

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WORLDWIDE RESEARCH SERVICES)
CORP.,)
)
Petitioner,)
)
vs.) Case No. 07-4397
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Respondent,)
)
and)
)
JENNIFER CHRISTINE MARGRAVE AND)
ANTHONY RICHARD MARGRAVE AS)
TRUSTEES OF THE FLORENCE ALICE)
CASSIDY TRUST,)
)
Intervenors.)
_____)

RECOMMENDED ORDER OF DISMISSAL

This cause may be determined upon the pleadings.
Accordingly, no preliminary statement has been provided.

FINDINGS OF FACT

1. On August 15, 2007, Respondent, Department of Financial Services (DFS) entered a Notice of Intent (the agency's proposed final agency action) to the effect that it proposed to enter a final order approving the claim for unclaimed property filed by "Christine Margrave and Anthony Richard Margrave as Trustees of the Florence Alice Cassidy Trust for the benefit of Peter

Cassidy" and to withhold no amount on behalf of Petitioner. The certificate of service of that Intent is dated August 16, 2007, as evidenced by its attachment to the Department's Motion to Dismiss.

2. The Notice of Intent was received by Petitioner on August 20, 2007, as evidenced by a signed "return receipt requested" form, a copy of which is attached to the Department's Motion to Dismiss.

3. On September 11, 2007, Petitioner filed its Petition with DFS. The date of receipt by the Agency is evidenced by the Agency's date stamp on the Petition, a copy of which is attached to the Department's Motion to Dismiss.

4. On or about September 24, 2007, the cause was referred to the Division of Administrative Hearings and assigned to the undersigned. Enclosed in the referral packet was Respondent Agency's timely Motion to Dismiss with all attached exhibits.

5. On October 3, 2007, an Order was entered, pointing out (to Petitioner) that Respondent Agency's Motion to Dismiss had been incorporated in the Agency referral packet received at the Division on or about September 24, 2007, and that, in an abundance of caution, Petitioner was being granted 12 days from October 3, 2007 (that is, until October 15, 2007), to file any response in opposition to the Agency's Motion to Dismiss. Petitioner filed no timely response. On October 25, 2007, an

Order was entered taking the Agency's Motion to Dismiss under advisement.

6. On September 28, 2007, the "Response of Jennifer Christine Margrave and Anthony Richard Margrave" was filed. This item has been treated as the Trust's motion to intervene. By another October 3, 2007 Order, Petitioner and Respondent were granted the time provided in Florida Administrative Code Rule 28-106.204, in which to respond in support or opposition to the Trust's motion to intervene. This would have been 12 days from the date of the October 3, 2007, Order. Respondent Agency filed a timely response in support of the Trust's intervention. Petitioner has filed nothing to date.

7. On October 11, 2007, the Trust filed a Motion to Dismiss, incorporating by reference Respondent's Motion to Dismiss and relating that the Trust had declined to sign a power of attorney to Petitioner which would have required it to pay more than 40 percent of the value of the unclaimed asset here at issue. Petitioner filed no timely response.

8. Because it appeared that the Trust had served its two motions upon Petitioner by e-mail and to a street address which was not Petitioner's street address of record before the Division of Administrative Hearings, the undersigned, in an abundance of caution, utilized the following procedure to ensure that Petitioner would have every opportunity to respond to those

motions or object to any of the exhibits attached to any motion. By attachments to an Order entered October 25, 2007, the Trust's Motion to Intervene and Motion to Dismiss were re-served upon Petitioner by U.S. Mail at the Petitioner's correct street address of record before the Division. The Order further invited a timely response per rule. A timely response would have to have been filed with the Division on or before November 6, 2007. Petitioner filed no timely response in opposition, and has filed nothing to date.

9. On November 6, 2007, an Order was entered, granting the Trust's motion to intervene and taking the Trust's Motion to Dismiss under advisement.

10. This Recommended Order of Dismissal is entered without oral argument, as permitted by Florida Administrative Code Rule 28-106.204.

11. The pleadings of record show that on or about April 12, 2006, "P. (Peter) Cassidy" had executed a written power of attorney to Petitioner Corporation restricted to authorizing Petitioner to effect distribution of assets legally belonging to the estate of his father, Jerome G. Cassidy, to which Peter was legally entitled as sole legal beneficiary. The agreement specified a fee of \$6,845.57 to Petitioner and a net of \$10,000.00 to Peter. However, Peter, in proper person, was

not the legal owner of the asset. The Florence Alice Cassidy Trust for the benefit of Peter Cassidy, is the beneficiary.

12. Oral agreements are recognized by the Florida Statutes as follows:

Section 717.1381

(a) Any oral or written agreement or power of attorney for compensation or gain or in the expectation of compensation or gain, that includes an unclaimed property account valued at more than \$250 which was made on or before 45 days after the holder or examination report was processed and added to the unclaimed property database, subsequent to a determination that the report was accurate and that the reported property was the same as the remitted property, is void as contrary to public policy.

(b) Any oral or written purchase agreement that includes an unclaimed property account valued at more than \$250, owned by another and made on or before 45 days after the holder or examination report was processed and added to the unclaimed property database, subsequent to a determination that the report was accurate and that the reported property was the same as the remitted property, is void as contrary to public policy.

(2) A person may not enter into a power of attorney or an agreement, or make solicitation to enter into a power of attorney or an agreement, that is void under this section.

13. However, there is nothing in Chapter 717, Florida Statutes, that makes the Department or the Division the determinor of such oral agreements.

14. The Petition herein represents that an oral agreement existed between Petitioner and Intervenors (the Trust), whereby the Trust as "Claimant" agreed to pay Petitioner a "fee" or "costs" (the Petition uses both terms) for the Petitioner's services for locating the account (asset) at issue; for obtaining the necessary documents to successfully claim the account; and by Petitioner doing any and all other acts necessary in the procurement of any additional items as might be required for Petitioner to file a complete claim on Intervenors' behalf.

15. Petitioner bases the instant claim on a February 9, 2007, e-mail transmission from Intervenors to Petitioner and the circumstances surrounding it, the most notable circumstance being that prior to the February 9, 2007, e-mail, Petitioner had advised Intervenors that all necessary documents had been secured and would be forwarded to them.

16. The Trust's February 9, 2007, e-mail reads:

I can confirm however that I have now obtained a certified death certificate for Mr. Cassidy which has a similar seal to that which you describe. All the documents I shall be sending you, including the death certificates for Mr. & Mrs. Cassidy, will be copies of the originals and which will have been certified and sealed by a Notary Public. You have confirmed that the copy [sic] driving licenses of Mr. & Mrs. Margrave which I will provide as proof of identity do not need to be certified.

Perhaps you would kindly confirm that all the above will be in order and on receipt of the document by mail you will be able to complete the claim. Perhaps you could also let me know how long completion of the claim and issue of the funds will take.

On a final note I, like you, have been christened with the male version of my name but am in fact Mrs. Gabriel Gray!

17. Petitioner also relies on its own February 12, 2007, e-mail transmission to Intervenors, which sets forth as follows:

As a reminder, the Limited Powers of Attorney must also accompany the documents .
. .

Upon receipt of the documents and Limited Powers of Attorney the claim will be submitted for approval.

18. Intervenors/Trustees and their English solicitor never executed a written power of attorney on behalf of the Trust.

19. On or about March 19, 2007, Intervenors filed their own claim, as Trustees of the Florence Alice Cassidy Trust for the Benefit of Peter Cassidy, for the unclaimed property of Jerome G. Cassidy. Intervenors have presented documentation to satisfy the Agency that Jerome Cassidy pre-deceased his spouse, Florence Alice Cassidy, who is also deceased; that both Jerome and Florence died in England; that Ms. Margrave is the personal representative of the estate of Florence Alice Cassidy for the benefit of Peter Cassidy, who is the son of the decedents.

Ms. Margrave and Anthony Richard Margrave are trustees of the discretionary trust.

20. The Petition represents that it would have been impossible for Intervenors to have obtained the necessary origination of the asset (bank account) in question using the Respondent Agency's database alone.

21. Upon the foregoing and other information, Respondent Agency has determined that Petitioner has no standing and that disbursement of the asset should be made exclusively to the Trust/Intervenors.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this case only pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

23. The Agency's Motion to Dismiss is based on the concepts that: (a) the Petition was untimely; (b) Petitioner does not have standing because no injury in fact can be demonstrated, and the injury is not of a type or nature that this proceeding is designed to protect; (c) the filing of the claim by the Intervenors had the effect of revoking the alleged oral power of attorney; and (d) neither the Respondent Agency, nor the Division of Administrative Hearings has statutory authority to adjudicate the merits of private oral contracts.

24. The certified mail receipt shows that the Notice of Intent (proposed final agency action) was received by Petitioner on August 20, 2007. The Agency's date stamp on the Petition shows it was received by the Agency on September 11, 2007. Twenty-one days from August 20, 2007, would have been September 10, 2007. Therefore, the Petition was late by one day. Petitioner has had every opportunity to explain any legally cognizable reason for this tardiness and has not done so. Therefore, the case should be dismissed pursuant to Section 120.569(2)(c), Florida Statutes.

25. Regardless of any power of attorney from Peter, there is no power of attorney or written agreement/contract between the Trust/Intervenors and Petitioner. Petitioner here attempts to exercise an "oral contract," based upon an e-mail pre-dating the blank power of attorney Petitioner sent to Intervenors, which power of attorney was never signed by them in any of their official capacities. For that matter, the power of attorney sent to the Trustees was never signed at all. From the record as a whole, it would appear that even Petitioner recognized that without an executed power of attorney from the correct party, Petitioner had no enforceable contract.

26. The proposed final agency action herein involves who is entitled to receive the proceeds of Peter Cassidy's ancestors' funds which remain located in the State of Florida.

That is a decision of the Agency subject to its jurisdiction, and may be referred to the Division.

27. However, Petitioner seeks to have a contract dispute between itself and the trust for Peter Cassidy resolved in this forum. Be it an oral or written contract, the resolution of contract disputes is the exclusive jurisdiction of Article V courts. Even though Chapter 717 contains language that a circuit court might apply in order to declare that an oral contract existed or did not exist between these parties, Chapter 717, cannot vary the constitutional jurisdiction of a circuit court for applying that statutory language.

28. This case may be dismissed for lack of jurisdiction, based on untimeliness of the Petition and upon lack of subject matter jurisdiction. Therefore, it is not necessary to address the remainder of the issues or any other arguments raised by the Respondent's and Intervenors' Motions to Dismiss.

RECOMMENDATION

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

RECOMMENDED that the Department of Financial Services enter a final order dismissing the Petition herein.

DONE AND ENTERED this 6th day of December, 2007, in
Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of December, 2007.

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.