

CHOICE PLUS, LLC, ON BEHALF OF
THE HEIRS OF GERTRUDE GRONING,

Petitioner,

vs.

DFS Case No. 207903-17-FA
DOAH Case No. 18-6673F

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF UNCLAIMED PROPERTY

Respondent,

FILED

JUN 4 2019

Docketed by mh

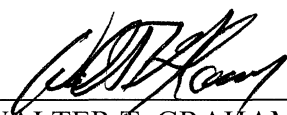
FINAL ORDER

The Department of Administrative Hearings, by Order dated May 23, 2019, has relinquished jurisdiction of this matter. The parties have executed a Settlement Agreement which is incorporated herein. The parties are ordered to comply with the terms and conditions of the Settlement Agreement.

Accordingly, it is hereby ORDERED and ADJUDGED that the Settlement Agreement is hereby incorporated into this Final Order and therefore, this case is closed.

DATED this 4 day of June 2019 at Tallahassee, Leon County, Florida.





WALTER T. GRAHAM
Director of Division of Unclaimed Property
Florida Department of Financial Services

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NOTICE OF RIGHTS


A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e. received by the Agency Clerk) ***within thirty days of rendition of this final order***. Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail.

Julie Jones
Agency Clerk
Department of Financial Services
612 Larson Building
200 E. Gaines Street
Tallahassee, FL 32399-0390

Facsimile: (850) 488-0697
Email: Julie.Jones@myfloridacfo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Final Order has been furnished by email on this 4th day of June 2019 to Michael J. Farrar, Esquire (michaelfarrar@bellsouth.net).



Michael A. Alao
Senior Attorney
Florida Department of Financial
Services
200 East Gaines Street
Tallahassee, Florida 32399-0333
Telephone: (850) 413-4253
Fax: (850) 488-0697
Michael.Alao@myfloridacfo.com

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DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF UNCLAIMED PROPERTY

Respondent,
_____ /

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between the Florida Department of Financial Services, Division of Unclaimed Property (“Department”), and Choice Plus, LLC (“Choice Plus”), on behalf of the heirs of Gertrude Groning pursuant to a limited power of attorney.

I. Background

1. The Department is the state agency charged with the administration and enforcement of the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes, and the rules adopted thereunder.

2. In May 2007, Citibank reported and submitted to the Department unclaimed property in the name of Gertrude Groning and consisting of the contents (jewelry) of a safety deposit box. The Department auctioned the jewelry which netted a balance of \$119,836.55 in unclaimed property account number 103130814.

3. Ms. Groning died on December 6, 2005.

4. In 1995, Ms. Groning executed a revocable inter vivos trust agreement. The trust named several of Ms. Groning’s heirs as primary beneficiaries of specified dollar amounts upon

her death. The trust named seven charities as residual trust beneficiaries. The trust named Citicorp Trust, NA, as the corporate trustee and a friend of Ms. Groning as co-trustee.

5. On August 19, 2015, the United Nations Children's Fund ("UNICEF"), through its legal counsel, submitted a claim to the Department for a 1/7th share of Ms. Groning's charitable residuary trust estate.

6. The Department subsequently approved and paid the UNICEF claim as well as the claims of four additional Groning trust residual beneficiary charities. The Department paid the claims from funds held in account number 103130814.

7. As of February 2016, after paying the five charity claims, the balance in account number 103130814 was \$34,239.03.

8. In November 2016, Choice Plus petitioned for summary administration of Ms. Groning's estate in Palm Beach County Circuit Court, case number 2016-CP-5318.

9. On January 3, 2017, a circuit court judge in case number 2016-CP-5318 issued an Amended Order of Summary Administration (Intestate), and ordered the "immediate distribution of the assets" of Ms. Groning's account held by the Department in the amount of \$119,836.55 to Ms. Groning's heirs.

10. On January 25, 2017, Choice Plus submitted to the Department claim number C7115985 for the unclaimed property account number 103130814. Choice Plus claimed \$119,836.55.

11. On October 13, 2017, the Department issued its Notice of Intent to approve the Choice Plus claim number C7115985, but only for \$34,239.03, which represented the amount

remaining in the account after the Department's payment of claims filed by the trust residual beneficiaries. The Department denied Choice Plus's claim for the entire \$119,836.55

12. Dissatisfied with the Department's decision, on October 20, 2017, Choice Plus submitted a petition to the Department under section 120.57(1), Florida Statutes (2017), for a formal evidentiary hearing involving disputed issues of material fact. The Department denied Choice Plus's request, concluding that the material dispute involved a question of law, not fact. Accordingly, the Department initiated an informal proceeding under section 120.57(2), under case number 207903-17-FA (the "Agency Case").

13. On March 6, 2018, Choice Plus served a motion for attorneys' fees under section 57.105, Florida Statutes (2017).

14. On May 15, 2018, an informal hearing under section 120.57(2) was held in the agency case before Hearing Officer Kathy Gatzlaff.

15. On May 29, 2018, Choice Plus filed its sections 57.105 and 120.569(2)(e) motions for sanctions.

16. On June 18, 2018, Department Hearing Officer Gatzlaff issued a written report and recommended order.

17. On June 20, 2018, Hearing Officer Gatzlaff issued an order denying the section 120.569(2)(e) motion, and dismissed without prejudice the section 57.105 motion for lack of jurisdiction.

18. No final order was issued in the Agency Case.

19. After reviewing the written report and recommended order, the agency head determined that disputed issues of material fact were present on one or more issues, and on

October 5, 2018, the agency head issued an order transferring the matter to DOAH and a formal administrative proceeding commenced pursuant to section 120.57(1).

20. Upon transfer to DOAH, the Department assigned the case to a senior attorney who reviewed the case file and completed her own investigation. Review of the case file and investigation disclosed that the jewelry could not have been trust property. Accordingly, the Department reversed its earlier decision and, on November 28, 2018, approved and paid Choice Plus's full claim.

21. Upon receipt of payment of the full claim, Choice Plus and the Department filed a joint motion for DOAH to release jurisdiction except for Choice Plus's sanctions motions pursuant to sections 57.105 and 120.569(2)(e).

22. DOAH held an evidentiary hearing on Choice Plus's sanctions motions on February 13, 2019.

23. On March 27, 2019, Administrative Law Judge Darren Schwartz entered an order establishing that Choice Plus is entitled to attorney's fees from the Department pursuant to sections 57.105 and 120.569(2)(e). Per ALJ Schwartz's order, Choice Plus is entitled to attorney's fees because the Department lacked a reasonably clear justification in its Notice of Intent for denying the entirety of Choice Plus's claim. ALJ Schwartz also found that there was no competent, substantial evidence introduced by the Department at hearing in support of the Department's initial decision to deny the entirety of Choice Plus's claim.

24. ALJ Schwartz set an evidentiary hearing for May 29, 2019, to determine the amount of attorney's fees to which Choice Plus is entitled.

25. On May 22, 2019, the Department and Choice Plus reached an agreement on the amount of attorney's fees and filed a joint motion for DOAH to cancel the evidentiary hearing.

26. On May 23, 2019, ALJ Schwartz entered an order canceling the May 29, 2019, hearing, closing the DOAH file, and relinquishing jurisdiction to the Department.

II. Settlement Agreement

27. In the interest of compromise and settlement, the parties have determined that their respective interests would best be served by completely resolving and settling the existing controversy between them without additional delay or litigation, and agree to the following terms and conditions.

a. The Department agrees to pay Choice Plus \$13,500 within 30 days of execution of this Agreement, with execution being the date the last party's representative signs this Agreement.

b. Upon full execution of this Agreement, each party waives and releases the other, its agents, representatives, attorneys, and employees from any and all causes of action that either party may have, now or in the future, arising from or relating to unclaimed property account number 103130814. The parties agree that for the sum specified in paragraph 27.a. and for other valuable consideration, the parties and any legal representatives, heirs, executors, administrators, successors, and assigns, hereby, without reservation, voluntarily release, waive, absolve, and forever discharge, to the full extent permitted by law, the Department from any and all demands, causes of action, judgments, or suits at law or in equity, of any kind or nature, arising from or relating to the claims for unclaimed property account number 103130814, or any resulting action taken by the

Department. The parties agree to accept this release on behalf of themselves, their principals, their agents, representatives, and employees.

c. Each party is solely responsible for its attorney fees and costs incurred in the defense, prosecution, or negotiation of this matter through the entry of the Final Order. The parties expressly waive any right to claim attorney fees or costs under any statute or authority.

d. If any provision of this Agreement or the application thereof is held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provisions, and to this end, the provisions hereof are declared severable.

e. The parties acknowledge that they have read this Agreement and fully understand the rights, obligations, terms, conditions, duties, and responsibilities with respect to its contents and are acting on the advice of competent counsel.

f. This agreement is intended as full and complete settlement of the issues raised in the administrative and legal proceeding identified above, and any other issues that could have been raised resulting from the claims filed by Choice Plus on the behalf of the heirs of Gertrude Groining for unclaimed property account number 103130814. The terms of this agreement are intended as full and complete settlement of the parties' claims against each other for damages or relief of any type or form.

g. The parties agree that this Agreement is entered into voluntarily and with full authority of the parties. The undersigned representatives of the Department and

Choice Plus represent that they have full authority to enter into and bind their principals to the terms and conditions of this Agreement.

h. The parties agree not to challenge or contest this Agreement in any forum that may now or in the future be available to them, including any administrative proceeding, circuit, federal, or appellate court action. Nothing herein shall be construed to limit either parties' right to enforce the terms and conditions of this Agreement.


i. The Department's determination to enter into this Agreement is based on the specific facts and circumstances of this case and has no applicability to any other matter arising or that may arise from actions taken by the Department under chapter 717, Florida Statutes.

WHEREFORE, the parties being satisfied that the terms and conditions of this Agreement set forth above are fair, reasonable, and adequate, and in consideration of the mutual promises and other good and valuable consideration as set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby acknowledge and agree to the foregoing terms and conditions of this Agreement by written consent on the dates indicated below.

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Choice Plus, LLC

By:




Randy Hotz
President

Dated: 31 May 2019

**Department of Financial Services,
Division of Unclaimed Property**

By:



Phillip Carlton
Assistant Director

Dated: 6/3/19