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LEGAL

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES

**CHOICE PLUS, LLC**, on behalf of:  
BENGT ROLAND DAHLQVIST; ANN-KRISTIN  
DAHLQVIST BERLIN; BARBRO BRITT MARIE  
LINDEN BARKMAN; BERT ERIK GORE LINDEN;  
CARL JOHAN TEGGE; MALIN CAROLINE  
CHARLOTTE TEGGE; LARS RAGNER LINDEN;  
GUNVOR MARIA LINDEN WILHDE;  
MARIANNE ELISABETH LINDEN HOLM; and  
ANITA MAGARETHA NYBERG.

Petitioners,

DOAH Case No. 15-0215  
DFS Case No. 145113-13-CI

v.

**DEPARTMENT OF FINANCIAL SERVICES,**  
**BUREAU OF UNCLAIMED PROPERTY,**

Respondent.

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**FINAL ORDER**

This cause is before me for consideration of an Order Granting Motion to Relinquish Jurisdiction and Closing File rendered by Administrative Law Judge Thomas Crapps of the Division of Administrative Hearings (“DOAH”). No exceptions to this order were filed.

Choice Plus is a claimant’s representative registered with the Department to submit unclaimed property claims for third parties. Choice Plus initiated and prosecuted all proceedings in connection with this matter on behalf of ten individuals, all of whom are residents of Sweden; the names of these persons are included in the caption of this case (“the Swedish claimants”). Choice Plus asserts the Swedish claimants are the previously unlocated heirs of Florida decedent Inez Rigley who are entitled to the monies comprising the estate of the late Ms. Rigley in the custody of the Department as an unclaimed property account (“the Rigley account”). In order to support this claim, in 2012, Choice Plus initiated *ex parte* Florida probate proceedings to have

the Swedish claimants judicially determined to be heirs of the late Ms. Rigley. Thereafter, Choice Plus filed a claim for the Rigley account based solely on the *ex parte* Florida probate court order they obtained. The Department, in order to determine whether the Swedish claimants are indeed the appropriate heirs to Ms. Rigley's unclaimed property, requested that Choice Plus provide documentation to prove the familial connection. Choice Plus repeatedly refused the request, even going so far as to seek a protective order against the Department's efforts to depose the Swedish claimants in the DOAH proceeding. Choice Plus' adherence to its position ultimately led Judge Crapps to conclude the Department's intended denial of the pending claim hinges entirely on the Department's legal authority to require Choice Plus to supply the requested documents, rather than on whether the Swedish claimants are, in fact, Rigley's proper heirs. With no material facts in dispute, Judge Crapps relinquished jurisdiction over the proceeding, so the Department could address the legal issue in a final order.

Judge Crapps' order, at pp. 2-3, concisely captures the parties' complete opposition concerning the Department's lawful authority and obligation to review and determine the validity of the claim for the Rigley account:

The Department's argument here is that pursuant to Article IV, section 4(c), Florida Constitution, and chapter 717, Florida Statutes (2014), the Department has a duty to determine the claimants' entitlement to escheated funds that have been transferred to the Chief Financial Officer pursuant to section 732.107, Florida Statutes.

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Choice Plus argues that nothing in section 717.124 provides the Department with the authority to determine entitlement to escheated funds. . . . In sum, Choice Plus's argument is that the Department's duty is a ministerial one requiring it to disburse the funds according to the probate court's order, rather than a duty to conduct an independent determination of the claimants' entitlement under chapter 717.

Judge Crapps, in remanding the matter for final determination by the Department, explained:

The resolution of this issue turns on a question of law rather than one of fact concerning the identity of the claimants. The relevant question of law concerns the Department's interpretation of its duties under chapter 717 in determining the claimants' entitlement to the escheated funds, in light of the probate court's order identifying the claimants and each claimants' respective share made pursuant to chapter 732. Because the instant case does not involve a question of material fact, it is appropriate to relinquish jurisdiction to the Department for entry of a final order.

#### Undisputed Facts

On January 23, 2014, the Department issued a Notice of Intent to deny Choice Plus' claim. The Notice of Intent included the following proposed findings of fact which, with the single exception noted below, accurately delineate the material facts relevant to this order:

1. The Department holds \$98,185.79 in the State Treasury in unclaimed property account 103834975 (the "Funds"), reported by the Clerk of Court of Pinellas County, Florida, pursuant to section 732.107, Florida Statutes, in the name of "Inez Eleanor Rigley" with a date of last contact of February 14, 2006.
2. On July 22, 2013, Choice Plus, LLC, a private investigative agency registered with the Department as a claimant's representative, filed claim number C5295692 for the Funds.
3. Darrilyn Borba, Managing Member of Choice Plus, LLC, signed the claim under penalty of perjury.
4. The claim does not include the death certificate of Inez Eleanor Rigley<sup>1</sup> or the death certificates of any of the purported deceased heirs of Inez Eleanor Rigley.
5. Submitted in support of the claim is a verified Petition to Determine Beneficiaries in the matter of the Estate of Inez Eleanor Rigley, Deceased.
6. Darrilyn Borba, "as agent for all of the heirs of this estate" and Kelly Culbertson, Esquire, as attorney for Darrilyn Borba, signed the Petition to Determine Beneficiaries under penalty of perjury.

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<sup>1</sup> Choice Plus provided a death certificate for Rigley in June of 2014.

7. The verified Petition to Determine Beneficiaries alleges that Thorwald Linden was Inez Eleanor Rigley's father; that Linnea Dahlqvist was Inez Eleanor Rigley's mother; and that the ten Claimants are the first cousins and first cousins once removed of Inez Eleanor Rigley.
8. The claim does not include Inez Eleanor Rigley's birth certificate. The claim does not include the birth certificates of the ten Claimants.
9. The verified Petition to Determine Beneficiaries alleges that the ten Claimants are the surviving heirs of Inez Eleanor Rigley.
10. An anonymous diagram which purportedly shows the genealogical relationships of the maternal and paternal kindred of Inez Eleanor Rigley is attached as exhibit B of the verified Petition to Determine Beneficiaries.
11. An anonymous summary of the purported relationships of the maternal and paternal kindred of Inez Eleanor Rigley is attached as exhibit C of the verified Petition to Determine Beneficiaries.
12. The anonymous summary, described by [Choice Plus] as a "researcher's report" lists 33 documents under the heading "endnotes." The listed documents are not attached to the verified Petition to Determine Beneficiaries.
13. The claim omits at least 32 of the 33 documents listed under the heading "endnotes" on the last page of the anonymous summary. One of the documents listed merely as "parish record" may be the purported adoption record filed with the claim; however, due to the failure to include authenticated copies of the 33 listed documents, or any verifiable information as to the present location of the documents, this cannot be determined.
14. Submitted with the claim is an ex parte Order Determining Beneficiaries which finds that the ten Claimants are the sole heirs of Inez Eleanor Rigley.

#### Discussion

After receiving the Notice of Intent, on February 14, 2014, Choice Plus filed a "Petition for Formal Administrative Proceedings and to Challenge Agency Action Based Upon Unadopted Rules." In the petition, Choice Plus alleged its claim was complete when filed; that the NOI was

based on an unadopted rule; and that the Department issued the NOI for an improper purpose.<sup>2</sup> The petition did not identify any disputed issues of material fact and did not dispute the findings contained in the NOI. The Swedish claimants were not named as petitioning parties in the petition.

On March 3, 2014, the Department issued an Order Dismissing Request for Hearing and Granting an Additional 21 Days to Request a Hearing. Specifically, the dismissal order concluded the petition did not state how Choice Plus, as sole petitioning party, had an *independent* interest in Rigley's property that would be affected by the denial without prejudice of an incomplete claim. The Department granted Choice Plus an additional 21 days to file an amended petition. The Department served the order by certified mail on Choice Plus at its Florida address of record and by registered mail on each of the claimants at his or her address of record in Sweden.

On March 24, 2014, Choice Plus, adding the Swedish claimants as petitioning parties, filed an "Amended Petition for Formal Administrative Proceedings and to Challenge Agency Action Based Upon Unadopted Rules." The amended petition repeated the allegations of Choice Plus' original petition: that its claim was complete; that the Department's intended action was based on an unadopted rule; and that the Department issued the NOI for an improper purpose. The amended petition also did not dispute the findings of the NOI and did not identify any other disputed issue of material fact. The amended petition averred, in essence, that a connection between the Swedish claimants and Ms. Rigley was conclusively established by the ex parte probate order.

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<sup>2</sup> The Department issued the NOI following an original proceeding in which Choice Plus sought a Writ of Mandamus to compel the Department to issue the NOI. *Choice Plus, LLC, v. Dep't. of Financial Servcs., Bureau of Unclaimed Property*, 135 So. 3d 1163 (Fla. 1st DCA 2014).

On May 12, 2014, the Department denied a formal administrative hearing because there was no dispute of material fact, and instead ordered an informal hearing pursuant to section 120.57(2), Florida Statutes. On September 24, 2014, an informal hearing was held before hearing officer Michael Davidson, who issued a Written Report and Recommendation on October 24, 2014. Mr. Davidson's recommendations, however, were not accepted. By order dated January 12, 2015, the Department, in an abundance of caution, referred the matter to DOAH in an attempt to resolve the issue of whether the Swedish claimants were Rigley's heirs.

After proceedings were commenced at DOAH, however, it became evident that Choice Plus did not dispute the material facts outlined in the Notice of Intent, but rather was seeking a DOAH determination that the Department was obligated to approve its claim solely because the probate court had issued an order finding the Swedish claimants to be the heirs of Ms. Rigley.

As noted above, Choice Plus went so far as to seek protective orders against Department efforts to depose the Swedish claimants and the person responsible for the otherwise anonymous "researcher's report" on which the heirship assertions were founded. Choice Plus made clear it would not produce these witnesses or the documents critical to establishing the claim.

Consequently, on March 2, 2015, oral argument was held before Judge Crapps on the question of whether any dispute of material fact between Choice Plus and the Department warranted formal fact finding under section 120.57(1), Florida Statutes. The outcome of the hearing was the administrative law judge's order, reproduced in pertinent part above, relinquishing jurisdiction to the Department for the entry of a final order on the issue of whether the Choice Plus claim should be denied.

Throughout the progress of this matter, Choice Plus has insisted that disputed issues of material fact required it to be given a formal evidentiary hearing at DOAH. When Choice Plus

was given the opportunity it demanded to prove its claim, it declined to do so, asserting only that the Department was obligated to approve its claim based upon what Choice Plus had already submitted. When pressed by the Department, Choice Plus was not able to persuade an independent administrative law judge that any material factual dispute existed. In light of this, the Department recedes from the position taken in its order of January 12, 2015, that a dispute of material fact might exist which would warrant proceeding before DOAH. Consequently, this Final Order, limited by Choice Plus' refusal to supply documentation for its claim, addresses only the two inextricably linked threshold legal questions: whether the Department has a ministerial duty to approve the claim merely because a probate judge's order, rendered in an *ex parte* proceeding brought by Choice Plus, identified Choice Plus' foreign clients as heirs of Inez Rigley; and whether, in reliance on that order, Choice Plus may refuse to provide the documentation supporting its claim for the Department's evaluation.

There is no dispute that Choice Plus failed to supply a variety of documentary information required by statute and rule and duly requested by the Department for the purpose of evaluating the claim. As stated in the Notice of Intent and never controverted by Choice Plus, Choice Plus initially declined to provide a death certificate for Ms. Rigley and never supplied them for the alleged intermediate heirs of Rigley through whom Choice Plus' clients are supposed to have inherited a portion of the Rigley estate. Nor did Choice Plus provide birth certificates for Ms. Rigley or for any of the Swedish claimants. Even though its entire claim rests on a single *ex parte* probate order, Choice Plus declined to provide to the Department all of the supporting documentation it supplied to the probate court in order to secure that order. An anonymous diagram which purported to show the genealogical relationships of the maternal and paternal kindred of Ms. Rigley was furnished as an exhibit to the Choice Plus probate petition, as

was an anonymous summary of the purported relationships of the maternal and paternal kindred of Ms. Rigley, called by Choice Plus a “researcher’s report.” 32 out of the 33 documents identified as “endnotes” to the “researcher’s report,” however, were not supplied to the Department, effectively preventing any independent analysis of the anonymous report.

The claimant for an unclaimed property account bears the burden to submit to the Department a preponderance of evidence which establishes his or her entitlement. § 717.126(1), Fla. Stat. (2014). If a claimant asserts entitlement to unclaimed funds by reason of a court document, a certified copy of the document must be filed with the claim. § 717.1262, Fla. Stat. (2014). Where, as here, the claimant asserts entitlement as a beneficiary or as an estate, the claim must also include “appropriate documentation” which connects the claimant to the decedent. *See* Fla. Admin. Code R. 69I-20.00522(3)(b). In this context, probate records are – with limited exceptions – public records available upon payment of the clerk’s service charge. Consequently, in order to negate the possibility of a fraudulent claim based solely on readily available court records, “appropriate” documentation to support an estate claim should reasonably include documents which are not available to the general public. *See* § 28.223, Fla. Stat. (2014).

The court documents tendered by Choice Plus, standing alone, do not conclusively establish its claimants’ connection to Rigley. Documents from the original 2006 probate of the Rigley estate show that the probate court concluded Rigley died without being survived by any heirs, and that the estate proceeds should be deemed escheated to the state. Documents from the 2013 proceedings show that Choice Plus alleged its claimants were Rigley’s sole heirs on the basis of the anonymous diagram and “researcher’s report.” Although Choice Plus has asserted that it demonstrated its claimants’ entitlement to the Rigley account to the probate judge, it is



required to demonstrate that entitlement to the Department in order to receive a disbursement of funds held in the State Treasury.

The Florida Legislature has vested in the Department sole jurisdiction to administer the Disposition of Unclaimed Property Act and to determine the merits of each claim for funds held in the State Treasury. *See* §§ 717.124, 717.1242(1), 717.1244, 717.1301(1), 717.1341, 717.138, Fla. Stat. (2014). Florida appellate courts have expressly recognized this authority. *See Atwater v. Citibank Fed. Savings Bank*, 96 So. 3d 1000, 1001 (Fla. 3d DCA 2012) (“[t]he trial court is without jurisdiction to compel the Department to disburse funds without the Department first having determined the entitlement of the claimant to the funds” because “[t]he [Department] is vested with the sole authority to make financial determinations as to unclaimed funds”). This authority includes the power to determine claims for alleged probate assets. *See* § 717.1242(1), Fla. Stat. (2014). In *Atwater v. City of Cape Coral*, 120 So. 3d 595, 599 (Fla. 2d DCA 2013), the court held that section 717.1242(1), Florida Statutes “expressly relates to probate proceedings.”

The Department rejects Choice Plus’ contention that it is under a ministerial duty to defer to the probate court order in this proceeding. Although Choice Plus has labored to draw a semantic distinction between “escheated” funds and “unclaimed” funds in the possession of the Department, it is a distinction without a difference in the context of this case. Section 717.124 (8), Florida Statutes, plainly states that the claims procedures applicable under chapter 717, Florida Statutes, apply to all property so reported and remitted, including property remitted, as were the Rigley estate proceeds, under section 732.107, Florida Statutes. The Department operates under uniform procedures relating to claims for funds deposited by the Department in the State School Fund over which it has custodial authority, irrespective of whether, by operation

of law funds now “unclaimed” may someday come to be permanently “escheated” to the State.

As stated in section 717.1242, Florida Statutes:

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 beneficiary, as defined in s. 731.201, 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.

The Department’s authority in this regard is intended to effectuate, to the greatest extent possible, the Legislature’s purpose of protecting the interests of missing owners of property. *See* § 717.139, Fla. Stat. (2014). To achieve this purpose, the institutional role of the Department is different than that of a probate judge, who is not expressly charged with the protection of missing owners. In order to negate the likelihood that funds might be distributed to someone who is not the *sole* missing owner—or indeed, who might not be a missing owner at all—the Department must seek information from the claimant or the claimant’s representative that illuminates the underpinnings of the claim under review, including the critical question of whether there might be persons other than the claimant with a bona fide interest in the property in question. Choice Plus declined to accommodate the Department in this respect at its own peril, especially in the context of a claim made on behalf of foreign persons who have not been shown to be lineal descendants of the decedent. That a probate judge, in an *ex parte* proceeding, might be willing to accept anonymous documentation as conclusive does not relieve the Department of its responsibility to ask questions that a busy probate judge in Pinellas County might not feel obligated to ask. The First District Court of Appeal has upheld the denial of an unclaimed property claim because the claiming locator “did not sufficiently provide information necessary for DFS to process the claim.” *See National Equity Recovery Serv., Inc. v. Dep’t of*

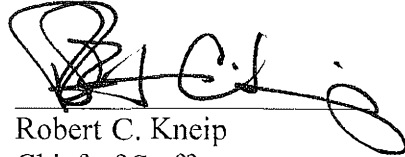
*Financial Serv.*, 127 So. 3d 1291 (Fla. 1<sup>st</sup> DCA 2013). This is precisely why Choice Plus' claim here must be denied.

In its "Motion for Reconsideration" dated April 7, 2015, Choice Plus, notwithstanding Judge Crapps' remand of the matter to the Department, insists the Department should again send the claim back to DOAH. Choice Plus ignores that the Department, not DOAH, is the forum for the determination of unclaimed property claims. The Department has afforded Choice Plus multiple opportunities to supply documentation the Department has determined necessary to evaluate the current claim on the merits. Choice Plus repeatedly declined to supply that documentation, and still has not done so as of the date of this order. There remain no disputed material facts for DOAH to resolve.

This denial of Choice Plus' claim on behalf of its Swedish clients does not forever foreclose a future claim. The alleged heirs may, at any time, file a new claim accompanied by such appropriate documentation as may be requested by the Department. Any person asserting an interest in unclaimed property held in the State Treasury, Choice Plus bears the burden to establish entitlement to the property by a preponderance of the evidence submitted. §§ 717.124, 717.126(1), Fla. Stat. (2013); Fla. Admin. Code R. 69I-20.0022(1), 69I-44.021(2)(a). If a claimant asserts entitlement as a beneficiary or an estate, the claim must include appropriate documentation which connects the claimant to the decedent. Fla. Admin. Code R. 69I-20.00522(3)(b). If a claimant asserts entitlement by means of the death of any person, the claim must include the death certificate of each decedent. § 717.1261, Fla. Stat. (2013). The documentation filed with the pending claim does not establish claimants' entitlement to funds

that previously belonged to Ms. Rigley. Accordingly, Claim C5295692 is DENIED.

DONE and ORDERED this 29<sup>th</sup> day of June, 2015.



Robert C. Kneip  
Chief of Staff

NOTICE OF RIGHT TO APPEAL

Any person adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Fla. R. App. P. 9.110. Review proceedings must be instituted by filing a notice of appeal with Julie Jones, CP, FRP, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0390, and a copy of the same accompanied by the required filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

COPY FURNISHED TO:

Seann M. Frazier, Esq.

Lori L. Jobe, Esq.