

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRED GOODMAN, d/b/a EYES)
AND EARS INVESTIGATIVE SERVICES,)
o/b/o JUNE ROSACKER,)
)
Petitioner,)
)
vs.) Case No. 01-2473
)
DEPARTMENT OF BANKING AND)
FINANCE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this case in accordance with Section 120.57(1), Florida Statutes, on August 16, 2001, by video teleconference at sites in West Palm Beach and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Philip J. Stoddard, Qualified
Representative
Finder Resource, Inc.
150 Kent Road, Suite 2-A
St. Augustine, Florida 32086

For Respondent: Paul C. Stadler, Jr., Esquire
Department of Banking and Finance
101 East Gaines Street
The Fletcher Building, Suite 526
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STATEMENT OF THE ISSUE

Whether Petitioner, acting on behalf of June Rosacker, is entitled, pursuant to Chapter 717, Florida Statutes, to the \$37,281.25 in the Department of Banking and Finance's (Department's) Unclaimed Property Account Number 00963-1981-00026, which was derived from the Department's sale of five \$5,000.00 Florida Development Commission Sunshine Skyway Revenue Bonds, numbers 2114, 2115, 2116, 2117, and 2118, that Gulfstream Bank, N. A., had turned over to the Department as unclaimed property.

PRELIMINARY STATEMENT

On June 13, 2001, the Department issued a notice of intent to deny Petitioner's claim, made on behalf of June Rosacker, of entitlement to the monies in Unclaimed Property Account Number 00963-1981-00026. On or about June 21, 2001, Petitioner filed a Petition for Formal Evidentiary Hearing on the Department's proposed denial of the claim. On June 25, 2001, the matter was referred to the Division of Administrative Hearings (Division) for the assignment of a Division Administrative Law Judge to conduct the hearing Petitioner had requested.

On August 1, 2001, the parties filed a Prehearing Stipulation which contained, among other things, the following "Stipulated Facts":

1. The Department has received the amount of \$37,281.25 derived from the sale of five \$5,000.00 Florida Development Commission Sunshine Skyway Revenue Bearer Bonds numbers 2114-2118 in safe deposit box number 3228 opened in the name of Richard Rosacker and reported by Gulfstream, N.A., Unclaimed Property Account Number 00963-1981-00026.

2. Eyes and Ears Investigative Services filed a claim for the account on behalf of June Rosacker.

As noted above, the hearing was held on August 16, 2001. Three witnesses testified at the hearing: Fred Goodman, June Rosacker, and John Alcorn. In addition, 33 exhibits (Petitioner's Exhibits 1 through 24, and Respondent's Exhibits 1 through 9) were offered and received into evidence.

At the close of the evidentiary portion of the hearing the undersigned established a deadline (14 days from the date of the filing of the hearing transcript with the Division) for the filing of proposed recommended orders.

A transcript of final hearing (consisting of one volume) was filed with the Division on September 14, 2001.

Petitioner and the Department filed Proposed Recommended Orders on September 26, 2001, and September 28, 2001, respectively. These post-hearing submittals have been carefully considered by the undersigned.

FINDINGS OF FACT

Based upon the evidence adduced at the final hearing and the record as a whole, the following findings of fact are made to supplement the "Stipulated Facts" set forth in the parties' Prehearing Stipulation:

1. June Rosacker (Mrs. Rosacker) is the widow of Richard Rosacker (Mr. Rosacker).

2. She and her late husband were married for 38 years before he passed away on October 11, 1995.

3. Mr. and Mrs. Rosacker lived in a residence on the premises of Floral Acres, a commercial nursery located at 109 Northeast 17th Street in Delray Beach from 1961 until 1978. It was their first marital residence.

4. Mr. Rosacker was the Vice President of Operations of Floral Acres until 1969, when he resigned his position.

5. Mr. Rosacker's resignation coincided with his cousin, Arthur Rosacker, Jr. (Arthur Jr.), succeeding Arthur Rosacker Sr. (Arthur Sr.), Arthur Jr.'s father and Mr. Rosacker's uncle, as President of Floral Acres. Mr. Rosacker and Arthur Jr. did not get along with each other as well as Mr. Rosacker and Arthur Sr. did.

6. Mr. Rosacker started his own business in 1970.

7. Arthur Sr. executed his Last Will and Testament (Arthur Sr.'s Will) in 1971. Mr. Rosacker was not named a beneficiary in Arthur Sr.'s Will.

8. Arthur Sr. passed away on April 4, 1978.

9. Sometime in the 1970's, Mr. Rosacker received at his and Mrs. Rosacker's Floral Acres residence correspondence from a bank, which was not Mr. and Mrs. Rosacker's "regular bank," advising Mr. Rosacker that the bank was holding \$25,000.00 in "funds" in his name. 1/

10. Mr. Rosacker thought "the bank must have made a mistake." He had no knowledge of the "funds" which were the subject of the bank's correspondence.

11. Mr. Rosacker went to the bank (which was located in Boca Raton) for the purpose of letting the bank know that the "funds" were not his.

12. Upon his return, he told Mrs. Rosacker that had taken care of the matter by telling the bank "it was not his money, he didn't put any money in the bank, and he knew nothing about it."

13. In 1981, Boca Raton-based Gulfstream Bank, N.A. 2/ (Gulfstream) reported to the Department that it was holding as unclaimed property five \$5,000.00 Florida Development Commission Sunshine Skyway Revenue Bonds, numbers 2114, 2115, 2116, 2117, and 2118, (Bonds in Question) that had been left in a safe

deposit box, number 3228, rented in the name of a "Richard Rosacker" whose address was not "on file" at the bank. 3/ Gulfstream's report to the Department further indicated that the "date of [the] last transaction" involving safe deposit box number 3228 was May 5, 1971. On this date, according to the report, the lessor of the box was Fort Lauderdale-based American National Bank and Trust Company (which subsequently merged with Gulfstream).

14. The bonds were remitted to the Department, which sold them for a total of \$37,281.25.

15. At no time did either Mr. or Mrs. Rosacker rent a safe deposit box from American National Bank and Trust Company or Gulfstream.

16. At no time did either Mr. or Mrs. Rosacker purchase Florida Development Commission Sunshine Skyway Revenue Bonds.

17. On May 18, 1984, Mr. Rosacker executed a Declaration of Trust, which provided, in pertinent part, as follows:

ARTICLE I

TRUST CORPUS

This Trust shall consist of the original TEN DOLLARS (\$10.00) contribution and additional assets may be contributed by me or by any other person. All trust assets shall be listed on the SCHEDULE OF ASSETS attached hereto, may be comprised of property of any kind and character, including insurance benefits of any nature, and may be added by inter vivos or testamentary transfer, or

otherwise at my demise. Any asset registered in the name of the Trust or Trustee 4/ shall be presumed to be a part of this Trust, whether such asset is listed on the SCHEDULE OF ASSETS or omitted therefrom, it being my intent to expand rather than restrict the list of assets held in this Trust. . . .

ARTICLE V

DISPOSITION AT SETTLOR'S DEMISE-RESIDUARY TRUST PROVISIONS

A. If my wife, JUNE WEBB ROSACKER, survives me, I direct my Trustee to fund into "Trust B" provided under paragraph B the largest amount, if any, that can pass free of Federal estate tax under this instrument by reason of the unified credit and the state death tax credit, reduced by property passing outside this instrument which does not qualify for the marital or charitable deduction in computing Grantor's federal estate tax. The values as finally fixed for Federal estate tax purposes shall govern the funding of this Trust. The balance of my estate I give outright to my wife, June Webb Rosacker. . . .

ARTICLE VI

APPOINTMENT OF TRUSTEE

B. Upon my demise my wife, JUNE WEBB ROSACKER and my friend, MARVIN SALINE, shall be appointed the Trustees of all shares of this Trust. Should MARVIN SALINE be unable to serve as Trustee, my brother, HANS DONALD ROSACKER shall be appointed Trustee. . . . Should neither of the foregoing be able to serve as Trustee with my spouse then she shall appoint as Trustee a corporate fiduciary.

The "Declaration of Trust's" "Schedule of Assets" was left blank.

18. On September 23, 1988, Mr. Rosacker executed an Amendment to Trust Agreement, which provided, in pertinent part, as follows:

I hereby amend Article VI, Paragraph A to provide that if my spouse cannot serve as Trustee, then my daughters, JANICE and ELLEN, shall serve as Trustees, or either shall serve as sole trustee if one cannot serve. I then amend Paragraph B to appoint my spouse and my daughters, JANICE and ELLEN, (or either if one cannot serve) as Co-Trustees at my demise. I therefore revoke all reference to MARVIN SALINE and HANS DONALD ROSACKER as potential Trustees,

19. On May 18, 1984, the same day he executed the Declaration of Trust, Mr. Rosacker also executed a Last Will and Testament, which provided, in pertinent part, as follows:

ARTICLE III

I give to my beloved wife, JUNE WEBB ROSACKER, in fee, all clothing, jewelry, household goods, personal effects, automobiles and other tangible personal property not otherwise specifically bequeathed by Will, Codicil or Separate Writing, except cash on hand, owned by me at the time of my death. . . .

ARTICLE V

All the rest, residue and remainder of the property which I may own at the time of my death, real, personal and mixed, tangible and intangible, of whatsoever nature and wheresoever situated, including all property

which I may acquire or become entitled to after the execution of this Will, . . . , I bequeath and devise to the Trustee of that Trust Agreement executed by me on _____, 1984, said assets to be held IN TRUST as part of the Trust Estate as that term is used in said Trust Agreement as further amended at time prior to my death. . . .

ARTICLE VI

I hereby appoint my wife, JUNE WEBB ROSACKER, to be my Personal Representative of this my Last Will and Testament. . . .

20. Fred Goodman is a Florida-licensed private investigator who does business as Eyes and Ears Investigative Services. He has been "involved in abandoned property matters" for the past nine years.

21. In February of 1994, Mr. Goodman visited Mr. and Mrs. Rosacker at their home in Oveido, Florida, to seek authorization to file a claim with the Department, on behalf of Mr. Rosacker, to recover the proceeds of the sale of the Bonds in Question.

22. Mr. Rosacker declined to give Mr. Goodman such authorization. He told Mr. Goodman that, although he believed that the bonds "were put in the bank for him by his uncle," Arthur Sr., "it was a situation in which he was not going to be able to prove that he owned the funds" and that therefore it would be a "waste of time" for him to pursue the matter.

23. Following Mr. Rosacker's death in 1995, Mr. Goodman entered into an agreement with Mrs. Rosacker in which Mrs. Rosacker agreed to "appoint Eyes and Ears Investigative Services . . . an irrevocable Limited Power of Attorney to proceed on [her] behalf in accordance with [the recovery of the \$37,281.25 in assets described in the agreement]; [and] to perform any and all acts, including but not limited to the execution of any and all documents, for and on behalf of [her], as may be required in order to effect the recovery and disbursement of said assets to Eyes and Ears Investigative Services Escrow Account." The agreement provided that, "for full compensation of its Services," Eyes and Ears Investigative Services would be "assigned a fee of 30% [of] said assets."

24. Although it has been almost six years since Mr. Rosacker has passed away, his Last Will and Testament has not yet been probated.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57, Florida Statutes.

26. Chapter 717, Florida Statutes, contains the "Florida Disposition of Unclaimed Property Act" (Act). Section 717.001, Florida Statutes.

27. Section 717.101, Florida Statutes, defines certain terms used in the Act. It provides, in pertinent part, as follows:

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder. . . .

(6) "Department" means the Department of Banking and Finance. . . .

(10) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another; . . .

(15) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a claimant, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

28. Pursuant to Section 717.116, Florida Statutes, "[a]ll tangible and intangible property held in a safe-deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by law, that has not been claimed by the owner for more than 3 years after the lease or rental period on the box or other repository has expired are presumed unclaimed."

29. If such unclaimed intangible property is a bond that was issued by "this state or any political subdivision of this state" and the "last known address of the apparent owner or other person entitled to the property" is unknown, the property is "subject to the custody of the [D]epartment as unclaimed property." Sections 717.103 and 717.1035, Florida Statutes.

30. The holder of a bond that is "subject to the custody of the [D]epartment as unclaimed property" is required to deliver the property to the Department, along with a report. Sections 717.117 and 717.119, Florida Statutes.

31. "Upon . . . delivery of property to the [D]epartment, the state assumes custody and responsibility for the safekeeping of property". Section 717.1201(1), Florida Statutes.

32. Unclaimed "[p]roperty removed from a safe-deposit box or other safekeeping repository is received by the [D]epartment subject to the holder's right . . . to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The [D]epartment [must] make the reimbursement to the holder out of the proceeds remaining after the deduction of the [D]epartment's selling cost." Section 717.1201(7), Florida Statutes.

33. The Department has the authority, after receiving the unclaimed property, to sell it. Section 717.122, Florida Statutes.

34. Section 717.123(1), Florida Statutes, requires that the Department do the following upon selling the property:

All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$8 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund.

35. Section 717.124, Florida Statutes, addresses the "[f]iling of claim[s] with [the] [D]epartment," and provides as follows:

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant. The department shall determine each claim within 90 days after it is filed. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57.

(2) A claim for a cashier's check or a stock certificate without the original instrument may require an indemnity bond equal to the value of the claim to be

provided prior to issue of the stock or payment of the claim by the department.

(3) The department may require an affidavit swearing to the authenticity of the claim, lack of documentation, and an agreement to allow the department to provide the name and address of the claimant to subsequent claimants coming forward with substantiated proof to claim the account. This shall apply to claims equal to or less than \$250.

(4) If a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department, together with any additional amount required by s. 717.121.

(5)(a) If an owner authorizes an attorney, Florida-certified public accountant, or private investigative agency which is duly licensed to do business in this state to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with such power of attorney.

(b)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees authorized pursuant to a written power of attorney.

2. Payments of fees authorized pursuant to a written power of attorney for approved cash claims shall be forwarded to the designated attorney, Florida-certified public accountant, or private investigative agency. Such payments may be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days.

3. Payments of approved claims for unclaimed securities and other intangible ownership interests made to an attorney, Florida-certified public accountant, or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney, Florida-certified public accountant, or the private investigative agency in a financial institution authorized to accept such deposits and located in this state.

(c) Distribution of unclaimed property by the attorney, Florida-certified public accountant, or private investigative agency to the claimant shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests in writing such distribution before it is made.

(6) The department shall not be civilly or criminally liable for any property or funds distributed pursuant to this section, provided such distribution is made in good faith.

36. Section 717.1242(1), Florida Statutes, discusses the "jurisdiction of the circuit court sitting in probate and the [D]epartment" in those instances where the apparent owner of the unclaimed property is deceased. It provides as follows:

It is and has been the intent of the Legislature that, pursuant to s. 26.012(2)(b), circuit courts have jurisdiction of proceedings relating to the settlement of the estates of decedents and other jurisdiction usually pertaining to courts of probate. It is and has been the intent of the Legislature that, pursuant to s. 717.124, the department determines the merits of claims for property paid or

delivered to the department under this chapter. Consistent with this legislative intent, any estate or heir of an estate seeking to obtain property paid or delivered to the department under this chapter must file a claim with the department as provided in s. 717.124.

37. "If the apparent owner is deceased, the Claimant must provide [the Department with] appropriate documentation to connect the Estate that is being represented by the claimant to the deceased apparent owner." Rule 3D-20.0022(4), Florida Administrative Code. 5/

38. "Any person aggrieved by a decision of the [D]epartment may petition for a hearing as provided in ss. 120.569 and 120.57. In any proceeding for determination of a claim to property paid or delivered to the [D]epartment under [the Act], the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence." Section 717.126, Florida Statutes; see also Rule 3D-20.0022(1), Florida Administrative Code ("Any and all persons filing a claim for unclaimed property has the burden to provide to the Department a preponderance of evidence to prove entitlement to such property being claimed.").

39. "A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' . . . or evidence that 'more likely than not' tends to prove a certain proposition." Gross v. Lyons, 763 So. 2d 276, 280 (Fla. 2000).

40. In the instant case, Petitioner has filed a claim on behalf Mrs. Rosacker pursuant Section 717.124, Florida Statutes, seeking to recover the proceeds of the sale of the Bonds in Question, five \$5,000.00 Florida Development Commission Sunshine Skyway Revenue Bonds that Gulfstream, in 1981, had turned over to the Department as unclaimed property. Mrs. Rosacker, through Petitioner, contends that her deceased husband, Mr. Rosacker, was the owner of these bonds and that she is entitled to the bond proceeds as "the successor trustee of her husband's intervivos trust."

41. The preponderance of the evidence does not support Mrs. Rosacker's contention.

42. While in the 1981 unclaimed property report it submitted to the Department Gulfstream indicated that the Bonds in Question had been left in a safe deposit box leased, on or before May 17, 1971, by its predecessor, Fort Lauderdale-based American National Bank and Trust Company, to a "Richard Rosacker," it does not appear that the Richard Rosacker to whom Mrs. Rosacker was married was the lessee of this box or the owner of its contents. More likely than not, some other Richard Rosacker, 6/ or someone else using that name, leased the box and used it for the safekeeping of the bonds.

43. No showing has been that Mr. Rosacker, at any time, had access to the box or exercised dominion and control over its

contents. 7/ Indeed, by Mrs. Rosacker's own admission (made during her deposition on August 6, 2001, the transcript of which was received into evidence as Respondent's Exhibit 8), neither she nor Mr. Rosacker ever rented a safe deposit box from American National Bank and Trust Company or from Gulfstream, nor did she or her husband ever purchase Florida Development Commission Sunshine Skyway Revenue Bonds. 8/ These admissions by Mrs. Rosacker rebut any presumption, arising from the name of the lessee of safe deposit box number 3228 (as reported by Gulfstream), that Mr. Rosacker owned the Bonds in Question. 9/

44. Mrs. Rosacker has speculated (as had Mr. Rosacker when discussing the matter with Petitioner in February of 1994) that Mr. Rosacker's uncle, Arthur Sr., left the Bonds in Question in safe deposit box number 3228 as a gift for Mr. Rosacker. Mere speculation, however, is insufficient to establish Mr. Rosacker's ownership of the unclaimed bonds. See Lassett v. Lassett, 768 So. 2d 472, 474 (Fla. 2d DCA 2000) ("The husband speculated that the wife had acquired additional coins during their marriage. There was no proof of this and no coins were produced or traced during the dissolution proceeding. Speculation, conjecture, and suspicion can neither establish the existence of the coins nor their status as marital property."); Pringle v. Marine Fisheries Commission, 732 So. 2d 395, 398 (Fla. 1st DCA 1999) (Van Nortwick, J., specially

concurring)("Bare speculation about a theoretical fishing method cannot constitute competent substantial evidence to support a finding of commercial viability."); LeMaster v. Glock, Inc., 610 So. 2d 1336, 1338-39 (Fla. 1st DCA 1992)("It has long been the rule that a witness's opinion as to what would have happened if circumstances were different constitutes rank speculation that is not competent evidence: 'Conjecture has no place in proceedings of this sort. . . . The law seems well established that testimony consisting of guesses, conjecture or speculation--suppositions without a premise of fact--are clearly inadmissible in the trial of causes in the courts of this country.'"); and Robinson v. Allstate Insurance Company, 367 So. 2d 708, 711 (Fla. 3d DCA 1979)("A mere speculation or inference of negligence is insufficient to support a jury verdict.").

45. "When a claim of a gift is not asserted until after the death of the alleged donor [as in the instant case], the donee [or the donee's successor(s) in interest] must show by clear and satisfactory evidence every element which is requisite to constitute a gift." Wood v. McClellan, 247 So. 2d 77, 78 (Fla. 1st DCA 1971). These elements include donative intent and delivery, either actual, constructive, or symbolic, to the donee. See J.R. Brooks & Son, Inc. v. Quiroz, 707 So. 2d 861, 862 (Fla. 3d DCA 1998)("[T]he record is devoid of any indication

that a valid transfer took place by either of the two conceivable ways it could have been legally accomplished. No sale. On the one hand, it is undisputed that Neal did not buy the corporation's interest in the truck at anytime. No gift. On the other, even if arguendo a Florida corporation has the legal power to make a non-charitable gift in any circumstances, . . . there is no evidence whatever of either (a) an expression of donative intent or (b) an actual, constructive or symbolic delivery of the subject matter--both of which are required to sustain the validity of a gift."). In the instant case, there is no competent substantial evidence that Arthur Sr. ever exercised dominion and control over the Bonds in Question, much less knowingly and intentionally surrendered such dominion and control to Mr. Rosacker. Accordingly, there is no evidentiary basis upon which to conclude that the Bonds in Question were a gift to Mr. Rosacker from Arthur Sr.

46. In view of the foregoing, the claim of entitlement to the proceeds of the sale of the Bonds in Question, filed by Petitioner on Mrs. Rosacker's behalf, which is premised upon the contention that the bonds were owned by Mr. Rosacker, must be rejected.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Department enter a final order rejecting Petitioner's claim that Mrs. Rosacker is entitled to the proceeds of the Bonds in Question.

DONE AND ENTERED this 4th day of October, 2001, in Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of October, 2001.

ENDNOTES

1/ There is no indication that the correspondence specified that the "funds" the bank was holding were Florida Development Commission Sunshine Skyway Revenue Bonds.

2/ Gulfstream's offices were located approximately ten to 15 miles from Floral Acres.

3/ The report gave only the name of the lessee of the box, and no other identifying information.

4/ "Bearer bonds [like the Bonds in Question], by their nature, are not titled in the name of one or more persons." Winterton v. Kaufmann, 504 So. 2d 439, 442 (Fla. 3d DCA 1987).

5/ This rule was adopted by the Department pursuant to the "rulemaking authority" described in Section 717.138, Florida Statutes, which authorizes the Department "to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of [Chapter 717, Florida Statutes]."

6/ There has been no showing that, at the time the box was leased, there was not any other Richard Rosacker living in, or having some connection to, the South Florida area.

7/ "The fact that a person may have the right of access through a written instrument to the contents of a safe deposit box does not mean, absent such language in the lease agreement, that said person has a right to the ownership of the contents found in the box." Bechtel v. Bechtel's Estate, 330 So. 2d 217, 219 (Fla. 2d DCA 1976).

8/ A party's own statement made other than at the final hearing, which is offered to prove the truth of the matter asserted therein, is hearsay evidence, but it nonetheless is sufficient, standing alone, to support a finding of fact because it falls within the "admissions" exception to the hearsay rule described in Section 90.803(18), Florida Statutes. See Section 120.57(1)(c), Florida Statutes ("Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").

9/ In its Proposed Recommended Order, Petitioner suggests that the "funds" referred to in the correspondence Mr. Rosacker received in the 1970's, described in paragraph 9 of this Recommended Order, were the Bonds in Question. To the extent that such an inference may be made, Mr. Rosacker's statement against interest, upon receiving such correspondence, that the "funds" were not his further undercuts Petitioner's position that Mr. Rosacker was the owner of these bonds. See Section 90.804, Florida Statutes ("(1) DEFINITION OF UNAVAILABILITY.-- 'Unavailability as a witness' means that the declarant: . . . (d) Is unable to be present or to testify at the hearing because of death (2) HEARSAY EXCEPTIONS.--The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness: (c) Statement against interest.--A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. . . ."); Cf. Rice v. Ransom, 8 Cal.Rptr. 840, 842 (Cal. App. 1960)("From the testimony of Wiggins [the husband's and wife's friend] it is quite clear that Charles [the husband]

considered the money in the joint bank accounts was, and intended that it should be, Alice's (the wife's) separate property. And the inference is that when Charles stated to Wiggins that the 'money that was involved in the property they owned was hers,' he was referring to the ranch property which was sold. These statements were declarations against interest and rebut the inference of a true joint tenancy.").

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.