



INTERIOR BOARD OF INDIAN APPEALS

Estate of Phillip Lorraine Post

44 IBIA 108 (01/26/2007)



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 PHILLIP LORRAINE POST : Order Docketing and Dismissing
: Appeal and Referring Matter to
: the Indian Probate Judge
:
: Docket No. IBIA 07-59
:
: January 26, 2007

On January 9, 2007, the Board of Indian Appeals (Board) received a letter from Arvella J. Post (Appellant), in which she refers to a request for an “appeal” from an order of Indian Probate Judge (IPJ) Allan R. Toledo in the estate of Phillip Lorraine Post, deceased Ute Indian, Probate No. P000030812IP. Enclosed with the letter was a Petition for Rehearing (Petition) filed by Appellant. The Petition seeks rehearing on an Order Approving Will and Decree of Distribution (Decision) entered on July 5, 2006 by the IPJ. The Petition is file-stamped “received Sep 01, 2006 Uintah and Ouray Agency Superintendent” (Superintendent). The Board construes Appellant’s letter as a notice of appeal from the July 5 decision. The Board docketed and dismisses the appeal as premature, and refers the matter to the IPJ for his consideration and decision.

The “Notice to All Persons Having an Interest in the Subject Matter of this Proceeding” (Notice) that accompanied the Decision informed the parties of their right to seek rehearing, if they were dissatisfied with the Decision. Specifically, the Notice informed the parties that petitions for rehearing must be filed with the Superintendent within 60 days from the date of mailing of the Notice, which occurred on July 5, 2006. Appellant submitted a petition for rehearing, which the Superintendent received on September 1, 2006.

On receipt of Appellant’s letter, the Board contacted the IPJ’s office to determine whether that office had received Appellant’s September 1 Petition. On January 19, 2007, by memorandum from the IPJ’s paralegal specialist, the Board was informed that “the petition filed by Arvella Post dated September 1st, 2006 * * * was not received by [the]

Paralegal Specialist [in the IPJ's office], and is not in the Phillip Lorraine Post probate folder." It therefore appears that Appellant complied with the rehearing instructions provided by the IPJ and filed a petition for rehearing with the Superintendent within 60 days of the Decision. The Superintendent, however, did not forward the Petition to the IPJ, and thus the IPJ has not considered or acted on it. 1/

The jurisdiction of the Board in probate matters is set forth in 43 C.F.R. § 4.320(a), which limits the Board's review to appeals from orders on petitions for rehearing, petitions for reopening probate proceedings, and tribal purchases of interests in decedents' trust estates. See also 43 C.F.R. §§ 4.1(b)(2), 4.240(b) (governing the finality of decisions where no petition for rehearing is filed). Consequently, in probate matters that do not involve tribal purchases of interests, any legal and/or factual errors and omissions as well as any newly discovered evidence first must be presented to the ALJ before an appeal to the Board will be ripe for review.

Pursuant to 43 C.F.R. § 4.241(a), interested parties who are aggrieved by a probate decision have 60 days from the date of the decision to seek rehearing. The petition for rehearing must be filed with the judge who issued the challenged decision. Id. The appeal instructions accompanying the IPJ's July 5, 2006 Decision incorrectly advised Appellant that she should file a petition for rehearing with the Superintendent. 2/ Because Appellant followed the appeal information provided in the Notice by filing her petition with the Superintendent within the time period provided, the Board concludes that the petition should be considered timely and should be referred to the IPJ for consideration pursuant to 43 C.F.R. § 4.241. See In the Matter of the Estate of Emerson Spotted Bear, 44 IBIA 15 (2006).

1/ On January 16, 2007, the IPJ's office provided the Board with a copy of a Petition for Rehearing submitted by Vivian Post and Linda Post, which apparently was submitted both to the Office of Hearings and Appeals (OHA) in Albuquerque, where the IPJ is located, as well as to the Salt River Pima-Maricopa Indian Community, which forwarded the petition to OHA. On October 5, 2006, the IPJ denied that petition for rehearing. That denial of rehearing, however, only addressed the handwritten petition filed by Vivian and Linda Post, and not the Petition submitted by Appellant.

2/ Pursuant to 43 C.F.R. § 4.241(b), the IPJ is responsible for "promptly forward[ing] a copy [of the Petition for Rehearing] to the Superintendent."

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 is docketed but dismissed as premature. This matter is referred to the IPJ for his consideration and decision.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge