

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GLOBAL DISCOVERIES LTD., LLC, ON
BEHALF OF JEAN ARISTIDE,

Petitioner,

Case No. 20-2632

vs.

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF UNCLAIMED PROPERTY,

Respondent.

RECOMMENDED ORDER

On August 27, 2020, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by Zoom.

APPEARANCES

For Petitioner: Michael J. Farrar, Esquire
Michael J. Farrar, P.A.
18851 Northeast 29th Avenue, Suite 700
Aventura, Florida 33180

For Respondent: Michael A. Alao, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue is whether, pursuant to section 717.126, Florida Statutes,¹ Petitioner² has proved that it is entitled to proceeds in the amount of \$128,788.36 from an unclaimed cashier's check.

PRELIMINARY STATEMENT

On July 3, 2018, Petitioner filed with Respondent a claim to ownership of the proceeds from a \$128,788.36 cashier's check last held by "Bank of America--Washington." The claim states that the primary owner is Claudy Joseph and co-owners are Erlande Merceron and Petitioner's principal, Jean Aristide, under an account listing the owners with an "or."

On November 11, 2019, Respondent issued a Notice of Intent (NOI) to deny the claim. The NOI acknowledges that Respondent has received the proceeds of the cashier's check with the "Names: Claudy Joseph or Jean Aristide or Erlande Merceron" from "Bank of America--Washington." The NOI states that Mr. Aristide has failed to prove that he is the same person as one of the persons named as an owner, and he has failed to explain the circumstances surrounding the preparation of the cashier's check.

At some point, Petitioner requested a hearing. The day prior to the date of an informal hearing, a hearing officer determined that factual disputes necessitated the transmittal of the claim to DOAH, so she issued an Order of Referral on June 2, 2020.

Neither party called a witness at the hearing. The parties jointly offered into evidence six exhibits: Joint Exhibits 1 through 6. Respondent offered into

¹ All references to sections are to Florida Statutes, and all statutory references are to 2019.

² All references to "Petitioner" include Mr. Aristide and his attorney-in-fact, as named in the case style.

evidence two exhibits: Respondent Exhibits 1 and 2. All exhibits were admitted.

The court reporter filed the transcript on September 1, 2020. The parties filed proposed recommended orders on September 11, 2020.

FINDINGS OF FACT

1. On April 15, 2011, Bank of America remitted to the state of Florida, as unclaimed property, \$128,788.36 in proceeds from one or more cashier's checks. Neither the original check nor a copy of the original check is available.

2. A synopsis of Bank of America records identifies the amount of the check or checks, the form of the property as "cashiers checks," an issue date of October 12, 2005, and the existence of "multi[ple] owners." If there were multiple cashier's checks, the total amount of the checks was \$128,788.36. For ease of reference, the cashier's check or cashier's checks will be referred to in the singular.

3. The synopsis lists the "title" as "Claudy Joseph Erlande Merceron Jean Aristide." There are three variants of the same form--one for each individual named in the preceding sentence. In each, the first name listed is Claudy Joseph. For the two other variants, this name is preceded by "1st Payee." It thus appears that these three persons were named as payees on the cashier's check.

4. In a cryptic reference, each variant of the synopsis states: "RELATIONSHIP CD: OR." The placement of this fragment of information follows the description of each payee. Although this fragment of information immediately precedes the above-quoted "title" information that names the three payees, it is on the extreme right-hand side of the page, and the "title" information starts on the extreme left-hand side of the page. The meaning of this fragment of information is obscure.

5. The variant of the synopsis for Claudy Joseph states that this page is a "Primary Record" as to this "Multiple Owner." For the other multiple owners, their variants state that this page is a "Secondary Record." For the address of each of the three owners, the variants list only "El Portal, Florida 33138."

6. There is no information concerning the purchaser of the cashier's check, who will be referred to as the remitter. The above-described references to the "owner" refer to the payee, not to the person who, by law, owns the proceeds of the cashier's check.

7. In 2018, Mr. Aristide banked with Bank of America and lived in El Portal, Florida, although in zip code 33150. On December 19, 2005, Mr. Aristide completed an application form to open a banking account with a Bank of America in "Sky Lake," and the bank associate's phone number is the area code for Miami.

8. Mr. Aristide's date of birth is November 30, 1970, so he is old enough to have engaged in a transaction in 2006 and young enough that he reasonably may be expected to recall the transaction and something about Mr. Joseph and Mr. Merceron.

9. In response to interrogatories, Mr. Aristide stated that the other two persons "very well could have been roommates at that time." Without addressing them in particular, Mr. Aristide added: "Claimant was a silent partner in real estate transactions together with other silent partners who invested in a third party who purchased real estate. The money was part of that investment transaction or transactions."

10. Mr. Aristide acknowledged that he never received the cashier's check, but "believes but is not sure that [the cashier's check] was part of a structured purchase of real estate by a third party." Mr. Aristide explained that he "was an investor with other investors and it is not uncommon to include each investor in cashiers checks."

11. Mr. Aristide did not testify in this case and has failed to provide the type of detail that would be expected, if he were a rightful owner of the

cashier's check, specifically, the circumstances surrounding the bank's issuance of the check and the remitter's delivery of the check. Petitioner thus has failed to prove entitlement to the property or any part of it.

12. Referred to as "Petitioner" in this recommended order, Global Discoveries, Ltd., LLC, is a registered claimant's representative, within the meaning of section 717.1400. Petitioner was retained by Mr. Aristide to pursue his claim to the proceeds of the cashier's check. On July 3, 2018, Petitioner duly filed a claim for the proceeds of the cashier's check, and Respondent denied the claim by the NOI.

CONCLUSIONS OF LAW

13. DOAH has jurisdiction. §§ 120.569, 120.57(1), and 717.126.

14. Petitioner has the burden of proving entitlement to unclaimed property by a preponderance of the evidence, and proof of that Mr. Aristide has the same name as the name reported to Respondent is insufficient to establish ownership. § 717.126(1).

15. In adjudicating claims for unclaimed property, Respondent applies all statutes, rules, and decisional law, including common law. § 717.1244. For "unclaimed securities or dividends" whose multiple owners are listed in the disjunctive--i.e., with an "or"--Respondent shall treat any owner as the owner of the entirety of the property evidenced by the account. § 717.12406(5).

16. An "apparent owner" is "the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder." § 717.101(2). The bank's records contain the names of the three payees, but not the remitter, and its identification of the payees as owners is unsupported by the evidence.

17. The last known owner of the cashier's check was the remitter, who paid the bank sufficient funds and any fee for the bank to issue the cashier's check. The bank would not have set aside the amount of the cashier's check, unless it had received this payment from the remitter.

18. The remitter typically would use the cashier's check to pay for goods and services in a manner as to receive immediate credit for the face amount of the check--as though it were cash, but without the inconvenience of cash. The record contains no indication as to what happened after the bank issued the check, including whether the bank delivered the check to the remitter or whether the remitter delivered the check to one of the payees.

19. Once the bank transfers the cashier's check to the remitter, the remitter becomes the owner of the check until it is delivered to the payee named on the check. *See, e.g., In re Lee*, 179 B.R. 149, 161 (9th Cir. BAP 1995), *aff'd sub nom., Hall-Mark Elec. Corp. v. Sims*, 108 F.3d 239 (9th Cir. 1997); *In re Essex Constr., LLC*, 575 B.R. 648, 654 (Bankr. D. Md. 2017). The named payee has no right to the cashier's check until delivery, because, until delivery, the remitter has the right to return the check for a refund. *Bartel v. Bank of Am. Corp.*, 193 A.3d 767 (D.C. App. 2018).

20. The factual scenario that would produce title in Mr. Aristide requires the delivery of the cashier's check to him or one of the co-payees or the performance of the bargained-for obligations by Mr. Aristide and his co-payees and the breach of the remitter's obligation to deliver the cashier's check. Mr. Aristide's memory of a transaction in which the remitter breached his duty to pay would be sharper, given that the bitter transaction took place only 15 years ago when Mr. Aristide was 35 years old. On the other hand, Mr. Aristide's memory of a transaction that never closed and was not partially performed might well be vaguer, but he and his co-payees would not have been entitled to delivery of the cashier's check, so they would not be owners of it today.

21. The vagueness of Mr. Aristide's testimony demonstrates a lack of knowledge of the details of the transaction for which the remitter obtained the cashier's check and thus undermines his claims to ownership of the proceeds of the check and to being the same Jean Aristide named as a co-payee of the cashier's check. His open-ended responses to interrogatories

seem well-designed to fit a number of plausible scenarios, but their very generality precludes a finding that Mr. Aristide and his co-payees ever earned the proceeds to the cashier's check.

22. Based on the foregoing, it is unnecessary to determine whether the synopsis of the bank's records establishes equitable ownership of the entire proceeds of the cashier's check by any one of the co-payees, or whether such an inquiry is categorically precluded by section 717.12406(5).

RECOMMENDATION

It is

RECOMMENDED that Respondent shall issue a final order denying Petitioner's claim.

DONE AND ENTERED this 6th day of October, 2020, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
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 6th day of October, 2020.

COPIES FURNISHED:

Michael A. Alao, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333
(eServed)

Michael J. Farrar, Esquire
Michael J. Farrar, P.A.
18851 Northeast 29th Avenue, Suite 700
Aventura, Florida 33180
(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.