filed within that time period with the IPJ.² Notably, the Notice also explained that "[c]laims against the estate are considered from . . . any person or entity who filed a claim with [BIA] prior to the transfer of the probate file to the Office of Hearings and Appeals." Notice at 1.

On December 28, 2009, within the 30-day period following issuance of the Notice, the IPJ's office received a letter from YNCE in which it asked "to withdraw [its] claim" against Decedent's estate. The letter further stated that the loan had been "paid in full" and "satisfied." The IPJ did not respond to YNCE's submission.

But, on April 13, 2010, the ALJ issued his Order. The ALJ granted YNCE's request to withdraw its claim, and ordered the distribution of Decedent's estate in equal shares to the estates of her adoptive parents, Leroy D. Heard (Leroy) and Evelyn B. Heard (Evelyn), in equal shares.³ Attached to the Order was a notice informing the parties that the Order

² The Notice also stated that all interested parties could request a hearing *de novo* within 30 days of receiving the Summary Order and that, in the absence of such a request, the Summary Order would become final 30 days from the date of mailing of the Notice.

³ According to their death certificates in the record, Leroy died in 1994 and Evelyn died in 1993. The death certificates indicate that they apparently were both survived by another daughter, Mary White.

would become final 30 days after the date of mailing unless an appeal was filed within that time period with the Board.

YNCE appealed to the Board. In its notice of appeal, YNCE explains, “[i]n an oversight error we have found this loan has not been satisfied [and] there is still a balance of \$2013.80.” Attached to the appeal is an “Account History” for “Heard-Estate, Carol L.” with a beginning date of January 1, 1994, and a “beginning balance” of \$2013.80. The last entry of September 8, 1994, includes what appears to be an adjustment to the account of \$2013.80, leaving a zero balance. The notice of appeal explains that “[a] Credit Committee action was not approved to charge off this debt.” No affidavit or further explanation or documentation accompanied the notice of appeal.

No briefs have been filed in this appeal.

Discussion

We conclude that this matter is not yet ripe for our review. As we explain in greater detail below, the filing of YNCE’s withdrawal of its claim within 30 days from the date of the Notice precluded the Summary Order from taking effect. Thus, the ALJ’s Order, rather than reopening Decedent’s estate, was the summary probate decision required by 43 C.F.R. § 30.204 to address pleadings received in the 30-day period following the Notice. The next level of review from the ALJ’s Order is not an appeal to the Board but *de novo* review pursuant to 43 C.F.R. § 30.205.

Summary probate proceedings are governed by 43 C.F.R. Part 30, Subpart I. This subpart applies to Indian trust estates that consist only of funds in an IIM account *and* where the total value of the account on the date of death does not exceed \$5,000.00. 43 C.F.R. §§ 30.101 (definition of “summary probate proceeding”), 30.200(b). Orders in such estates may be entered by an attorney decision maker or a probate judge without a hearing. *Id.* § 30.200(a). A summary probate proceeding is initiated by issuing, *inter alia*, a notice of the proceeding. The notice includes a summary of the proposed distribution of the decedent’s estate and notice to interested parties that, during the ensuing 30 days, renunciations, disclaimers, and claims against the estate may be filed by eligible heirs, *id.* §§ 30.201(b),(d), 30.202; and advises interested parties that they may request a formal hearing, *id.* §§ 30.201(a) (any interested party may request a formal probate proceeding), 30.203 (interested parties who are devisees or eligible heirs may request a formal probate proceeding). In particular, “claims received from any person or entity prior to the transfer of the probate file to [the Office of Hearings and Appeals]” will be *considered* during the 30-day period. *Id.* § 30.201(c) (emphasis added).

Thus, the notice of summary probate proceedings opens the record for a period of 30 days to allow interested parties to exercise certain rights and, in effect, to supplement for these limited purposes the record that the judge received from BIA. At the conclusion of the 30-day period and in the absence of a request for a formal probate proceeding, there must be a written proposed decision (proposed decision) that complies with § 30.204. The proposed decision must provide notice of the right of adversely affected parties to seek *de novo* review within 30 days of the date of the proposed decision. 43 C.F.R. § 30.204(b)(4). Interested parties who are adversely affected by the decision after *de novo* review may petition for rehearing in accordance with 43 C.F.R. § 30.238. See *Estate of Doris Mae Wilkie Klatt*, 53 IBIA 223, 226 (2011).

In the probate context, the Board is limited to reviewing appeals that fall into one of four categories: appeals from decisions or orders (1) on a petition for rehearing, (2) on a petition to reopen an estate, (3) addressing the purchase of interests in a deceased Indian's estate, or (4) modifying the inventory of an estate. 43 C.F.R. § 4.320. The Board does not have jurisdiction over direct appeals from decisions entered in summary probate proceedings or from decisions after *de novo* review. *Estate of Klatt*, 53 IBIA at 226. Therefore, if after remand, any party remains dissatisfied after receiving a decision upon rehearing, an appeal may then be filed with the Board.

Here, the IPJ's initial Notice included both the notice required by § 30.201 *and* the § 30.204 proposed decision. But it is evident, under Subpart I, that the record remained open during the 30-day period following the Notice. During this time, interested parties could have requested a formal probate proceeding; eligible heirs could have renounced or disclaimed their inheritance, if they were entitled to any part of Decedent's estate; and eligible heirs could have filed claims against Decedent's estate. And, pertinent to our decision and pursuant to § 30.201(c), claims against the estate *would be considered*.

YNCE submitted the withdrawal of its claim directly to the office of the IPJ during the 30-day period following the Notice when the record remained open. As a result, the Summary Order that was included with the Notice could no longer serve as the proposed decision required by § 30.204 because it failed to consider the complete record that was before the IPJ at the conclusion of the 30-day period. Upon receipt of YNCE's withdrawal of its claim, § 30.204 required a final, corrected proposed decision that addressed the claim and included notice of the right to seek *de novo* review. In the meantime, the estate remained open. Thus, the ALJ did not "reopen" Decedent's estate because the estate never closed and he did not "modify" the distribution because there was no final decision to modify. At best, the ALJ's Order was the § 30.204 proposed decision that concluded the summary probate proceedings and YNCE's "notice of appeal" is the equivalent of a request for *de novo* review.

YNCE complied with the ALJ's erroneous instructions to file an appeal with the Board. But because we lack jurisdiction to hear appeals from *summary* probate decisions, we must dismiss 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 docketed but dismisses this appeal as premature, and remands the matter to the Probate Hearings Division for consideration of YNCE's submission consistent with our decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge