

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMERICAN RESEARCH AND
INVESTIGATIONS, INC.,

Petitioner,

vs.

Case No. 13-4953

DEPARTMENT OF FINANCIAL
SERVICES,

Respondent.

_____/
CHOICE PLUS, LLC,

Petitioner,

vs.

Case No. 13-4954

DEPARTMENT OF FINANCIAL
SERVICES,

Respondent.

_____/

RECOMMENDED ORDER

On March 4, 2014, a duly-noticed hearing was held by video-teleconference in Tallahassee and Lauderdale Lakes, Florida, before Jessica E. Varn, an administrative law judge assigned by the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner American Research and Investigations, Inc.:

Steven D. Fromang, Esquire
1861 Tenth Avenue
Vero Beach, Florida 32960

For Petitioner Choice Plus, LLC:

Michael Farrar, Esquire
Choice Plus, LLC
Suite 890
3470 Northwest 82nd Avenue
Miami, Florida 33122

For Respondent: Josephine Schultz, Esquire
Department of Financial Services
Legal Services, Room 601
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether either Petitioner is entitled to Unclaimed Property Account Number 108502717.

PRELIMINARY STATEMENT

On November 13, 2013, the Department of Financial Services (Department) issued a Notice of Intent to deny the four claims it had received for the unclaimed property identified as Account Number 108502717. Two of those claimants, the two Petitioners in this case, responded to the Notice of Intent. On November 30, 2013, Choice Plus, LLC (Choice Plus) executed a Petition for Evidentiary Hearing. On December 3, 2013, American Research and Investigations, Inc. (American Research) executed a Petition for Evidentiary Hearing.

On December 20, 2013, the Department referred both cases to DOAH. By request of the parties, the undersigned consolidated the cases, and set the hearing for March 3, 2014, by video-teleconference with sites in Tallahassee and Miami, Florida. On

February 13, 2013, Choice Plus filed a Motion for Telephonic Testimony, which although granted by the undersigned over the objection of the other two parties, was rendered moot because the intended witness passed away prior to the hearing. With the agreement of the parties, the hearing was re-scheduled for March 4, 2014, by video-teleconference with sites in Tallahassee and Lauderdale Lakes, Florida.

At the hearing, American Research presented the testimony of Riley Welchance, President of American Research; American Research Exhibits 1-5 and 8-10 were admitted into evidence. Choice Plus presented the testimony of its attorney; Choice Plus Exhibit 1 was admitted into evidence. The Department presented the testimony of Phillip Carlton, the Assistant Bureau Chief for the Bureau of Unclaimed Property; Department Exhibits 1-5 were admitted into evidence.

On March 25, 2013, a one-volume Transcript was filed. Each party filed a Proposed Recommended Order, all of which were considered in preparation of this Recommended Order.

All statutory references are to the current version of Florida Statutes, except as otherwise indicated.

FINDINGS OF FACT

1. The Department receives unclaimed property and disburses that property from the State of Florida Treasury to the rightful owners. During the last fiscal year, the Department's Bureau of

Unclaimed Property received in excess of \$300,000,000 of unclaimed property, and paid claims in excess of \$212,000,000.

2. The Department has the duty to evaluate the merits of each claim for unclaimed property and to pay only those claimants who can establish, by a preponderance of the evidence, that they are the rightful owners of the unclaimed property.

3. Anja Sova was born in 1921 in Finland, but resided in Lake Worth, Florida. Her husband's brother was married to Iina Sova, who resided in Finland. Anja Sova opened several accounts with different banks during her lifetime; two of those accounts were opened at Washington Mutual Bank, and she designated Iina Sova, her sister-in-law, and Silja Lappalainen, her grand-niece and Iina's granddaughter, as joint pay-on-death beneficiaries.

4. In January 2001, at the age of 79, Anja Sova opened a Certificate of Deposit (CD) account with Sterling Bank, depositing \$95,000.00 in the account. The CD designated the pay-on-death beneficiary as Silja Sova. Anja Sova signed the signature card for this CD three times, once right next to the name of the designated beneficiary, Silja Sova. The bank had no other information as to the beneficiary.

5. Anja Sova died in a car accident in 2002. The accounts with Washington Mutual were paid to the designated beneficiaries, her sister-in-law, and her grand-niece.

6. Unclaimed Property Account Number 108502717 consists of the matured Sterling Bank CD, worth \$127,031.97, and designates Silja Sova as the pay-on-death beneficiary. It had been held by Sterling Bank until its remittance to the Department as unclaimed property.

7. American Research is a corporate claimant representative, and represents the residual heirs of Anja Sova's estate.

8. Choice Plus is also a corporate claimant representative, and represents Silja Lappalainen, Anja Sova's grand-niece.

9. American Research ran searches through various private, social, and governmental databases in the United States, and found no person named Silja Sova.

10. In 2013, American Research also requested and received an Extract from the Population Information System in Finland. This database was created in 1969. The Extract revealed one person named Silja Sova; that person is a child born in 2009, who lives in Finland. No credible evidence was presented on whether the Extract includes only living persons, or if it also includes deceased persons (persons who were born between 1969 and 2001 and died before November 2013, when the search was done through the Extract).

11. American Research argued that Silja Sova simply does not exist. It is unknown, however, whether Anja Sova's husband

had more brothers with the surname Sova, or whether Anja Sova's father-in-law had brothers. The undersigned cannot find, given the scant evidence presented, that Silja Sova does not exist, and never existed, in Finland.

12. American Research also proposed the theory that Anja Sova purposely created a fictitious name when designating Silja Sova as the beneficiary. There was no credible evidence presented to support this theory, either; it was mere speculation.

13. An Order for Subsequent Administration was entered by a probate court in Palm Beach County, Florida, on April 11, 2013. It establishes the residual beneficiaries of Anja Sova's estate, but it does not include Silja Lappalainen, Anja Sova's surviving grand-niece.

14. Choice Plus was also unable to locate a person named Silja Sova, and argued that the CD mistakenly designated the pay-on-death beneficiary as Silja Sova when it should have read Silja Lappalainen, Anja's grand-niece who had also been a beneficiary on the Washington Mutual accounts. Curiously, Choice Plus represents Silja Lappalainen, but did not offer testimony from her at the hearing.^{1/}

15. Instead, Choice Plus offered into evidence an affidavit from Iina Sova, the deceased's sister-in-law, disclaiming any interest in the account. The affidavit is not found credible or

reliable; it is written in a language that the affiant did not speak, there is no indication that a certified translator was present while the statement was being made, and the affidavit is replete with hearsay.

16. Unfortunately, there was no credible evidence presented to support Choice Plus's argument that the designation of Silja Sova as the pay-on-death beneficiary was indeed a mistake that a then 79-year-old great-aunt made.

17. The record is void of any credible evidence which meets the preponderance of the evidence standard, entitling either Petitioner to Unclaimed Property Account Number 108502717.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

19. In any administrative proceeding for the determination of a claim for unclaimed property, the claimant has the burden of proving entitlement to the property by a preponderance of the evidence. See § 717.126, Florida Statutes.

20. The hearing is a de novo proceeding intended to formulate agency action, not to review action taken earlier. Beverly Enters.-Fla., Inc. v. Dep't of Health & Rehab., 573 So. 2d 19, 23 (Fla. 1st DCA 1990).

21. There is simply no evidence to support either of Petitioner's arguments as to their entitlement to the unclaimed property. The arguments were mere speculation; accordingly, neither Petitioner established, by a preponderance of the evidence, their entitlement to Unclaimed Property Account Number 108502717.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that American Research and Investigations, Inc.'s claim for Unclaimed Property Account Number 108502717 be DENIED. It is also RECOMMENDED that Choice Plus, LLC's claim for Unclaimed Property Account Number 108502717 be DENIED.

DONE AND ENTERED this 18th day of April, 2014, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of April, 2014.

ENDNOTE

^{1/} The grand-niece, Silja Lappalainen, could have provided relevant testimony as to the relationship she had with Anja Sova. The fact that Silja Lappalainen was a named beneficiary on two other accounts could have perhaps, coupled with a credible statement from Silja herself, met the preponderance of the evidence burden.

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.