

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CECILIA ROBINSON,)
)
 Petitioner,)
)
 vs.) Case No. 02-3359
)
 DEPARTMENT OF FINANCIAL)
 SERVICES, OFFICE OF FINANCIAL)
 INSTITUTIONS AND SECURITIES)
 REGULATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was heard in this case on October 25, 2002, in Tallahassee, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bruce G. Kaufmann, Esquire
8353 79th Avenue, North
Seminole, Florida 33777

For Respondent: Cynthia K. Maynard, Esquire, and
Catherine Jones, Qualified Representative
Department of Banking and Finance
The Fletcher Building
101 East Gaines Street, Suite 526
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner is entitled, pursuant to Section 517.1203, Florida Statutes, to distribution of funds of the

Securities Guaranty Fund which were set aside to reimburse investors for funds lost through investments with GIC Government Securities, Inc.

PRELIMINARY STATEMENT

This cause arises from a claim made in 1998, against "the GIC Fund," or "the New Fund," administered by the Department of Banking and Finance, Respondent's predecessor agency. The claim was repeatedly, but in some instances ineffectually, denied so as to obscure or compromise the window of opportunity to request a disputed-fact hearing pursuant to Section 120.57(1), Florida Statutes. To remedy any confusion, and to provide a fair opportunity to be heard, the Agency ultimately referred the case to the Division of Administrative Hearings on or about August 22, 2002.

That said, this Preliminary Statement is restricted to procedural and evidentiary issues before the Division after August 22, 2002. Any procedural matters prior to August 22, 2002, which have factual or legal significance for resolution of the disputed issues of material fact between these parties are addressed in the Findings of Fact and/or Conclusions of Law.

The case having been referred to the Division on August 22, 2002, the parties' respective responses to the Initial Order were considered. By an Amended Notice of Hearing, mailed August 30, 2002, the disputed-fact hearing on the merits was

scheduled for October 25, 2002, to accommodate the respective schedules of counsel for each party.

No formal discovery ensued. No Pre-hearing Stipulation was entered into by the parties, as required by the Order of Pre-hearing Instructions. However, Respondent Agency's Unilateral Pre-hearing Statement has been considered as an admission on behalf of the Agency, that a claim was filed as set out in Finding of Fact 22, and Endnote 4.

On October 5, 2002, Respondent served and filed a Request for Official Recognition of eight documents and a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Pursuant to Rule 28-106.204, Florida Administrative Code, Petitioner was permitted until October 17, 2002, to file responses in opposition. No responses were served or filed. A ruling on the Motion for Official Recognition was reserved until the commencement of the October 25, 2002, disputed-fact hearing on the merits. Likewise, argument on the Motion to Dismiss, based on the documents attached to the Motion for Official Recognition, was also reserved until October 25, 2002.

A conference call was conducted at Petitioner's request a few hours prior to the scheduled hearing on October 25, 2002, during which it became apparent that no stipulations or agreement to continue had been reached. The commencement of the

motion and merits hearing was extended by a half-hour to permit the parties to meet and further discuss their options.

At the commencement of the motion and merits hearing, counsel were given another 15 minutes to consult in private. They reached no agreements.

Thereafter, Petitioner orally moved for a continuance or for the Division to relinquish jurisdiction to the Agency for an opportunity to amend, before the Agency, the "claim," an informal hearing before the Agency, and a new window of opportunity to return to the Division upon new disputed facts. Respondent Agency opposed this motion.

The grounds enunciated for Petitioner's foregoing oral motion were that Respondent's counsel had failed to comply with Petitioner's oral request to meet and exchange exhibits, pursuant to the Order of Pre-hearing Instructions. Respondent's counsel stated that Respondent would be offering at trial no exhibits other than those attached to Respondent's two pending Motions, which Petitioner had received in early October. That being conceded, Petitioner was unable to demonstrate any surprise or prejudice arising from Respondent's failure to meet and exchange exhibits pursuant to the Order of Pre-hearing Instructions.

Petitioner did not envision a relinquishment of jurisdiction as constituting a withdrawal of Petitioner's

request for hearing and presented no statute or rule, or case law to permit the amendment of a claim barred by statute after December 31, 1998, or permitting a new window of opportunity to return to the Division for an impartial evidentiary hearing after jurisdiction of a pending claim/case is relinquished to the Agency. For these reasons, and because the parties each maintained that there remained disputed issues of material fact, Petitioner's oral motion to continue/relinquish jurisdiction to the Agency was denied.

Next, upon inquiry under oath, Ms. Catherine Jones demonstrated that by education, training, and experience, she could be recognized, pursuant to Rules 28-106.105, 28-106.106, and 28-106.107, Florida Administrative Code, as a Qualified Representative of Respondent, for purposes of this case.

At hearing on the Motion for Official Recognition, Petitioner did not take issue with the validity of any document bearing an official seal of a court or the National Archives, but objected to their admission "simply because there's no verification as to whether or not anything was filed to correct or amend or change or reject these documents," obtained from and certified by the National Archives of Records Administration. (TR-15-16.) The entire packet of eight exhibits was officially recognized over this objection. (TR-16.)^{1/}

Petitioner disputed none of the facts alleged in the Motion to Dismiss. (TR-17-18.) All of the officially recognized documents were considered for purposes of the Motion to Dismiss. Ruling on the Motion to Dismiss was reserved for resolution in this Recommended Order.^{2/}

The case then proceeded on the merits. Many facts were stipulated by counsel. Six of Petitioner's Exhibits were admitted in evidence, some over Respondent's objection. Petitioner's Exhibit 1 was not admitted in evidence.^{3/}

Petitioner was not permitted to present the oral testimony of Leo Young, over objection, it appearing that Mr. Young had not been disclosed as a potential witness, pursuant to the Order of Pre-hearing Instructions and would be testifying as an "heir finder," to hearsay communications or documents not in evidence. (TR-61-63.)

Respondent's eight documents which had been officially recognized were also admitted in evidence. (R-1 through R-8, See Endnote 1.)

Respondent's oral motion for a directed verdict was denied. Respondent's oral motion for a summary recommended order was also denied.

A Transcript was filed on December 2, 2002. Respondent timely-filed its Proposed Recommended Order, pursuant to the parties' agreement for a January 2, 2003, filing date.

Petitioner's Proposed Recommended Order was filed late, on January 8, 2003, but in the absence of any motion to strike, it has been considered.

FINDINGS OF FACT

1. This proceeding arises under Section 517.1203, Florida Statutes, administered by the Agency. Under the terms of the statute, the Agency is responsible for evaluating claims filed by investors who suffered financial loss due to the actions of GIC Government Securities, Inc. (GIC). Basically, the Florida Legislature decided to extend, through this statute, some relief to investors who were "scammed" by a specific fraudulent security company or security company behaving fraudulently, which company ended up in bankruptcy in the 1980's. The statute enables investors to file claims to recover from the "New Fund" the portion of their proven investments which were not recovered from the Bankruptcy Court, GIC or its agents, or the Securities Guaranty Fund. The "New Fund" or "GIC Fund" is funded with monies generated by the sale of bonds issued by Investment Fraud Restoration Financing Corporation, a corporation created by statute to generate funds to reimburse GIC investors for their lost investments.

2. Pursuant to Section 517.1203(2)(a), Florida Statutes, investors must have done the following, in order to be considered for reimbursement:

. . . filed claims with the Department of Banking and Finance after October 1, 1996, and on or before December 31, 1998 [and have either]:

1. Received a final judgment against an associated person of GIC Government Securities, Inc., based upon allegations which would amount to a violation of s. 517.07 or s. 517.301; or

2. Demonstrated to the department that the claimant has suffered monetary damages as a result of the acts or actions of GIC Government Securities, Inc., or any associated person thereof, based upon allegations which would amount to a violation of s. 517.07 or s. 517.301.

3. "Investor" is not defined in Chapter 517, Florida Statutes. See, Section 517.021, Florida Statutes.

4. Section 517.1203(3), Florida Statutes, provides that in evaluating the investors' claims against the GIC Fund, "the department may rely on records from the bankruptcy proceeding regarding GIC Government Securities, Inc., unless there is good cause to believe that the record is not genuine."

5. Minnie Moss was the daughter of Pauline Kline and the sister of Cecilia Robinson a/k/a Cecelia Robinson a/k/a Celia Robinson. Minnie Moss predeceased both her mother and sister and died testate (leaving a will), on November 16, 1980.

6. Cecilia Robinson was the daughter of Pauline Kline. She was the sister of Minnie Moss. She was the mother of

Jessica Robinson and Michael Robinson a/k/a Spencer Michael Robinson.

7. Cecilia Robinson died on November 11, 1998. She is survived by her two children, Jessica and Michael.

8. When Cecilia's sister, Minnie Moss, had died on November 16, 1980, she left a will dated September 19, 1969, as amended by four codicils (collectively, "the Will"). Under the terms of the Will, Mrs. Moss's estate was divided into two equal parts, designated Part A and Part B.

9. Part A of Mrs. Moss's estate consisted of \$100,000, which was divided into two equal parts to be distributed, one part each, to equal trusts created for the benefit of Jessica and Michael Robinson, Mrs. Moss's niece and nephew.

10. Part B of Mrs. Moss's estate, consisting of her remaining estate, was also divided into two equal parts which were, in turn, utilized to create two charitable unitrusts. One unitrust provided life benefits for Cecilia Robinson. The other unitrust provided life benefits for Pauline Kline. By the terms of the Will, when either Cecilia or Pauline died, the survivor of the two would receive the benefits from the decedent's unitrust for the remainder of the survivor's life, and upon the death of the survivor (either Cecilia or Pauline), the unitrusts' combined balances were to be distributed as follows: five percent to Jacksonville Jewish Center; five percent to

River Garden Hebrew Home for the Aged, and ninety percent to Hadassah.

11. Put another way, the Will intended that if Pauline Kline died first, Cecilia Robinson was to continue to be able to draw on the Robinson unitrust and also have a life estate in the Kline unitrust, and when Cecilia Robinson died, the Will intended that the remainder/balance of the Kline unitrust and the remainder/balance of the Robinson unitrust were to be combined, and the total remainder/balance of the combined trusts' balances were to pass to the three residual charities in the respective named percentages.

12. In fact, when Pauline Kline predeceased Cecilia Robinson, that event left Cecilia as the lifetime beneficiary of both the Robinson and Kline unitrusts, but her interest was only a life estate in the two trusts.

13. Mrs. Moss's Will had nominated Robert Rieders to serve as personal representative of her estate and as trustee for each of the unitrusts established by the Will for Pauline Kline and Cecilia Robinson.

14. On November 29, 1985, Rieders filed a claim in the Tampa Division of the United States Bankruptcy Court, for the Middle District of Florida, in the bankruptcy case of In re: G.I.C. Government Securities, Inc., Case No. 85-2784-887, stating, in relevant part:

I, the undersigned, ROBERT M. RIEDERS, WHO RESIDES AT Jacksonville, Florida, am the Trustee for CECILIA ROBINSON, under Trust, created by Will and Codicils thereto of Minnie Moss, Deceased and I am authorized to make this Proof of Claim on behalf of said trust, through my undersigned attorney. (Emphasis supplied)

15. In support of the foregoing bankruptcy claim, which was filed in the amount of \$190,912.86, Rieders attached copies of various documents, including investment receipts and canceled checks from the Robinson unitrust account, establishing that the investments were made on behalf of "Robinson under trust created by will and codicils of Minnie Moss, deceased."

16. Four years later, on or about February 21, 1989, Rieders joined in filing a "Motion for Substitution of Counsel and Substitution of Trustee for Creditor" in the GIC bankruptcy case. The Motion sought to have the bankruptcy court substitute Florida National Bank as trustee "of the trusts created for the benefit of Cecilia Robinson and Pauline Kline under the will and codicils thereto of Minnie Moss, deceased (the 'Trusts'), which are creditors of the debtor's estate herein." It further represented that "The Trusts, Ritz and Post & King each filed timely proofs of claim in this proceeding and have received periodic distributions from the estate. The Trusts own the stock of Ritz and Post & King."

17. The foregoing Motion also attached, as an exhibit thereto, a copy of an agreement of compromise between Rieders, as "trustee of the trusts under the will and codicils of Minnie Moss," and Hadassah, one of the three residual charity-beneficiaries of both unitrusts. The agreement set forth "Facts Giving Rise to Agreement" which stated, in part, referring to Moss's Will:

Under the said Will, the residuary estate was divided into two equal parts. One part was bequeathed to a charitable remainder unitrust for the benefit of Pauline Kline, the mother of decedent, and the other part bequeathed to a charitable unitrust for the benefit of Celia [sic] Robinson, the sister of decedent. Upon the death of the last to die of Pauline Kline or Celia [sic] Robinson, the remainder of the trusts is distributable as follows: Five percent to Jacksonville Jewish Center, five percent to River Garden Hebrew Home for the Aged and ninety percent to Hadassah. Pauline Kline has died, and Celia [sic] Robinson is still alive. (Emphasis supplied)

18. On March 7, 1989, the Bankruptcy Court issued an "Order for Substitution of Counsel and Substitution of Trustee for Creditor," granting Rieders' Motion and accepting the agreement of compromise and the facts set forth therein, without comment.

19. While the evidence demonstrates that disbursements were made by the Bankruptcy Court to the trusts and their corporate possessions (see Finding of Fact 16), no competent,

credible evidence was adduced that the Bankruptcy Court ever made any determination that Cecilia Robinson, individually, was entitled to, or collected, any amount from Debtor GIC.

20. Petitioner's counsel represented that there appear to be no remaining records of the Bankruptcy case, In re: G.I.C. Government Securities, Inc., Case No. 85-2784-887, except for those left with a Victims Advocacy Group. (TR-84)

21. Cecilia Robinson died on November 11, 1998.

22. Jessica Robinson had received a Durable Power-of-Attorney from Cecilia on June 17, 1986. It was not effective after Cecilia died, but pursuant to it, Jessica filed a claim, or caused a claim to be filed, with the Agency's GIC Fund on December 22, 1998.^{4/}

23. The statutory time limit for filing claims with the GIC Fund ended on December 31, 1998.

24. There is no evidence of any other relevant timely claims being filed by Jessica Robinson or anyone else.

25. There is no evidence of any other claims being filed on behalf of Cecilia Robinson, in any capacity, timely or otherwise.

26. There is no evidence that a claim was made on the Agency's GIC Fund on behalf of Cecilia Robinson's Estate prior to December 31, 1998.

27. Jessica's December 22, 1998, claim apparently was made in the name of "Cecelia [sic] Robinson, Ritz Enterprises, and Post & King Liquors," because on December 13, 2001, the Agency entered a Notice of Intent to Enter a Final Order Granting or Denying Recovery (NOI), with an attachment referencing "Robinson, Cecelia; Ritz Enterprises; Post & King Liquors: 853,854,855-claim by Jessica Attorney in Fact for Cece" ^{5/}

28. On May 1, 2002, a similar NOI was entered with the same attachment concerning Jessica as attorney in fact and some withdrawals of other claims not relevant here. ^{6/}

29. On June 17, 2002, the Agency entered an Order Amending Final Order and Notice of Rights, stating the May 1, 2002, NOI had contained scrivener's errors, and removing references to Ritz Enterprises, Post & King Liquors, and Cecelia Robinson, because those claimants had requested a disputed-fact hearing. ^{7/}

30. Jessica Robinson qualified as Personal Representative of Cecilia Robinson's Estate by Letters of Administration entered June 18, 2002.

31. On July 23, 2002, the Agency entered an Order Dismissing Petition for Hearing With Leave to Amend, finding, in pertinent part,

3. Claimant's counsel filed a letter with the Department in response to the NOI advising of Claimant's intent to instigate

probate proceedings on behalf of the estate.
The Department accepts this letter as a
nonconforming Petition for Hearing.

and ordering that:

Based on the foregoing Findings of Fact and Conclusions of Law, Claimant's Petition for hearing is Dismissed with leave to amend. Claimant is granted fifteen (15) days from the date of this Order in which to file a Petition for Hearing in compliance with the administrative rules.^{8/}

32. The Division Case File reflects that on August 10, 2002, a Petition for Hearing, with attachments, was served by mail upon the Agency. It was brought by "Jessica Robinson, Personal Representative of the Estate of Cecilia Robinson, . . . on behalf of herself and her brother Spencer Robinson." It claimed \$184,325.46, on the basis of a bankruptcy court judgment because "on several occasions, the necessary claim and proof was provided to the Office of the Comptroller but the claim was denied."^{9/}

33. The Agency referred the matter to the Division of Administrative Hearings on August 22, 2002, enclosing the August 10, 2002, Petition for Hearing and the December 13, 2001, Order, which had been repeatedly superceded, as set out above.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57 (1), Florida Statutes.

35. Finding of Fact 2 is incorporated here as Conclusion of Law 35.

36. Finding of Fact 4 is incorporated here as Conclusion of Law 36.

37. Notwithstanding the confusion occasioned by the juxtaposed documents referred to the Division and the style of the case as requested by the Agency (See Finding of Fact 33), it is concluded, upon the foregoing Findings of Fact, that the real party in interest in the instant cause is the Estate of Cecilia Robinson.

38. Petitioner has the duty to go forward and the burden to prove entitlement to the funds claimed, by a preponderance of the evidence.

39. Petitioner asserts that equity requires that \$184,325.46 be paid to Jessica Robinson, as the Robinson Estate's Personal Representative, and further asserts that Jessica, daughter of Cecilia Robinson, pursuant to a Power-of-Attorney received from Cecilia prior to Cecilia's death on November 11, 1998, filed a GIC Fund claim with the Agency timely on December 22, 1998, and then, pursuant to her status as Personal Representative of Cecilia Robinson's Estate, filed a Petition for Hearing on August 10, 2002, seeking to continue pursuit of the earlier claim.

40. However, this is not a court of equity. This forum can only determine the validity of a proposed final agency action, which in this case is the denial of payment of any monies from the GIC Fund to, or on behalf of, Cecilia Robinson.

41. Respondent denies the basic legitimacy of the December 22, 1998 claim, since Jessica's attorney-in-fact authority to file the claim on Cecilia's behalf terminated upon Cecilia's death, and her authority to bring the claim on behalf of Cecilia's Estate did not go into effect until after the December 31, 1998, statutory bar to GIC Fund claims. Neither party has adequately addressed this issue in the Proposed Recommended Orders. Fortunately, it is a conundrum that need not be addressed in order to resolve this case, because the Motion to Dismiss is well-taken.

42. Upon Cecilia's death, neither Jessica and Michael individually, nor Cecilia's Estate, had any claim on investments made by the Robinson unitrust, or, in fact, made by either the Kline or Robinson unitrusts. Pursuant to the terms of the Moss Will and the respective trust arrangements, as of the moment of Cecilia's demise, Cecilia's life estates in the two unitrusts, which would have given rise to any claim against GIC or the Agency's GIC Fund in the first place, ended. To the extent that the bankruptcy records in evidence prove anything, they only prove that claims were made against GIC in the bankruptcy court

for investments made in trust for Cecilia, not by Cecilia in her individual capacity.

43. "Standing" is conferred on persons whose substantial interests will be affected by proposed final agency action. Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186 (Fla. 1st DCA 1992), citing Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. den. 415 So. 2d 1359 (Fla. 1982), and 415 So. 2d 1361 (Fla. 1982). "In the administrative context, standing has been equated with jurisdiction of the subject matter of litigation and has been held subject to the same rules." Department of Revenue v. Daystar Farms, Inc. 803 So 2d 892 (Fla. 5th DCA 2002).

44. Cecilia Robinson's estate cannot be adversely affected by the proposed agency decision to deny the 1998 claim, and therefore the estate has no standing here. The uncontroverted evidence is that Cecilia's estate would not be the beneficiary of either the Kline or the Robinson unitrust. Upon Robinson's death, as the last survivor between Kline and Robinson, the corpus of the Robinson and Kline unitrusts created from the remainder of Minnie Moss's estate, Part B, passed, by operation of law, directly to the residual charities, and not to Cecilia's descendents or the heirs of her estate. The Florida National Bank or the residual charities may have had standing to bring a

claim against the Agency's GIC Fund, had one been brought timely, but Cecilia's estate did not then, and does not now, have standing to claim or receive any monies from the GIC Fund. Likewise, neither of Cecilia's children had then, or has now, standing to claim or receive any GIC Fund monies.

45. Because the Petition for Hearing was not brought on behalf of Ritz or King & Post Liquors, because Petitioner herein made no argument claiming on behalf of Ritz or King & Post Liquors, and because the bankruptcy records in evidence show that the trusts owned stock in those other corporate creditors of GIC, it is not necessary to address any claim on their behalf against the GIC Fund.

46. The Petition should be dismissed for lack of standing.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED: That the Department of Financial Services, Office of Financial Institutions and Securities Regulation, enter a final order denying the Claim/Petition brought in the name of Cecilia Robinson and/or her Estate.

DONE AND ENTERED this 25th day of February, 2003, in
Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 2003.

ENDNOTES

1/ These items were officially recognized, for all purposes, pursuant to the Motion for Official Recognition: Exhibit R-1 is a Proof of Claim in U. S. Bankruptcy Court; R-2 is a Bankruptcy Court Motion for Substitution of Counsel and Trustee; R-3 is a Bankruptcy Court Order of Substitution of Counsel and Substitution of Trustee for Creditor; R-4 is the Moss Will; R-5 is the First Codicil of the Moss Will; R-6 is the Second Codicil of the Moss Will; R-7 is the Third Codicil of the Moss Will; R-8 is the Fourth Codicil of the Moss Will.

2/ In addition to the foregoing officially recognized documents listed in Endnote 1, the following items were tendered by the Agency and only marked for identification during argument on the Motion to Dismiss: Respondent's Motion Exhibit 1 (a December 13, 2001, Notice of Intent to Enter a Final Order Granting or Denying Recovery From the Securities Guaranty Fund and Notice of Rights, with attachment); Respondent's Motion Exhibit 2 (a May 1, 2002 Agency Final Order Denying Recovery from the Securities Guaranty Fund, with attachments); Respondent's Motion Exhibit 3 (a June 17, 2002, Order Amending Final Order and Notice of Rights, with attachments); and Respondent's Motion Exhibit 4 (a July 23, 2002, Agency Order Dismissing Petition for Hearing With Leave to Amend, with attachments). However, because these are all items subject to

Official Recognition, the undersigned hereby, sua sponte, within this Recommended Order, takes official recognition of them for all purposes, so as to resolve the procedural history of this case. See Findings of Fact 27-33.

3/ Petitioner's Exhibits 3 through 8 were admitted in evidence. P-3 is a June 17, 1986 Durable Family Power of Attorney. P-4 is a July 17, 2002, Proof of Publication of Formal Notice of Petition for (Probate) Administration. P-5 is the June 18, 2002, Letters of Administration for Jessica Robinson. P-6 is the Last Will and Testament of Cecilia Robinson. P-7 is the June 10, 2002, Petition for Administration. P-8 is Cecilia Robinson's Death Certificate.

Exhibit P-1 purported to be a Bankruptcy Trustee's Proposed Distribution. It was not admitted for the reasons given on the record. (TR-51-52; 74-82.)

Exhibit P-2 was marked, but not admitted. It was apparently retained by Petitioner. (TR-64-67). To the extent its purpose was to show that P-1 (which purports to be a Bankruptcy Trustee's Proposed Distribution) was one of many exhibits attached to the August 10, 2002, Petition for Hearing which was referred, on August 22, 2002, to the Division, it is noted that the Petition for Hearing in the Division's Case File reflects that P-1 was attached to the Petition for Hearing. (See Finding of Fact 32.) This does not prove, or otherwise establish, that P-1 or any other attachment to the August 10, 2002, Petition for Hearing was filed with the original December 22, 1998, GIC Fund claim.

4/ The Agency conceded as much in its Unilateral Pre-hearing Statement, and it will not be permitted to suggest otherwise in its Proposed Recommended Order. The contents of the claim is shown by the attachments to the Agency's own Orders. See Endnote 2 and Findings of Fact 27-33.

5/ See Endnote 2, officially recognized Respondent's Motion Exhibit 1.

6/ See Endnote 2, officially recognized Respondent's Motion Exhibit 2.

7/ See Endnote 2, officially recognized Respondent's Motion Exhibit 3.

8/ See Endnote 2, officially recognized Respondent's Motion Exhibit 4.

9/ It is noted that even if this amended Petition for Hearing was filed with the Agency on the date of service by mail, which is unlikely since August 10, 2002, was a Saturday, it was late under the terms of the July 23, 2002, Order permitting the amendment, but this issue has not been raised by Respondent.

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.