

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL
SERVICES,

Petitioner,

vs.

Case No. 16-3242

MICHELANGELO MORTELLARO, GINA
SINADINOS, AND MORTELLARO AND
SINADINOS, PLLC,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, on August 30, 2016, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Josephine A. Schultz, Esquire
Department of Financial Services
Office of the General Counsel
200 East Gaines Street, Room 645E-5
Tallahassee, Florida 32399

For Respondent: Jenay E. Iurato, Esquire
Iurato Law Firm, PL
Suite 203
10012 North Dale Mabry Highway
Tampa, Florida 33618

STATEMENT OF THE ISSUES

Whether Respondents assisted their client in receiving unclaimed property to which the client was not entitled, and, if so, what discipline should be imposed against Respondents' locator registration with the Florida Department of Financial Services.

Whether Respondents received and refused to return unclaimed property to which they were not entitled, and ,if so, what discipline should be imposed against Respondents' locator registration with the Florida Department of Financial Services.

PRELIMINARY STATEMENT

On May 4, 2016, the State of Florida, Department of Financial Services (Department), issued against Michelangelo Montellaro, Esquire; Gina M. Sinadinos, Esquire; and Mortellaro & Sinadinos, PLLC (collectively referred to as Respondents), an Administrative Complaint to Revoke Registration and Notice of Rights (Administrative Complaint). In response to the Administrative Complaint, Respondents timely filed a Petition for Formal Administrative Hearing. By correspondence dated June 13, 2016, the matter was forwarded to the Division of Administrative Hearings (DOAH) for a disputed-fact hearing.

Petitioner offered the testimony of Ms. Tawana McClellan, a financial administrator with the Department's Division of Unclaimed Property. Ms. Sinadinos testified on behalf of

Respondents, and Respondents called no other witnesses. Joint Exhibits 1 and 2 were admitted into evidence. Petitioner's Exhibits 2, 5, and 7 through 14 were admitted into evidence. Respondents' Exhibits 16-A, 16-C, 30, 38, 50 (Bates 00084 through 00086 and Bates 000150 through 000152), 69 (Bates 00069 found at Exhibit 50), 71, 78, 95 through 97 and 100 were also admitted into evidence.

A Transcript of the disputed-fact hearing was filed with DOAH on September 20, 2016. The parties timely filed proposed recommended orders, which have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

On November 26, 2014, United States Magistrate Judge Thomas B. McCoun, III, Middle District of Florida, in response to a Motion to Stay filed in a related case by Mortellaro & Sinadinos, PLLC, entered an Order denying the motion. Magistrate McCoun's Order provides an excellent overview of the facts underlying the instant dispute. The "background facts" set forth below are, in part, taken from Magistrate McCoun's Order.

A. Background Facts

1. During all times relevant hereto, the Department was responsible for examining and approving all claims for unclaimed property under chapter 717, Florida Laws (2013). Section 717.1400, Florida Statutes, provides that State of Florida

licensed private investigators, certified public accountants, and attorneys must register with the Department if they desire to file claims on behalf of claimants seeking unclaimed property from the Department. Upon successfully completing the registration process, a claimant's representative is assigned a locator identification number.

2. During times relevant hereto, Michelangelo Mortellaro and Gina M. Sinadinos were members in good standing of The Florida Bar. Mr. Mortellaro and Ms. Sinadinos are shareholders in the law firm of Mortellaro & Sinadinos, PLLC.

3. Attorneys Mortellaro and Sinadinos registered with the Department as representatives authorized to assist claimants and were jointly issued locator identification number 103423042. In the instant dispute, Respondents were retained by the Estate of Darlene Swaim to file with the Department a claim for unclaimed property.

4. Diann Capwell and Darlene Swaim had a joint checking account at Wachovia Bank, N.A. (Wachovia). Ms. Capwell, who received social security benefits, passed away on April 23, 1989. From April 1989 through March 2010, the Social Security Administration (SSA) deposited approximately \$247,619.00 in benefits for Ms. Capwell into the joint checking account that she held with Ms. Swaim. On March 17, 2004, Ms. Swaim passed away.

5. According to the Department, on April 30, 2010, Wachovia reported to the Department that it held \$182,248.61 in unclaimed property in the account titled in the names of Ms. Capwell and Ms. Swaim. Wachovia remitted the funds to the Department, which, in turn, held the \$182,248.61 in an unclaimed property account.

6. On November 2, 2012, a Petition for Administration of the Estate of Ms. Swaim was filed in the probate division of the Circuit Court for Broward County, Florida. Mack A. Swaim served as the personal representative of the estate.

7. On February 14, 2013, Attorneys Mortellaro and Sinadinos, pursuant to their registered locator status, filed a claim with the Department on behalf of the Estate of Darlene Swaim for the \$182,284.61 (Swaim claim). Upon approval of the claim, Attorneys Mortellaro and Sinadinos would receive 50 percent of the funds as its locator fee.

8. On July 24, 2013, the Department approved the Swaim claim and issued a paper warrant payable to the Estate of Darlene Swaim, c/o Mack A. Swaim, in the amount of \$91,142.31 (purported estate funds). The paper warrant for the purported estate funds was delivered to the Mortellaro & Sinadinos law firm.

9. On July 26, 2013, the Department disbursed, via electronic funds transfer, the remaining \$91,142.30 to the Mortellaro & Sinadinos law firm as payment of its locator fee.

B. The Social Security Administration

10. On August 1, 2013, SSA notified the Department that the purported estate funds should not have been deposited into the Wachovia joint checking account following Ms. Capwell's death. SSA did not file a formal claim with the Department until August 14, 2013.

C. The Purported Estate Funds

11. On August 2, 2013, the following email exchange occurred between the Department and Respondents.

From the Department (8/2/13 at 2:26 p.m.):

I received notification from the Soc. Sec. Admin. that there was a \$200,000+ overpayment into the account that was reported to this office. As such, the Soc. Sec. Admin. is entitled to these funds, not the estate or your office. I am currently in the process of cancelling the warrant that was issued to the PR and I advise you to return your fee to this office within 15 days.

From Respondent (8/2/13 at 3:20 p.m.):

Please be advised that the checks, including the estate check, have been negotiated. With that said, we have not disbursed any of the funds; nor will we, until this matter is resolved. Please be further advised that since the estate is still open, the probate court has exclusive jurisdiction over the estate assets. This position is clearly in line with the unclaimed property statute 717.1242, F.S., - Restatement of jurisdiction of the circuit court sitting in probate and the department. Since this law firm has a fiduciary responsibility to the Personal Representative and the beneficiaries of the

estate, it will not release estate funds without the probate court entering an order directing same.

12. On or about August 2, 2013, the paper treasury warrant representing payment to the estate was initially deposited into a checking account opened for the Estate of Darlene Swaim at SunTrust Bank. SunTrust is the same bank where Respondents maintain multiple accounts, including the firm's IOTA trust account. At the time of presentation of the paper warrant to the bank, SunTrust provisionally made the funds available to the estate for withdrawal. Respondents, after being contacted by the Department on August 2, 2013, regarding SSA's claim, immediately transferred the estate funds into the firms' IOTA trust account for safekeeping.

13. The Department, after receiving Respondents' email reply of August 2, 2013, immediately contacted SunTrust and informed the bank that the paper warrant presented to the bank for payment to the Estate of Darlene Swaim was void. SunTrust reversed the provisional credit to the estate checking account which resulted in the estate account being overdrawn by approximately \$91,000. Because SunTrust had only issued a provisional credit for the deposit of the estate funds, this meant that SunTrust needed to reconcile the estate checking account. Accordingly, SunTrust, soon after Respondents

transferred the estate funds into their trust account, debited Respondents' trust account in the amount of \$91,142.31.

14. The evidence shows that the estate funds were provisionally made available to both the Estate of Darlene Swaim and Respondents. The evidence also conclusively establishes that monies from the State treasury were never released by the Department to SunTrust, the Estate of Darlene Swaim, or Respondents.

15. On or about August 27, 2013, Respondents filed with the probate division of the Circuit Court for Broward County, Florida, an Emergency Motion to Return Estate Funds. Respondents' emergency motion argued, in part, that the Department lost jurisdiction of the monies at issue once it approved the estate's claim, and that the circuit court, sitting in probate, possessed exclusive jurisdiction to resolve any dispute regarding the estate funds.

16. On September 6, 2013, the circuit court held a hearing on Respondents' emergency motion. The Department did not attend the hearing, and claims that it never received notice of the same. Respondents assert that the Department received proper notice of the hearing on the emergency motion but, for whatever reason, elected not to attend. Nevertheless, the circuit court, after hearing argument from Respondents on the emergency motion,

verbally granted the motion and directed Respondents to provide the court with a written order outlining the court's ruling.

17. By correspondence dated September 9, 2013, the Department advised Respondents that they should "immediately return the \$91,142.31 (locator fee) to which the firm is not entitled [and] [i]f [they] fail to return these funds within ten days, the Bureau will pursue appropriate remedies for conversion of the funds."^{1/} The letter makes no mention of the emergency motion that was then pending before the circuit court. Furthermore, the September 9, 2013, letter to Respondents does not contain a Notice of Rights statement or any other language which provided Respondents with a clear point of entry to challenge the Department's contention that Respondents possessed funds (i.e., the locator fee) to which they were not entitled.

18. On September 23, 2013, the Department responded in writing to the emergency motion and argued to the circuit court that the Department has exclusive jurisdiction to determine the merits of claims for unclaimed property held in the State treasury. The circuit court was not persuaded by the Department's assertions, and on October 30, 2013, entered a written Order granting Respondents' motion and directed therein that the Department return the \$91,142.31 to the Estate of Darlene Swaim on or before November 19, 2013.

19. The Department neither appealed nor complied with the Order of the circuit court, but instead, on November 15, 2013, issued a Notice of Intent to Approve Claim (Notice of Intent) in favor of the SSA in the amount of \$182,284.61. A Notice of Rights statement, for the first time, was included with the Notice of Intent. Despite the fact that Respondents were now provided with a point of entry to challenge the Department's actions, they elected not to challenge the intended action, in part, because they had an Order from the circuit court directing the Department to return the purported estate funds.

20. On January 9, 2014, the Department entered a Final Order Approving Claim (Final Order) in favor of the SSA in the amount of \$182,284.61. In addition to the Final Order, the Department also issued a separate Notice of Intent to Offset and Notice of Rights, wherein the Department advised that it was seeking to collect the \$91,142.30 locator fee that Respondents still possessed with respect to the Estate of Darlene Swaim from other claims where Respondents were owed locator fees.

21. On February 7, 2014, Respondents appealed the Final Order approving SSA's claim to the First District Court of Appeal, State of Florida (DCA). Among other things, Respondents requested the DCA "to reverse the final order, and order the Department to return the funds it ha[d] taken from the estate in accordance with its July 24, 201[3], approval of the estate's

claim as well as the probate court's order directing the return of the [estate] funds." On March 14, 2014, while Respondents' appeal to the DCA was pending, the Federal Bureau of Investigation (FBI) seized the \$91,142.30 locator fee from Respondents' bank account.

22. On August 19, 2014, Respondents filed a Verified Claim with the United States District Court seeking return of the seized locator fee. The Department was not a party to the seizure action, and the Estate of Darlene Swaim elected not to participate in the same. After some additional legal wrangling, and recognizing that recovery of its locator fee was contingent upon a successful recovery of the unclaimed monies by the estate (with the claim of the estate having been abandoned by Mr. Swaim), Respondents, on January 20, 2015, withdrew their Verified Claim with respect to the seized locator funds.

D. Respondents "Received" the Locator Fee

23. As noted above, Respondents, in their August 2, 2013, email to the Department, advised that "we have not disbursed any of the funds; nor will we, until this matter is resolved." Respondents' representation to the Department that none of the funds would be disbursed reasonably implies that all funds, including the locator fee, would be deposited in Respondents' trust account.

24. Rule 5-1.1(f), of The Florida Bar Rules Regulating Trust Accounts, provides as follows:

Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property shall be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm shall be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Rule 5-1.1(f) makes clear that when a lawyer is in possession of disputed property and the lawyer claims an interest in the same, the property shall be treated as trust property and, therefore, kept separate until such time as the dispute is resolved. If Respondents had maintained the locator fee in the firms' trust account during the pendency of the dispute, Respondents would be in a better position to assert that the firm never actually received the locator fee because of the special character of property held in trust.

25. In her Verified Claim filed with respect to the seized locator fee, Respondent Sinadinos attests to the following:

On July 26, 2014, the Department issued a warrant in favor of [Respondents] in the amount of \$91,142.30, effectuated by electronic funds transfer, to a bank account of Claimant at SunTrust Bank.

Shortly thereafter, [Respondents] transferred the \$91,142.31 into [Respondents'] savings account at SunTrust Bank.

Subsequently, for accounting purposes, [Respondents] opened a money market account at SunTrust Bank, account number xxx0890, wherein it deposited the \$91,142.31 warrant in favor of [Respondents] issued by the Department in connection with claim no. C5047499.

The \$91,142.30 was seized pursuant to a seizure warrant . . . from SunTrust account number xxx0890.

While the Verified Claim references two different amounts, it is clear that the locator fees are the same monies that were seized by the FBI from Respondents' money market account.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding.

§§ 120.569 and 120.57(1), Fla. Stat. (2016).^{2/}

27. The Department, pursuant to sections 717.1322 and 717.1341, Florida Statutes, seeks to revoke locator license number 103423042 issued by the Department to Attorneys Mortellaro and Sinadinos. Accordingly, the Department has the burden of establishing by clear and convincing evidence the facts necessary to support revocation. See, e.g., Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987). Clear and convincing evidence has been described by the courts as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (citing Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

28. Section 717.1341(1) (a) provides in part as follows:

No person shall receive unclaimed property that the person is not entitled to receive. Any person who receives, or assists another person to receive, unclaimed property that the person is not entitled to receive is strictly, jointly, personally, and severally liable for the unclaimed property and shall immediately return the property.

29. Neither chapter 717 nor the Department's rules pertaining to the same, define what it means to "receive" property within the meaning of the statute. According to Black's Law Dictionary, "receive" means "to take into possession and control." Black's Law Dictionary 1140 (5th ed. 1979).

30. The evidence shows that the Estate of Darlene Swaim never took possession and control of the purported estate funds because these funds were never disbursed from the State treasury. Accordingly, the Estate of Darlene Swaim did not "receive" unclaimed property from the Department. Therefore, the

Department has failed to prove that Respondents assisted the estate in receiving unclaimed property that the estate was not entitled to receive.

31. As for the locator fee, Respondents clearly had possession of the fee as evidenced by the fact that the Department, by way of electronic transfer, deposited the monies into one of the firm's accounts at SunTrust Bank. The evidence also clearly establishes that Respondents had control of the locator fee as evidenced by the fact that Respondents moved the monies between several of the firm's bank accounts. Simply stated, Respondents, by placing the locator fee in multiple business accounts, none of which were the firm's trust account, exercised both possession and control over these funds for the period July 26, 2013, through March 14, 2014. The locator fee was "received" property within the meaning of section 717.1341.

32. For there to be liability under section 717.1341(1)(a), the evidence, in addition to showing that Respondents received unclaimed property, must also clearly and convincingly establish that Respondents were not entitled to the unclaimed property. The evidence establishes that on July 26, 2013, Respondents were entitled to the locator fee because the Department had, at that time, approved the estate's claim for the unclaimed property at issue.

33. The Department argues that Respondents ceased being entitled to the locator fee commencing August 2, 2013, when the Department notified Respondents via email that the purported estate funds belonged to the SSA. Contrary to the Department's assertion, the August 2, 2013, email amounted to nothing more than a "heads-up," and consequently of little, if any, legal significance, because the facts underlying the email (i.e. the claim of SSA) had not yet been established as a matter of final agency action.^{3/} Similarly, the Department's letter of September 9, 2013, to Respondents was also of no legal significance as to Respondents' entitlement to the locator fee because the letter suffered from the same shortcomings as the email of August 2, 2013.

34. The circuit court's Order Granting Emergency Motion to Return Estate Funds had the practical effect of bolstering Respondents' claim to the locator fee because as of the date of the Order (October 30, 2013), there was now a judicial determination indicating that the Estate of Darlene Swaim was entitled to the funds being held by the Department. The Department's July 26, 2013, approval of the estate's claim coupled with the circuit court's Order of October 30, 2013, establishes that Respondents had at least a colorable claim of entitlement to the locator fee. Alternatively stated, the evidence does not clearly and convincingly establish that

Respondents were not entitled to the locator fee during this period of time.

35. Section 717.1241(3), provides that “[a] claim is complete when entitlement to the unclaimed property has been established.” Consistent with this section, SSA’s claim to the monies at issue was not complete until January 9, 2014, when the Department issued its Final Order Approving Claim filed on behalf of SSA. On January 9, 2014, Respondents were postured such that on the one hand, there was an un-appealed Order from the circuit court saying that the estate was entitled to the purported estate funds, which meant that Respondents were entitled to the locator fee; and on the other hand, there was a Final Order from the Department saying that the estate was not entitled to the funds because all of the money, including Respondents’ locator fee, belonged to SSA.^{4/}

36. The Department relies heavily on Atwater v. City of Cape Coral, 120 So. 3d 595 (Fla. 2d DCA 2013), in support of its contention that the circuit court’s Order in the instant case was wrong and therefore offers Respondents no safe haven in the instant revocation action. In Atwater, the claimant attempted to bypass the Department’s process for claiming unclaimed property by going directly to circuit court. In ruling for the Department, the appellate court noted that “Article 4, section 4(c) of the Florida Constitution vests the CFO with

exclusive authority to examine and approve all claims for unclaimed funds under chapter 717 . . . [and that] [once] entitlement to the surplus funds as unclaimed property has been determined, the funds are then payable to the beneficiary by state warrant drawn by the CFO.” Id. at 599.

37. The instant case is distinguishable from Atwater because Respondents filed their claim directly with the Department and ultimately received approval of the claim from the Department. The Department does not cite, nor has the undersigned found, any case where a court has squarely addressed the issue of whether the Department retains jurisdiction once it has approved a claim for unclaimed property.

38. It is certainly reasonable for the Department to opine that section 717.1341(1)(a), to the extent that it directs a person to immediately return property to which the person is not entitled, contemplates the Department retaining jurisdiction to address erroneously approved claims once the property has been released by the Department, but this is a position that was rejected by the circuit court when it granted Respondents’ Emergency Motion to Return Estate Property. Similarly, it was also reasonable for Respondents to challenge the Department’s actions given the unique circumstances present in the instant case.

39. As previously noted, the federal government, on March 14, 2014, seized the locator fee from Respondents' money market account. As part of the process associated with seizing the locator fee, notice of the property seizure, and the right to challenge the same, was provided to the Estate of Darlene Swaim. The Estate of Darlene Swaim did not file a claim regarding the seized fee and on February 5, 2015, the United State District Court entered an Order directing that a clerk's default be entered against the estate with respect to the locator fee.

40. Respondents' locator fee was contingent upon the estate prevailing in its claim for the unclaimed property, and once the estate, with the advice of other counsel, elected not to challenge the seizure action, it became evident at this precise moment that Respondents were not entitled to the locator fee. Accordingly, the Department has met its burden of clearly and convincingly establishing that Respondents, between August 3, 2013, and March 14, 2014, possessed, in violation of section 717.1341(1)(a), unclaimed property that they were not entitled to receive.

41. Section 717.1322(1)(a) is a catch-all provision which states that a violation of any provision of chapter 717 shall constitute grounds for an administrative enforcement action by the Department. Because Respondents violated section 717.1341(1)(a), Respondents have also violated section

717.1322(1)(a). Florida Administrative Code Rule 69G-20.075(1)(a) provides, in part, that if it is found that a registrant has violated section 717.1322(1)(a), then the registrant shall face "suspension of 6 months to revocation if the act is willful or with reckless disregard or deliberate ignorance of the truth, [or] 1 to 2 months if the act is not willful or with reckless disregard or deliberate ignorance of the truth."

42. Chapter 717 does not offer definitions for the terms "willful," "reckless disregard," and "deliberate ignorance." Because Respondents are lawyers, and were acting as such during the pendency of this dispute, the framework for determining whether Respondents acted with willful, reckless disregard, or deliberate ignorance of the truth, lies in rule 4-3.1 of The Florida Bar Rules of Professional Conduct.

43. Rule 4-3.1 provides, in part, that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law." The Comment for rule 4-3.1 notes that "[t]he law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of

advocacy, account must be taken of the law's ambiguities and potential for change." The Comment for rule 4-3.1 also provides that an "action is frivolous . . . if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification, or reversal of existing law."

44. The Department takes an expansive view of chapter 717 and believes that it has exclusive jurisdiction as to all issues related to unclaimed property. In support of its position, the Department cites Atwater, which was decided on July 10, 2013, just 14 days prior to the Department's approval of the estate's claim in the instant dispute. The Department relies on Atwater for the proposition that chapter 717 vests the Department with sole authority to make the final determination as to the disposition of unclaimed property, including exclusive authority to correct determinations that were made in error.

45. Respondents view the Department's authority as being not as broad, and as noted in its email to the Department on August 2, 2013, believe that once the Department approves a claim and disburses funds, either correctly or incorrectly, the Department, as it relates to open estates subject to the jurisdiction of a circuit court sitting in probate, loses jurisdiction to correct mistakes made during the claim approval process.

46. In the context of the instant proceeding, it is not necessary to evaluate the merits of either position because the circuit court, on October 30, 2013, agreed with Respondents and directed the Department to return the funds to the estate. The circuit court's Order made it at least plausible that there was a basis in law and fact for the legal position advanced by Respondents with respect to the estate funds. Because it was at least plausible that there was a basis in law and fact for the arguments advanced by Respondents, the Department has failed to prove that Respondents acted with willful, reckless disregard, or deliberate ignorance of the truth with respect to actions taken regarding either the purported estate funds or the locator fee.

47. As previously noted, rule 69G-20.075(1)(a) directs that Respondents shall be suspended between "1 to 2 months if the act is not willful or with reckless disregard or deliberate ignorance of the truth." Further, the rule provides that "[t]he penalty imposed within the range of penalties should be based upon the severity of the violation."

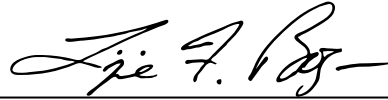
48. There is no evidence that Respondents, in any way, misled or otherwise contributed to the Department's erroneous approval of the claim filed by the Estate of Darlene Swaim. There is no evidence that Respondents assisted the Estate of Darlene Swaim in receiving unclaimed property that the estate was not entitled to receive. Once the Department stopped payment on

the Treasury warrant issued to the estate, Respondents, consistent with their professional obligations as attorneys, took the objectively reasonable and appropriate step of challenging the Department's actions by seeking an emergency Order from the circuit court. Furthermore, once it became clear that the Estate of Darlene Swaim had abandoned all claims related to the unclaimed property, Respondents, within a reasonable time thereafter, withdrew their claim to the locator fees. In the opinion of the undersigned, these factors weigh strongly in favor of the minimum suspension; which is for a period of one month.^{5/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services enter a final order finding that Michelangelo Mortellaro and Gina M. Sinadinos violated sections 717.1322(1)(a) and 717.1341(1)(a), Florida Statutes. It is further recommended that the Department suspend locator license number 103423042 for a period of one month.^{6/}

DONE AND ENTERED this 21st day of November, 2016, in
Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of November, 2016.

ENDNOTES

^{1/} The amount claimed should be \$91,142.30.

^{2/} All statutory references are to 2016 Florida Statutes, unless otherwise indicated.

^{3/} As previously noted, the SSA did not file its claim until August 14, 2013. Furthermore, section 717.124(1)(c), Florida Statutes, states, in part, that "[w]ithin 90 days after receipt of the claim . . . the department shall determine each claim [and such] [d]etermination shall contain a notice of rights provided by ss. 120.569 and 120.57." It is undisputed that the Department's correspondence of August 2, 2013, did not comply with any of the requirements of chapter 717.

^{4/} Respondents' right to the locator fee is contingent upon the firm recovering unclaimed property on behalf of the Estate of Darlene Swaim.

^{5/} Section 717.1400(3), requires, in part, that in order to file claims as a claimant's representative, "an attorney licensed to practice in this state . . . must provide [t]he [attorney's] Florida Bar number . . . [and] [s]ufficient information to enable the department to disburse funds by electronic funds." The clear

import of section 717.1400(3) is that it is the attorney who is registering with the Department as a claimant's representative. The other requirements of the statute, such as requiring electronic funds account information and the business name and address of the attorney's employer, are items ancillary to the attorney's registration with the Department. Accordingly, the one-month suspension applies to Mr. Mortellaro and Ms. Sinadinos individually and not to the firm of Mortellaro & Sinadinos, PLLC.

^{6/} Respondents' Motion to Dismiss and their Motion for Summary Judgment are, for the reasons set forth above, DENIED.

COPIES FURNISHED:

Jenay E. Iurato, Esquire
Iurato Law Firm, PL
Suite 203
10012 North Dale Mabry Highway
Tampa, Florida 33618
(eServed)

Josephine A. Schultz, Esquire
Department of Financial Services
Office of the General Counsel
200 East Gaines Street, Room 645E-5
Tallahassee, Florida 32399
(eServed)

Gina Marie Sinadinos, Esquire
Mortellaro & Sinadinos, PLLC
Suite 200
8401 J.R. Manor Drive
Tampa, Florida 33634
(eServed)

Julie Jones, CP, FRP, Agency Clerk
Division of Legal Services
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390
(eServed)

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.