

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HELENA MASON,

Petitioner,

vs.

Case No. 18-3296

DEPARTMENT OF FINANCIAL
SERVICES, BUREAU OF UNCLAIMED
PROPERTY, AND JAMES MAHER,

Respondents.

RECOMMENDED ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this matter by video teleconference on September 7, 2018, at sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: Brandon Rose, Esquire
Smith & Rose, P.A.
2060 Winter Springs Boulevard
Oviedo, Florida 32765-9347

For Respondent: Kimberly V. Masson, Esquire
(Department) Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

For Respondent: Jeffrey M. Koltun, Esquire
(Maher) Kane & Koltun
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150 Spartan Drive
Maitland, Florida 32751-3463

STATEMENT OF THE ISSUE

The issue is whether Helena Mason or James Maher is entitled to the proceeds from the sale of the contents in a safe deposit box remitted as unclaimed property to the Department of Financial Services, Division of Unclaimed Property (Department).

PRELIMINARY STATEMENT

On January 16, 2018, the Department notified Asset Finders, LLC (Asset Finders), then Petitioner's claim representative, that a claim filed on her behalf for the proceeds from the sale of certain unclaimed property was denied and that an earlier-filed claim by James Maher for the same proceeds was approved. Asset Finders timely filed a request for a hearing on behalf of Ms. Mason to contest the decision. Shortly thereafter, Petitioner engaged the services of an attorney. After initially scheduling the matter for an informal hearing, the Department determined that disputed issues of material fact exist, and the case was referred to the Division of Administrative Hearings.

At the final hearing, Mr. Maher, the proposed winner in this dispute, was added as a co-respondent. Ms. Mason's ore tenus request to add Asset Finders as a substantially affected party was denied. Except for assisting Ms. Mason early in the process, Asset Finders never has submitted any paper alleging that its substantial interests are affected, and it did not appear at the final hearing or otherwise indicate that it still represented

her. The style of the case has been amended to reflect these rulings. Finally, the Department's Motion to Dismiss on the ground no disputed issues of material fact exist is denied.

At the final hearing, Ms. Mason testified on her own behalf. The Department presented the testimony of one witness. Department Exhibits 1 through 4 were accepted in evidence. Mr. Maher testified on his own behalf. Late-filed Maher Exhibit 1 was accepted in evidence.

A one-volume Transcript of the proceeding was prepared. Proposed findings of fact and conclusions of law were filed by the parties on October 8, 2018, and have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. 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 provisions of the Unclaimed Property Act, codified in chapter 717, Florida Statutes (2017).

2. Unclaimed property is property that has been abandoned or lost by its owner for an extended period of time. Over the last 15 years or so, the Department has processed approximately 5,000,000 claims and paid \$3.1 billion to the claimants. Claims concerning the contents of safe deposit boxes make up approximately five percent of the total claims processed by the Department.

3. On December 27, 1996, Mr. Maher opened a safe deposit box account with SunTrust Bank in Orlando. The account was opened in the names of James Maher "or" Helena Mason, a friend who had resided with him for several years. Mr. Maher added her name to the account because he was unmarried, had no heirs, and did not want the contents of the safe deposit box to escheat to the State. Mr. Maher paid all fees on the box until 2010 when he stopped because of financial problems. The relationship between the two has ended.

4. An "or" account means that either person listed on the account legally may claim all or part of the contents held in the account at any time prior to the items being declared unclaimed and then sold by the Department. § 717.12403, Fla Stat. See also § 655.937, Fla. Stat. (unless specifically provided otherwise in the lease or rental agreement, all lessees are permitted access to the safe deposit box and its contents). When the account was opened, Mr. Maher and Petitioner also agreed to be bound by the bank's Safe Deposit Box Rules and Regulations, which provide that each person had access to the "entire contents of the box." Dep't Ex. 4. Bank records reveal that between December 1996 and July 2005, Mr. Maher accessed the box nine times, while Ms. Mason never accessed the box. Neither person listed on the account attempted to remove any of the contents of

the safe deposit box before the contents were treated as unclaimed property and sold.

5. In 2015, SunTrust Bank reported to the Department an unclaimed safe deposit box in the names of James Maher or Helena Mason for the 2014 reporting year. The report was made after rent had not been paid on the box since 2010 and the account had become dormant for at least three years. If the contents of a safe deposit box are not returned to the owners of the account within a three-year dormancy period, the holder (the bank) must report and remit that property to the Department. Beginning no later than April 2012, the bank attempted to notify the two that the account was dormant. Dep't Ex. 4.

6. The report states that Mr. Maher's address was listed as 2227 Catbriar Way, Oviedo, while Ms. Mason's address was listed as 1044 Chatham Pines, Apartment 20, Winter Springs. The report also states that the safe deposit box contained items of jewelry, coins, and miscellaneous personal papers, such as deeds, tax returns, surveys, and insurance policies.

7. The jewelry and coins were sold by the Department pursuant to section 717.122, Florida Statutes, at an unclaimed property auction on July 13, 2017. The current amount held by the Department in the unclaimed property account is \$18,871.46.

8. Any person claiming an interest in unclaimed property may file a claim with the Department. § 717.124(1), Fla. Stat.

Claims submitted to the Department must be made on prescribed forms together with documentation proving entitlement to the unclaimed property. Fla. Admin. Code R. 69G-20.0021(1). A claim form must be fully completed and manually signed by the claimant in order to be considered "complete." Fla. Admin. Code R. 69G-20.0021(1)(b). The claimant must submit proof that he/she is the person listed on the account and entitled to the property. Fla. Admin. Code R. 69G-20.0021(4)(c)2.

9. The Department always has construed a complete claim as one in which the claimant provides proof that he/she is the same individual listed on the account. If this is established, that person is "entitled" to the proceeds. The Department does not attempt to sort out who actually owned the contents of the safe deposit box before the contents were deemed to be unclaimed property. Therefore, the issue of which person listed on the account actually owned all or part of the contents is immaterial in determining who is entitled to the proceeds.

10. On October 26, 2017, the Department received a claim filed on behalf of James Maher for the unclaimed property account. In support of his claim, Mr. Maher provided a copy of his driver's license and a Notice of Change in Benefits from the United States Social Security Administration, which demonstrated a connection to both the social security number submitted with his claim and the Catbriar Way address reported to the

Department. The claim was deemed to be complete when it was filed on October 26, 2017.

11. Mr. Graham, the director of the Department's Division of Unclaimed Property, gave a comprehensive description of the process used by the Department when conflicting claims are filed. His testimony was not disputed. He established that Mr. Maher's claim was "complete," "it meets every single item required to prove that it's right," and "it was done correctly."

12. On November 13, 2017, the Department received a second claim filed by Asset Finders on behalf of Ms. Mason for the same unclaimed property account. In support of her claim, Asset Finders provided a copy of Ms. Mason's driver's license and the results of a search, which demonstrated a connection between Ms. Mason and the address reported by her to the Department. The claim was deemed to be complete when it was filed on November 13, 2017.

13. After reviewing the competing claims, and verifying the information provided by the bank, on January 16, 2018, the Department issued a notice of intent to deny the claim filed on behalf of Ms. Mason and to approve the claim submitted by Mr. Maher. The basis for this decision was that Mr. Maher was the first person to submit a complete claim. This decision comports with the statutory mandate in the "Conflicting Claims

Statute," section 717.1241(1)(a), which provides that the first person to submit a complete claim will be given the proceeds.

14. Ms. Mason argues that the claim filed by Mr. Maher was incomplete because rule 69G-20.0021(1)(b) requires that the form must be signed by all persons making a claim, and Mr. Maher failed to secure her signature on his claim form before he submitted it to the Department. This construction of the rule would produce an absurd result and has been rejected.

15. Petitioner also argues that she is the owner of the jewelry and therefore entitled to the proceeds. She testified that the jewelry was first owned by her grandmother, passed on to her mother, and then given to her in 1995. For safekeeping purposes only, Mr. Maher then placed the jewelry in the safe deposit box. On the other hand, Mr. Maher testified that the jewelry belonged to him, and he received it after his mother passed away in 1996. To resolve this dispute, however, it is unnecessary to determine who actually owned the jewelry. Once the contents are deemed to be unclaimed, ownership is not a statutory consideration in resolving conflicting claims.^{1/}

16. In the same vein, Petitioner argues that a claimant must show entitlement to the property in order to prevail and Mr. Maher failed to do so. On this issue, the Department construes the statute to mean that if a claimant is the same person named on the account, he/she is "entitled" to the

proceeds. This is a reasonable and logical interpretation of the statute. Mr. Maher satisfied this requirement.

17. Petitioner argues that even though Asset Finders did not file her claim until November 13, 2017, she should prevail because she signed her claim form on October 21, 2017, before Mr. Maher signed and filed his claim. This contention is rejected, as the relevant statutory test is clear and requires the Department to award the proceeds to the claimant filing the first complete claim.

18. Finally, Petitioner argues that she filed an affidavit with her application, while Mr. Maher did not. However, affidavits are required only if the proceeds from the sale are less than \$250.00. § 717.124(3), Fla. Stat.

19. By a preponderance of the evidence, Mr. Maher has established entitlement to the proceeds.

CONCLUSIONS OF LAW

20. In any proceeding for determination of a claim, "the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence." § 717.126(1), Fla. Stat.; Fla. Admin. Code R. 69G-20.0022(1). Therefore, Mr. Maher has the burden of proving that he filed a complete claim prior to the claim filed by Petitioner.

21. In making a determination regarding the merits of a claim for unclaimed property, the Department shall rely on

applicable statutory, regulatory, common, and case law. See § 717.1244, Fla. Stat.

22. Rule 69G-20.0021(1) provides that the Department will only process claims that are complete. The rule goes on to provide that complete claims are those that have all blanks filled in and are manually signed and dated by the claimant, and that they contain all supporting documentation required by rules 69G-20.0021 and 69G-20.0022. The latter rule requires a claimant to provide documentation to establish that he/she is the same person listed on the account.

23. When conflicting claims have been received by the Department, the property shall be given "[t]o the person submitting the first claim received by the Division . . . that is complete or made complete." § 717.1241(1)(a), Fla. Stat.

24. By a preponderance of the evidence, Mr. Maher has established that he is the same person listed on the safe deposit box account, he has filed a complete application, and he submitted the first claim received by the Department. Therefore, he is entitled to the proceeds of the sale.

25. In making its determination that Mr. Maher is entitled to the proceeds, the Department relied on section 717.12403(2), which provides that when unclaimed demand, savings, and checking accounts are reported by financial institutions in the name of two or more persons, either person listed on the account may

claim the entire amount held in the unclaimed property account. Petitioner argues, however, that the statute does not refer to safe deposit box accounts and, therefore, cannot apply to the instant dispute. Instead, she argues that rule 69G-20.0028(1) should control the outcome. That rule provides that when accounts are not unclaimed demand, savings, or checking accounts formerly held by a financial institution, "each owner is entitled to receive a percentage share of the unclaimed property," and if there are two owners, "each owner will receive 50 percent." Because neither claimant established clear ownership to the jewelry, Ms. Mason argues that under the foregoing rule, the proceeds of the sale of the jewelry (\$18,598.11) should be split between the two.

26. Even though section 717.12403 refers only to an "unclaimed demand, savings, or checking account in a financial institution," a safe deposit box is an account that functions the same as a demand, saving, or checking account, except that it contains tangible property. Therefore, it is not unreasonable, or clearly erroneous, for the Department to interpret the statute in the manner that it does when evaluating claims for safe deposit boxes. The statute presumes that either person listed on the account may claim the entire amount held in the unclaimed property account. The delivery of the proceeds to Mr. Maher is correct.

27. Finally, Petitioner cites the case of Bechtel v. Estate of Bechtel, 330 So. 2d 217, 219 (Fla. 2d DCA 1976), decided long before the enactment of chapter 717, which held that even though a person may have the right of access to the safe deposit box, this does not mean that the person has a right to ownership of the contents found in the box. The case is cited ostensibly for the proposition that filing the first complete claim with the Department does not establish entitlement to, or ownership of, the jewelry.

28. Petitioner's reliance on Bechtel is misplaced and has no application here, as that case involved a dispute in probate court over the ownership of the contents of the decedent's safe deposit box, and not in an unclaimed property dispute under chapter 717. Also, section 655.937, enacted after Bechtel, states that, unless specifically provided otherwise in the lease or rental agreement, all lessees are permitted access to the safe deposit box and its contents. In this case, the bank's rules and regulations specifically provided that either person listed on the account had access to "the entire contents of the box." Dep't Ex. 4. Both claimants agreed to comply with that requirement when the account was established. The argument accordingly is rejected.

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 approving the delivery of the proceeds from the sale of the contents of the safety deposit box to Mr. Maher.

DONE AND ENTERED this 17th day of October, 2018, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2018.

ENDNOTE

^{1/} When asked why she did not remove the jewelry from the box when she moved out of Mr. Maher's home in 2012, Ms. Mason testified that she did not consider her departure a "complete split," and she hoped the two would get back together again. Had the jewelry actually been owned by Ms. Mason (and especially as a purported family inheritance), the undersigned finds it highly unlikely that she would have made no effort since 2012 to retrieve the jewelry from the box.

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.