

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHOICE PLUS, LLC, ON ITS OWN
BEHALF AS A PURCHASER OF THE
UNCLAIMED PROPERTY ACCOUNT HELD
IN THE NAME OF DONALD C.
ROGERS, SR.,

Petitioner,

vs.

Case No. 14-0895

DEPARTMENT OF FINANCIAL
SERVICES, BUREAU OF UNCLAIMED
PROPERTY,

Respondent.

_____ /

RECOMMENDED ORDER

On April 15, 2014, a duly-noticed hearing was held by video-teleconference in Tallahassee and Miami, Florida, before June C. McKinney, an administrative law judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: 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 Choice Plus, LLC is entitled to Unclaimed Property Account Number 103851316.

PRELIMINARY STATEMENT

On January 17, 2014, the Department of Financial Services ("Department") issued a Notice of Intent to deny the claim it had received for the unclaimed property identified as Account Number 103851316, reported in the name Donald C. Rogers, Sr. On February 5, 2014, Choice Plus, LLC ("Choice Plus" or "Petitioner") requested a formal hearing to contest the Notice of Intent.

On February 24, 2014, the Department forwarded the Petitioner's request to the Division of Administrative Hearings to conduct a formal hearing. The hearing was scheduled for April 15, 2014.

On April 4, 2014, the Department filed a Motion to Relinquish Jurisdiction. Petitioner filed a Motion for Official Recognition of four mandamus actions, three of which Petitioner had filed in January and February, 2014.

At the hearing, the Motion to Relinquish Jurisdiction was denied and the Motion for Official Recognition was granted. The parties offered Joint Composite Exhibits 1-A through 1-I, which were received into evidence. Choice Plus did not present any witnesses. Choice Plus Exhibits 2 through 5 were received into

evidence. The Department presented the testimony of Walter Graham, Bureau Chief for the Bureau of Unclaimed Property. The Department's Exhibit 1 was received into evidence.

This matter was recorded and transcribed. On April 29, 2014, a one-volume Transcript was filed with the Division of Administrative Hearings. Both parties filed timely Proposed Recommended Orders, which have been considered in this matter.

FINDINGS OF FACT

1. On January 25, 1999, Donald C. Rogers died.
2. On August 19, 1999, the Estate of Donald C. Rogers, ("decedent") was submitted for probate.
3. The Department received the following described unclaimed property:

Account Number: 103851316
Reported Amount: \$28,007.01
Reported Name: Rogers, Donald C. Sr.
Reported Address: Hillsborough
SSN#: None
Holder: Clerk of Court
Property Type: Cash
4. On March 22, 2005, the probate court entered an Order Granting Petitioner to Distribute Funds and to Distribute Surplus Funds into Registry of Court. The Personal Representative for the Estate had been unable to locate Sean Henry Casner ("Casner"), the decedent's grandson. Casner's share of the Estate was \$23,689.95. The Order for Discharge was rendered June 24, 2005.

5. On November 3, 2012, Casner executed a Limited Power of Attorney ("LPOA") authorizing Choice Plus to act on his behalf as Claimant's Representative. The LPOA disclosed that Choice Plus' fee was 25 percent of the funds recovered. The 25 percent equaled \$5,922.49; the net amount to Casner was \$17,767.46.

6. On April 29, 2013, the Department received a completed claim form filed by Choice Plus on behalf of Casner.

7. On August 12, 2013, Choice Plus withdrew its claim on behalf of Casner by email.

8. On August 17, 2013, Casner sold his interest in the property related to the above-referenced account ("account") to Choice Plus by means of a purchase agreement.

9. On or about August 19, 2013, Casner cashed the \$13,029.47 check from Choice Plus for the purchase agreement.

10. On September 3, 2013, the Department received a claim from Choice Plus on behalf of Casner, as the purchaser of the account.

11. The Purchase Agreement disclosed the following:

\$23,689.95=Approximate Dollar Value of the Property
\$23,689.95=Amount to be Paid to Buyer
\$13,029.47=Net Amount to be Paid to Seller
Property Account Number(s): 103851316

12. The Department issued a Notice of Intent to enter a final order denying the claim filed by Choice Plus as the purchaser for the unclaimed property relating to Account Number

103851316. The Department determined Choice Plus failed to comply with section 717.1351, Florida Statutes, by deleting the percentage line in the Purchase Agreement without a flat fee.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2013).

14. The Department is charged with the responsibility and duty of delivering or paying over to a claimant, property paid or delivered to the Department under the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes ("Act").

15. In this matter, Choice Plus has the burden of proof to establish entitlement to the property by the preponderance of the evidence. See § 717.126, Fla. Stat.

16. Respondent contends in the Notice of Intent that the specific dollar amount Choice Plus described within its disclosure section of the Purchase Agreement did not constitute a "flat fee" and therefore Choice Plus improperly deleted the percentage line item disclosure. In the Department's Proposed Recommended Order, the Department asserts that Choice Plus' "fail[ure] to disclose the amount it would receive for its services or the percentage of the account that it would receive, . . . failed to comply with the requirements of § 717.1351.

[Such] fail[ure] to clearly disclose its compensation deprived Mr. Casner of the information he needed to make an informed decision."

17. This is a de novo proceeding for the purpose of formulating agency action, not to determine whether the Department's decision was correct at the time that it made the decision. The findings of fact "shall be based exclusively on the evidence of record and on matters officially recognized." § 120.57(1)(j) and (k), Fla. Stat.

18. Section 717.1351 sets forth the law that is at issue in this matter and says in pertinent part:

PURCHASE AGREEMENT

\$ = Approximate Dollar Value of the Property

= Number of Shares of Stock (If Applicable)

= Percent of Property to be Paid to the Buyer

\$ = Amount to be Paid to Buyer

\$ = Net Amount to be Paid to Seller

Property Account Number(s):

- (6) All agreements shall include:
 - (a) The name and professional license number of the registrant.
 - (b) The name, address, and telephone number of the registrant's firm or employer.
 - (c) The name, address, and telephone number of the seller.
 - (d) The taxpayer identification number or social security number of the seller, if available.

(e) The name and address to whom the warrant is to be issued if it is different from the seller's name and address.

(f) The original signature of the registrant and the date signed by the registrant.

(7) This section does not prohibit the:

(a) Use of bolding, italics, print of different colors, or text borders as a means of highlighting or stressing certain selected items within the text.

(b) Placement of the name, address, and telephone number of the registrant's firm or company in the top margin above the words "PURCHASE AGREEMENT." No additional writing of any kind may be placed in the top margin, including, but not limited to, logos, license numbers, Internet addresses, or slogans.

(c) Deletion of the words "Number of Shares of Stock (If Applicable)" if the agreement does not relate to the recovery of securities.

(d) Deletion of the words "Percent of Property to be Paid to Buyer," if the purchase agreement provides for a flat fee to be paid as compensation to the buyer.

19. The term "flat fee" is not defined in the Department's rules or statutes. Therefore, statutory interpretation begins with the plain and obvious meaning of the statute. See Holly v. Auld, 450 So. 2d 217 (Fla. 1984).

20. In the instant case, Choice Plus complied with the requirements of section 717.1351 when it disclosed the amount it would receive for its services by specifically listing in the Purchase Agreement the value of the property, as well as how much of that value would be paid to the seller, which is the flat fee at issue. By doing so, Choice Plus provided the buyer notice of exactly what he was to receive in payment.

21. Choice Plus was not required to state the information "Percent of Property to be Paid to Buyer" because that information was not required since the Purchase Agreement provided the fixed amount of \$23,689.95, a flat fee, to be paid as compensation to the buyer. The evidence in this matter demonstrates Choice Plus is in conformity with the requirements of the Act. Therefore, Choice Plus has met its burden and established entitlement to the Account Number 103851316.

RECOMMENDATION

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

RECOMMENDED that a final order be entered granting Choice Plus claim to the unclaimed property Account Number 103851316.

DONE AND ENTERED this 24th day of June, 2014, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of June, 2014.

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.