UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ESTATE OF RAYMOND P. SAUSER, and JAMES RAYMOND SAUSER, Plaintiffs, v. UNITED STATES OF AMERICA, SALLY JEWELL, AS SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR, and KEVIN WASHBURN, AS ASSISTANT SECRETARY OF INTERIOR BUREAU OF INDIAN AFFAIRS, Defendants.	CIV NO. 14-5051 - JLV **DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS**

The United States of America, by and through its counsel, Randolph J. Seiler, Acting United States Attorney, and Cheryl Schrempp DuPris, Assistant United States, hereby files this brief in opposition to Plaintiffs' Motion for Judgment on the Pleadings, (Dkt 17). [1]

INTRODUCTION

This is an appeal pursuant to the Administrative Procedures Act (APA). In its Order Affirming Denial of Rehearing (Final Agency Decision or FAD), dated July 17, 2014, the Interior Board of Indian Appeals (IBIA), upheld a determination made by Administrative Law Judge (ALJ), Richard Hines, in the

[1] The Court's docket is denoted by "Dkt" and the document number. References to the Administrative Record are denoted by "AR" followed by the bates number.

probate matter entitled *Estate of Raymond P. Sauser (Decedent).* (AR 26-30; Dkt 1-5; 59 IBIA 29).

Pursuant to 28 U.S.C. §§ 1331, 2201, 2202 and 5 U.S.C. §§ 701-706, Plaintiffs challenge the Final Agency Decision (FAD) asserting that the IBIA erred in interpreting the Decedent's intentions as expressed in his Will and in failing to distribute decedent's estate assets in accordance with the Renunciation and Disclaimer of James Sauser filed with the IBIA on May 22, 2012. Dkt 1. Defendants argue that Plaintiffs fail to show error in interpreting the Will and since the Disclaimer was not presented to the ALJ, it could not be raised on appeal to the IBIA. Accordingly, the FAD should be upheld.

FACTUAL BACKGROUND

Raymond Sauser (Decedent) was domiciled on the Pine Ridge Indian Reservation in the State of South Dakota until the date of his death on March 15, 2008. During his life, Decedent adopted two children, James Sauser and Jonathan Sauser. Jonathan is an enrolled Indian and James is not.[2] Decedent died owning Indian trust real and personal property interests. Decedent died testate, having validly executed a Last Will and Testament (Will) dated October 13, 2005. (AR 284-302; Dkt 1-1).

a. Administrative Proceedings

Pursuant to 25 U.S.C. §§ 2201 *et. seq.*, and 43 C.F.R. Part 30, Decedent's trust estate was probated by the Office of Hearings and Appeals

[2] Plaintiffs state that "James is a Non-Indian," (Dkt 18, p. 11), and that "James Sauser is a non-enrolled Indian" (Dkt 18, p. 12). As discussed herein, his status is irrelevant.

(OHA), United States Department of the Interior. After conducting a hearing, an Administrative Law Judge (ALJ) issued an August 18, 2011, Decision approving Decedent's Will and ordering distribution of Decedent's Indian trust estate. AR 164-168. Relevant to this appeal, the ALJ determined that under the terms of the Will, and consistent with the American Indian Probate Reform Act (AIPRA) of 2004, 25 U.S.C. § 2201 *et seq.*, Plaintiff, James Sauser, was entitled to receive a life estate in Allotment No. 3075-B (referred to as the "Home Place") and an undivided one-half share life estate in Decedent's other trust lands. (AR 162-168; Decision at pp. 3-4).

On September 19, 2011, Plaintiffs submitted a petition for rehearing asserting that the ALJ had misinterpreted Decedent's Will and that it was Decedent's intent that all trust property--other than the property described as the "Home Place"--pass exclusively to Jonathan Sauser (Jonathan), Decedent's other son. Notice of Appeal (Petition for Rehearing) at 1 (AR 155-161). Plaintiffs argued that Decedent's intent was that Decedent's trust property would stay in trust and that the disputed devise of a one-half share life estate to James Sauser would be inconsistent with that intent, because if the AIPRA were repealed, there could be a risk that property subject to a life estate in James Sauser would go out of trust. (*See id.* at pp. 1-2). At that time, Plaintiff James Sauser did not purport to renounce or disclaim any interest in Decedent's estate.

The ALJ denied rehearing on December 20, 2011, concluding that Plaintiffs' Petition for rehearing lacked merit. (AR 121-122; Dkt 1-3). The ALJ found:

> This forum does not have the authority to disregard or reform the clear provisions of Indian wills for any purpose--particularly not unforeseen acts of Congress. Further, the desire of the beneficiaries is not 'a sufficient basis upon which [the Office of Hearings and Appeals] can amend language in a will.' *Estate of Phillip Loring*, 50 IBIA 178, 187 (2009); petition for reconsideration denied, 50 IBIA 259 (2009).

(AR 122; Dkt 1-3; Order Denying Rehearing at 2 (italics added)).

b. <u>The IBIA Proceedings</u>

The IBIA is one of three independent appeals boards within the OHA. 43 C.F.R. § 4.1 The IBIA issues decisions in (1) appeals in Indian probate matters, (2) appeals from decisions of BIA officials, and (3) other matters pertaining to Indians which are referred to it by the Secretary. (*Id.* at 4.1(b)(2)). If any party objects to an ALJ's decision, in accordance with 43 C.F.R. § 4.310(d)(1), a notice of appeal to the IBIA must be filed within 60 days. 43 C.F.R. § 4.241 and § 4.320. If no party objects to the ALJ's decision, that decision shall constitute the decision of the IBIA under 43 C.F.R. § 4.340. *Id.* Only the IBIA may issue an agency decision subject to review by a District Court. 43 C.F.R. § 4.314 provides:

> No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. § 704 unless it has been made effective pending a decision on appeal by order of the Board.

(*Id.*).

Plaintiffs submitted a Notice of Appeal to the IBIA on January 19, 2012, giving the following reasons for appeal:

> [T]he decisions regarding the Decedent's knowledge of law and intent in making the devise of his property amounted to an impermissible substitution of the preferences of the Administrative Law Judge and those of the Secretary of the Interior for those of the Decedent, and exceed the discretion vested in the Secretary of the Interior and the Administrative Law Judge.

(AR 60-63).

On February 29, 2012, the IBIA issued a Notice of Docketing and Order Setting Briefing Schedule. On April 4, 2012, Plaintiffs submitted a "Request for Stay Pending Settlement Discussions." (AR 38-40). Plaintiffs asked the IBIA to "stay the briefing schedule while the parties discuss the possibility of settling the issues in this appeal by means of a renunciation or disclaimer under 25 U.S.C. § 2206(j)(8)." On April 12, 2012, the IBIA denied, without prejudice, Plaintiffs' request for a stay. (AR 36-37).

On May 22, 2012, Plaintiffs filed with the IBIA a "RENUNCIATION OR DISCLAIMER OF INTERESTS IN CERTAIN TRUST LANDS PURSUANT TO [25] U.S.C. § 2206(j)(8)." (AR 31-35). Plaintiff, James Sauser, stated in material part that the Will "clearly recites that the most important and overriding intent of the Decedent . . . is that only his enrolled son, Jonath[a]n Thomas Sauser . . . receive all of the trust land interests of our father, the Decedent, to the exclusion of me, with the exception of the 'Home Place'"; the Decision "fails to follow the intent of the Decedent"; Plaintiffs had appealed the Decision to the Board "so that no final probate order has yet been entered in the [probate] proceedings"; and Plaintiff, James Sauser, "irrevocably and without

qualification, renounce[s] or disclaim[s] any and all right, title, and interest in and to" the one-half share life estate in trust lands held by Decedent on the Pine Ridge Reservation, excluding the life estate in the Home Place, with such renunciation and disclaimer to be made in favor of Jonathan, pursuant to 25 U.S.C. § 2206(j)(8).

On July 17, 2014, the IBIA issued a decision affirming the ALJ's Denial of Rehearing. (AR 26-30; Dkt 1-5). In that decision, the IBIA determined that Plaintiffs had only made conclusory statements asserting that the ALJ substituted his judgment for Decedent's intent. The IBIA noted that simple disagreements with a challenged decision are insufficient to carry Plaintiffs' burden of proof. The IBIA concluded that Plaintiffs had not met their burden of showing that the Order Denying Rehearing was factually or legally incorrect. With respect to the May 22, 2012, renunciation filed by Plaintiff James Sauser, the IBIA determined that it was untimely and the Board did not have jurisdiction to consider it pursuant to the applicable regulations, 43 C.F.R. § 30.180, 43 C.F.R. § 30.181, 43 C.F.R. § 30.101, and 43 C.F.R. § 30.243.

Plaintiffs filed a petition for reconsideration of the IBIA's decision on August 20, 2014. The IBIA dismissed Plaintiffs' petition for lack of jurisdiction on August 29, 2014 and corrected a typographical error in its Order affirming the ALJ's Order Denial of Rehearing. (AR 4-6; 59 IBIA 117).

On August 20, 2014, Plaintiffs filed a complaint in federal district court appealing the IBIA decision. (Dkt 1).

ARGUMENT

The APA is a waiver of sovereign immunity for judicial review of agency actions. 5 U.S.C. § 702. The Court's review is limited to the administrative record compiled by the agency. *See, e.g., Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743 (1985) (The focal point for judicial review is administrative records already in existence, not some new record initially made in the reviewing court). The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, (1983). Courts review the agency's factual determinations for substantial evidence in the record, and will reverse or remand the final agency action, only if the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. (5 U.S.C. § 706(2)(A)).

Substantial deference is accorded an agency's decision and an agency's interpretation of its own regulations. *Farmers Bank of Hamburg v. U.S. Dep't of Agric.,* 495 F.3d 559, 563 (8th Cir. 2007). As long as the agency provides a rational explanation for its decision, a reviewing court will not disturb it. *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1031-32 (8th Cir. 2003). An agency's interpretation of its own regulation is controlling unless "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997). The deference afforded to an agency "especially extends to an agency's unique experience and knowledge in its own area of expertise . . . . In other words, if the agency has properly considered the evidence placed before it and has a

rational basis for its determination, the Court will not overturn that determination even if the Court would have reached a contrary determination." *Von Eye v. United States*, 887 F. Supp. 1287, 1291, (D.S.D. 1995), *aff'd* 92 F.3d 681 (8th Cir. 1996).

1. The IBIA's Order is an Appealable Final Agency Decision.

An appeal to federal district court is appropriate pursuant to 28 U.S.C. § 1331 when an appellant has exhausted all administrative remedies pursuant to 43 C.F.R. § 4.314. "An administrative action is final if it marks the consummation of the agency's decision making process – it must not be of a merely tentative or interlocutory nature – and it determines right or obligations from which legal consequences flow." *Crow Creek Tribe v. Bureau of Indian Affairs*, 463 F. Supp. 2d 964, 969 (D.S.D. 2006) (internal citations omitted). Plaintiffs assert that they have exhausted their administrative remedies because the decision made by the IBIA is final and marked the consummation of the agency's decision making process. (Dkt 18, pp. 7-8).[3] The Defendants agree that the IBIA's Order Affirming Denial of Rehearing, AR 26-30, as amended by AR 4-6, is an appealable final agency decision.

2. Plaintiffs Never Presented the Disclaimer to the ALJ.

Courts apply an issue-exhaustion requirement when reviewing administrative decisions, which is "analog[ous] to the rule that appellate

[3] Without citing any legal authority, Plaintiffs also argue that "to this day" there exists no final order in the probate file and that by filing a timely petition for rehearing, the ALJ's Order remained open. (Dkt 18, pp. 14-15). That argument is inconsistent and lacks merit. Without a final order, there would be no decision to appeal to the IBIA or, for that matter to the District Court.

courts will not consider arguments not raised before trial courts." *Otter Tail Power Co. v. Surface Transp. Bd.,* 484 F.3d 959, 962 (8th Cir. 2007), quoting *Sims v. Apfel*, 530 U.S. 103, 108-109 (2000). The requirement that a party exhaust available administrative remedies ensures that the agency has the opportunity to bring its expertise to bear on an issue and has an opportunity to correct errors it may have made at an earlier stage in the proceedings. *See McGee v. United States*, 402 U.S. 479, 484 (1971). A party may not challenge an agency action on an issue that was never presented to the agency during the administrative proceeding. This includes challenges to an agency's jurisdiction or authority. *See Koretoff v. Vilsack*, 707 F.3d 394, 398 (D.C. Cir. 2013).

The BIA ALJ and IBIA hold the requisite expertise to knowledgeably resolve questions involving the probate of Indian wills. Properly raised and supported matters allow the deciding official to rule. However, the failure to raise an issue or exhaust remedies that were available in the probate proceedings, bars further consideration of a challenge of the ALJ's final order. *See Kakaygeesick v. Salazar,* 656 F. Supp. 2d 964, 979 (D. Minn. 2009) (failing to exhaust the remedies available unnecessarily taxes the efficiencies of the court by immersing the process in allegations which were not previously presented to the probate ALJ for proper redress.).

Plaintiff James Sauser's renunciation and disclaimer first surfaced before the IBIA. Plaintiffs failed to submit the renunciation and disclaimer to the ALJ in the probate proceeding. As the record demonstrates, Plaintiffs

received the ALJ's August 18, 2011, Probate Decision. (AR 162-163). From that point, Plaintiff James Sauser, being aware of the ALJ's determination regarding distribution of the Decedent's estate, had the opportunity to submit a timely renunciation and disclaimer of any interests he did not want to inherit. Plaintiffs only submitted a petition for rehearing to the ALJ.

Through the December 20, 2011, date of the ALJ's Order Denying Rehearing, (AR 121) Plaintiff James Sauser had the opportunity to renounce and disclaim any interests in the Decedent's estate during the probate proceeding, but failed to do so. Pursuant to the applicable regulations, once the Order Denying Rehearing was issued, no renunciation and disclaimer could be effective. 43 C.F.R. § 30.181 and 43 C.F.R. § 30.240(d). Therefore, at least with respect to Plaintiffs' argument regarding the IBIA's failure to accept the renunciation, Plaintiffs failed to exhaust that issue and should not be permitted to raise it on appeal.

3. The IBIA's Decision as to Plaintiff James Sauser's Renunciation was Not Erroneous or Inconsistent with the Regulations.

It is a well-established rule that courts "must give substantial deference to an agency's interpretation of its own regulations." *Thomas Jefferson Univ. v. Shalala,* 512 U.S. 504, 512 (1994). The role of the reviewing court is:

> [N]ot to decide which among several competing interpretations best serves the regulatory purpose. Rather, the agency's interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation . . . . This broad deference is all the more warranted when, as here, the regulation concerns a complex and highly technical regulatory program, in which the identification and classification of relevant criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.

Id. (citations and internal quotation marks omitted).

> Just as we defer to an agency's reasonable interpretations of the statute when it issues regulations in the first instance, *see Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)], the agency is entitled to further deference when it adopts a reasonable interpretation of regulations it has put in force. *See Auer v. Robbins*, 519 U.S. 452, (1997). Under *Auer*, we accept the agency's position unless it is "[]"plainly erroneous or inconsistent with the regulation."" *Id.*, at 461 (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989)).

Federal Exp. Corp. v. Holowecki, 552 U.S. 389, 397 (2008); *Kakaygeesick v. Salazar*, 656 F. Supp. 2d 964, 977-978 (D. Minn. 2009). If regulations are ambiguous, court's generally defer to agency interpretation. So long as the agency's interpretation is a reasonable one, it must be upheld, even if "its interpretation might 'not be the best or most natural one by grammatical or other standards.'" *Chalenor v. Univ. of North Dakota*, 291 F.3d 1042, 1046 (8th Cir. 2002) (citing *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 702 (1991)).

In this case, the IBIA declined to give effect to the renunciation and disclaimer because "the Order Denying Rehearing was a final order of the ALJ." (AR 26-30) (Order Affirming Denial of Rehearing at p. 4). Without citing any authority, Plaintiffs argue that the IBIA committed a grievous error of law by not considering and implementing Plaintiff James Sauser's Renunciation or Disclaimer of Interest, and that it was inappropriate to consider the disclaimer as "untimely" filed. (Dkt 18, p. 13). The burden is on Plaintiffs to prove that the agency's interpretation is plainly erroneous or inconsistent with the regulation-which Plaintiffs have failed to do. This means that the Court must uphold the

IBIA's FAD even if the Court were, on its own, to reach a different interpretation.

The IBIA properly applied the regulations governing disclaimers and its interpretation of those regulations is entitled to deference. The applicable regulation states, "to renounce an interest under [43 C.F.R.] § 30.180, [one] must file with the judge, before the issuance of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced." (43 C.F.R. § 30.181). The IBIA determined that that regulation required the renunciation of Plaintiff James Sauser to have been filed before the issuance of the Order Denying Rehearing. The IBIA correctly interpreted the regulations governing the OHA's proceedings to indicate that a "final order" for the purposes of § 30.181, when a timely request for rehearing is submitted, is defined by § 30.240(d).[4] That regulation indicates that a "final order" is the order issued by the ALJ after either denying a request for rehearing or granting the request and affirming, modifying, or vacating the former decision. (43 C.F.R. § 30.240(c)).

Additionally, the IBIA noted that for the purposes of the probate proceedings, the term "judge" was defined to include the ALJ or IPJ (Indian Probate Judge). (43 C.F.R. § 30.101). Notably absent is the designation of

[4] Plaintiffs assert that the IBIA relied on 43 C.F.R. § 30.243 in defining the term "final order." While the July 17, 2014, IBIA decision did include that citation, the IBIA corrected its typographical error in its August 29, 2014, Order. (AR 4-7). In that Order, the IBIA provided Notice of Errata that it had incorrectly identified the regulation at 43 C.F.R. § 30.243, but that it had intended to cite 43 C.F.R. § 30.240, as the parenthetical following the citation in the July 17, 2014, Order clearly demonstrated. (59 IBIA 117).

"Administrative Judge, Interior Board of Indian Appeals." The regulations governing the Office of Hearings and Appeals provide for an organizational structure that separates the Interior Board of Indian Appeals from the Hearings Division (the Probate Hearings Division is headquartered in Albuquerque, New Mexico, and supervised by a Supervisory Administrative Law Judge). (43 C.F.R § 4.1). The IBIA is located in Arlington, Virginia, and renders final agency decisions on a range of issues arising under the authority of the Bureau of Indian Affairs in addition to providing a forum for review of the probate decisions issued by the ALJs of the Probate Hearings Division.

Defendants assert that the meaning of the regulations are clear and unambiguous. The authority to effect disclaimers pursuant to 43 C.F.R. § 30.120 is vested in the "judge" and the clear meaning of "judge" is the ALJ or IPJ assigned to the probate. (43 C.F.R. § 30.101). Additionally, as determined by the IBIA, the "final order" in this case was the ALJ's decision denying rehearing. The IBIA's interpretation of the regulations to determine that Plaintiff James Sauser's renunciation was untimely, was reasonable, and was the result of the plain language of the regulations.

4. Plaintiffs Fail to Demonstrate that the Agency Acted Arbitrarily or Capriciously.

Plaintiffs assert that Defendants are attempting to force Plaintiff James Sauser to inherit an interest in the trust lands that Decedent did not wish him to have, and that Defendants have put the Estate in a position where it has had to expend time and money to take the "moral high ground," that Plaintiff James Sauser should not inherit the interests in his father's trust

land that the Defendants are thrusting upon him.[5] Plaintiffs have requested that this Court grant them relief from the arbitrary and capricious actions of Defendants. Defendants respond that Plaintiffs have failed, as they failed before the ALJ and IBIA to demonstrate that the ALJ's interpretation of the Decedent's Will was erroneous or contrary to Decedent's testamentary intent. As noted by Plaintiffs, the Department of the Interior may not revoke or rewrite an otherwise valid Will disposing of Indian trust or restricted property that reflects a rational testamentary scheme simply because the disposition does not comport with the deciding official's conception of equity and fairness. *Tooahnippah v. Hickel*, 397 U.S. 598 (1970). However, Plaintiffs are incorrect in asserting that the ALJ in this case substituted his judgment for the clearly stated intent of the Decedent.

The ALJ's August 18, 2011, Decision is based on a reasonable and straightforward interpretation of Decedent's Will, and Plaintiffs have failed at each stage to demonstrate that the ALJ's interpretation was clearly erroneous, much less arbitrary and capricious. Plaintiffs state that they have

[5] Plaintiffs' argument appears to be based on a basic misunderstanding of Indian probate law. As noted by the ALJ, the AIPRA contemplates that non-enrolled members of tribes can receive life estate interests in trust land without affecting the trust status of the land. (Order Denying Rehearing at ¶ 6). This is because beneficial title is still held by the life estate holder with the remaindermen becoming beneficial and possessory interest holders at his death. (*See, i.e. Estate of Irene Parker*, 58 IBIA 61, 62 (2013)). There is nothing in the record to indicate that James Sauser's one-half life estate interest will lose its trust status. Moreover, citing 25 C.F.R. § 152, the IBIA suggested options available to transfer unwanted interests. 59 IBIA 32. Instead of asking the BIA to approve a gift deed, 25 C.F.R. § 152.25, Plaintiffs chose to file this action requesting that the agency be compelled to perform an action which they could, and may still do, if only submitting a proper request to the BIA.

taken the "moral high ground" because they believe the ALJ's interpretation reflects a substitution of judgment rather than a reasoned and defensible analysis. For the most part, judges are "presumptively capable" of overcoming biasing influences and rendering evenhanded justice; and only a strong, direct interest in the outcome of a case is sufficient to overcome that presumption of judicial integrity. *Fero v. Kerby*, 39 F.3d 1462, 1479 (10th Cir. 1994). Plaintiffs have produced no evidence in support of their assertion that the ALJ failed to defer to the Decedent's testamentary intent – other than specious allegations based on generalizations of the long history of the Federal Government's implementation of the Indian probate program.

In this case, the Decedent's Will indicates an "overriding and primary intent" that the Indian Trust properties retain their characterization and status as Indian Trust properties. (AR 284-302, at p. 4 of 19, Article VI of the Last Will and Testament of Raymond P. Sauser). Subsequently Decedent's Will provides:

> (C) I give to my sons the right to occupy the real Indian Trust properties during their lifetimes (i.e., a life estate), except as otherwise specifically limited in this document subject to the following: . . . . "

(AR 284-302, at page 4 of 19, Article VI, (C), of the Last Will and Testament of Raymond P. Sauser).

> In Section (H) of Article VI, the Decedent devises to Plaintiff, James Sauser, a life estate in the "Home Place."

Id.

Plaintiffs assert that the IBIA should have reversed the Decision of the ALJ and ordered a distribution that complies with the validly executed and approved Last Will and Testament citing that "the principal criterion in construing an Indian will is the intention of the testator, if that intention can be reasonable ascertained and it is not contrary to an established rule of law or in violation of public policy." *Estate of Wilford Hail*, 13 IBIA 140, 143 (1985). Plaintiffs assert that the Decedent's clearly-stated intent was that all trust property, other than the Home Place, be devised exclusively to his enrolled son, Jonathan Sauser. Plaintiffs state that it is not for the agency to decide that the Decedent should have left his land interests equally to his two sons. Again, Plaintiffs accuse the agency of substituting its judgment for that of the Decedent. Plaintiffs' accusations are unfounded and contradicted by the plain language of the Decedent's Will. Therefore, the ALJ's determination as to the inherited interests of Plaintiff James Sauser is in accordance with the testamentary intent of Decedent. Defendants respectfully request that the Plaintiffs' Motion be denied and the FAD be upheld.

Plaintiffs have failed to demonstrate that the Agency's decision was arbitrary and capricious or clearly erroneous. The record in this case clearly demonstrates that the ALJ's decision was reasoned and based on a thoughtful review of Decedent's Will. The IBIA's decision to affirm the ALJ's decision denying rehearing was not arbitrary and capricious. The IBIA decision reflected the ALJ's reasonable interpretation of the Decedent's Will

and found that Plaintiff's had failed to demonstrate any error on the part of the ALJ.

CONCLUSION

Based on the foregoing, Plaintiffs have not exhausted all administrative remedies in failing to submit the renunciation and disclaimer to the ALJ and should not permitted to raise that claim. Further, there is no evidence based on Plaintiffs' assertions that the Defendants have acted arbitrarily or capriciously in ordering the distribution of Decedent's estate.

Dated this 26th day of August, 2015.

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