

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHOICE PLUS, LLC, ON BEHALF OF
FELICIA R. LEGGIERO,

Petitioner,

Case No. 20-5031

vs.

DEPARTMENT OF FINANCIAL SERVICES,

Respondent.

_____ /

RECOMMENDED ORDER

A hearing was held before Administrative Law Judge, Robert L. Kilbride, of the Division of Administrative Hearings (“DOAH”) on January 15, 2021, in Tallahassee, Florida, by Zoom conference.

APPEARANCES

For Petitioner: Michael J. Farrar, Esquire
Michael J. Farrar, P.A.
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Aventura, Florida 33180

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

STATEMENT OF THE ISSUE

Whether the Department of Financial Services (the “Department”) correctly denied the unclaimed property claim submitted by Choice Plus, LLC (“Choice Plus” or “Petitioner”), on behalf of Louis Nardi as attorney-in-fact for Felicia Leggiero (“Leggiero”).

PRELIMINARY STATEMENT

On May 26, 2020, Petitioner submitted a claim to the Department on behalf of the claimant for 24 unclaimed property accounts with a total value of \$116,322.10.

On October 20, 2020, the Department issued a Notice of Intent to deny Petitioner's claim.

Taking exception to this determination, on November 3, 2020, Petitioner made a Request for Hearing under section 120.57(1), Florida Statutes (2020). The Department referred the case to DOAH on November 18, 2020.

On January 15, 2021, the undersigned conducted a final evidentiary hearing in Tallahassee, Florida.

Petitioner called Randy Lee Hotz, co-founder, chief executive, and president of Choice Plus, as its witness. The Department called Walter Graham, Director of the Division of Unclaimed Property, as its witness. The parties submitted Joint Exhibits 1 through 5. All exhibits were admitted into evidence. The Joint Exhibits will be referred to as "Joint Ex." with the corresponding number and Bates stamp number.

The Department moved for official recognition of the Recommended Order, Final Order, and Per Curiam Affirmation in *Choice Plus, LLC, f/b/o Mary E. Morrison v. Florida Department of Financial Services*, Case No. 194635-16-FA (Fla. DFS Mar. 27, 2017); *Choice Plus, LLC v. Florida Department of Financial Services, Division of Unclaimed Property*, Case No. 1D17-1454, 2018 WL 486750, at *1 (Fla. 1st DCA Jan. 19, 2018)(the "Morrison Case"), and official recognition of the Recommended Order and Final Order in *Choice Plus, LLC, f/b/o Ramona D. Shedroff v. Florida*

Department of Financial Services, Case No. 211106-17-FA (Fla. DFS Oct. 18, 2018)(the “Shedroff Case”). Petitioner likewise moved for official recognition of Petitioner’s Proposed Recommended Order in the Shedroff Case. The parties’ respective motions for official recognition were granted during the hearing.

A Transcript of the hearing was ordered. The Transcript was filed with DOAH on February 2, 2021. Thereafter, the parties timely filed their proposed recommended orders. Each were reviewed and considered by the undersigned in the preparation of this Recommended Order.

Any references in this Recommended Order to statutes, rules, or other laws refer to the versions in effect when the act, conduct, or omission occurred.

FINDINGS OF FACT

Based on the evidence presented at the hearing, and the record as a whole, the undersigned makes the following findings of relevant and material fact:

1. Choice Plus is registered with the Department as a “claimant’s representative” pursuant to section 717.1400, Florida Statutes (2020). In Florida, a claimant’s representative may file claims with the Department on behalf of owners of unclaimed property for a fee. *See* Joint Ex. 1, Bates Nos. 0001-17.

2. The Department is the state agency charged with the responsibility of administering and processing claims, pursuant to the provisions of chapter 717, the Florida Disposition of Unclaimed Property Act (“Act”). *See* Joint Ex. 4, Bates No. 0045.

3. Between 2005 and 2018, the Department received unclaimed stock shares and dividends reported in the names of John R. Leggiero and Felicia R. Leggiero, from various holders. The Department currently maintains the funds, totaling \$116,322.10, in 24 unclaimed property accounts. *See* Joint Ex. 1, Bates Nos. 0001-3.

The Claim by Choice Plus

4. On or about May 26, 2020, Choice Plus filed a written claim, No. C8610372, on behalf of Louis Nardi, as attorney-in-fact for Felicia R. Leggiero, for 24 unclaimed property accounts.

5. In support of the claim, Choice Plus provided the Department a copy of a Limited Power of Attorney (“LPOA”) and full disclosure statement, pursuant to section 717.135, executed by Louis Nardi; a copy of Louis Nardi’s driver’s license; a copy of Leggiero’s driver’s license; a Florida Certificate of Death for John R. Leggiero, indicating that he predeceased Felicia R. Leggiero; a copy of a durable power of attorney where Leggiero designated her brother, Louis Nardi, as her attorney-in-fact; and the results of a TLO.com search.¹ *See* Joint Ex. 1, Bates Nos. 0001-17.

6. The LPOA and full disclosure statement, executed on May 4, 2020, authorized Choice Plus to file a claim on behalf of Louis Nardi as attorney-in-fact for Felicia R. Leggiero, for a fee of \$11,632.21. § 717.135, Fla. Stat. The LPOA included the following language:

CP offers to advance its expertise and financial resources, including legal expenses, on Claimant’s behalf, to prove entitlement and secure release of property from any person or entity in possession of property. In exchange for CP’s resources Claimant irrevocably assigns Claimant’s right, title and interest in property up to the amount and/or percentage reference above as Compensation. If CP

¹ A people and business location system that searches public and proprietary databases.

fails to document Claimant's entitlement, nothing will be owed to CP.

See Joint Ex. 1, Bates Nos. 0004-5.

7. As a part of the Department's statutorily mandated review of the claim submitted by Choice Plus, it conducted a Driver and Vehicle Information Database ("DAVID") search for Leggiero on June 17, 2020. The search indicated that she died on May 27, 2020. *See* Joint Ex. 4, ¶ 3; and Joint Ex. 5, Bates No. 0042.

8. In part, because of her death, the Department issued a Request for Information ("RFI") on June 18, 2020, to Choice Plus. The RFI noted that Felicia R. Leggiero was deceased, and requested probate documentation for her estate. *See* Joint Ex. 2, Bates No. 0018.

9. As it turns out, this is a common request when the Department has questions or concerns about a claim that is filed, or needs additional documentation as it sorts through and evaluates the merits of a claim.

10. On July 13, 2020, the Department received Choice Plus's response to the RFI. The response consisted of a four-page memorandum which extensively outlined the law and the position of Choice Plus on the claim. In the memorandum, Choice Plus took the position that the claim was complete when filed, and that the claim determination was retroactive to the date of filing the claim. *See* Joint Ex. 3.

11. Choice Plus further argued that the Department should not consider subsequent events, i.e., the death of the claimant, when determining entitlement to the unclaimed property. Interestingly, however, it took the position that the Department must pay the claim to the "estate" of the deceased claimant. *Id.*

12. However, and of particular note, Choice Plus provided no documentation to show that (1) Felicia R. Leggiero's estate had been submitted to probate court for administration; (2) that Choice Plus

represented Felicia Leggiero's estate; or (3) represented the personal representative of her estate. *See* Joint Ex. 3, Bates Nos. 0019-24.

13. After its review of the claim file and the memorandum submitted by Choice Plus, the Department issued a Notice of Intent ("NOI") on October 20, 2020, stating that it would enter a final order denying the claim filed by Choice Plus on behalf of Louis Nardi as attorney-in-fact for Felicia R. Leggiero.

14. The Department took the position, essentially, that at the time it began its review of the claim, Leggiero had already died and that, therefore, as a matter of law, Leggiero no longer had any legal or beneficial entitlement to the unclaimed funds, as entitlement had already vested in her estate. *See* Joint Ex. 4, Bates Nos. 0045-49, ¶¶ 11-13.

15. Director Graham also testified that the Department's treatment of this particular claim was consistent with the Department's treatment of similarly situated claims where the claimant or person entitled to the property dies after submitting a claim to the Department, but before the Department has the opportunity to review and evaluate the claim.

CONCLUSIONS OF LAW

After reviewing the proposed recommended orders submitted by the parties, studying and applying the law, and considering the Findings of Fact, the undersigned makes the following conclusions of law:

16. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 717.126, Fla. Stat.

General Principles of Unclaimed Property Law in Florida

17. Petitioner has the burden of proving by a preponderance of the evidence that it is entitled to the unclaimed funds it seeks from the Department. § 717.126(1), Fla. Stat.

18. Under the provisions of the Act, the Department is charged with the responsibility and duty to deliver or pay over to the rightful owner, unclaimed property held by the Department. *See generally* Ch. 717, Fla. Stat.

19. “Unclaimed property” is intangible or tangible property that has been abandoned or lost by its rightful owner for an extended amount of time--this period of time is often referred to as the “dormancy period.” Once property is identified as unclaimed, the holder of the property (usually a financial institution or business entity) is required to report that property to the Department. § 717.117, Fla. Stat.

20. There is also a procedure to allow the Department to accept custody of the unclaimed property from the holder. *Id.*

21. A person claiming ownership or an interest in unclaimed property may file a claim with the Department. § 717.124(1), Fla. Stat.

22. Pursuant to Florida Administrative Code Rule 69G-20.0021(1), claims for unclaimed property must be submitted to the Department on the prescribed forms supported by documentation proving entitlement to the unclaimed property.

23. A completed claim, as described in the rule, generally consists of the claim form--fully completed, signed, and dated by the claimant--a copy of photographic government-issued identification, proof of entitlement, and supporting documentation. Fla. Admin. Code R. 69G-20.0021(1)(b).

24. Furthermore, when the apparent or reported owner of unclaimed property is deceased, rule 69G-20.0022(3) outlines additional documentation requirements before such a claim will be approved and paid to beneficiaries or estates. The rule addresses four different scenarios: (1) Open Estates, (2) Closed Estates, (3) Will Never Probated, and (4) No Will and No Administration.

25. After the Department receives a claim for unclaimed property, and determines that the claim is complete in accordance with

rule 69G-20.0021(1)(b), the Department is then required to engage in a second step--to evaluate and determine the merits of the claim.

26. This determination involves an analysis of whether entitlement by the person or entity making the claim to the property is appropriate, valid, and has been properly established. §§ 717.1244 and 717.126, Fla. Stat.

27. To this end, the Department may request additional information by way of an RFI and will investigate the claim, any reports, and other records it deems necessary to administer and enforce the provisions of the Act. §§ 717.124(1)(a) and 717.1301, Fla. Stat.

28. During this review, the Department has 90 days after the receipt of a claim, or the response of the claimant or claimant's representative to the Department's request for additional information, whichever is later, in which to review a claim and make a determination to approve, request additional information, or deny a claim. § 717.124(1)(c), Fla. Stat.

29. As a part of its evaluation and determination regarding the merits of a claim, the Department is expressly directed to rely on the applicable statutory, regulatory, common, and case law. § 717.1244, Fla. Stat.

30. The role of the Department in cases of unclaimed property under chapter 717 has been characterized as that of a "custodian," suggesting to the undersigned a special, cautious, and circumspect role by the Department in the handling and payout of such funds or property. *See generally Choice Plus, LLC v. Dep't of Fin. Servs., Bureau of Unclaimed Prop.*, 244 So. 3d 343, 347-48 (Fla. 1st DCA 2018).

31. Moreover, when various types of unclaimed or escheated funds come into the Department's possession, the Department "carries a responsibility to ensure that funds are properly disbursed to the rightful owner." *Id.*

32. In that case, the First District Court of Appeal, in addition to addressing escheated funds, also commented on unclaimed property under chapter 717:

Chapter 717 gives the Department a panoply of tools in order to determine the merits of a claim of ownership to “unclaimed property” that come to the Department through various means. *See, e.g.*, § 717.1244, Fla. Stat. (2013) (“In rendering a determination regarding the merits of an unclaimed property claim, the department shall rely on the applicable statutory, regulatory, common, and case law.”); § 717.1301, Fla. Stat. (2013) (the Department has the authority to make investigations and examinations to enforce chapter 717); § 717.1341, Fla. Stat. (2013) (“No person shall receive unclaimed property that the person is not entitled to receive.”); § 717.126, Fla. Stat. (2013) (“[T]he burden shall be upon the claimant to establish entitlement to the property by a preponderance of the evidence.

Id.

Leggiero’s Death Immediately Vested Rights to Her Property in Her Heirs

33. In addition to chapter 717, other sections of Florida law must be considered in this case.

34. For instance, Florida Probate Code, section 732.101(2), Florida Statutes, provides that “the decedent’s death is *the event* that vests the heirs’ right to the decedent’s *intestate* property.”

35. Section 732.514 similarly provides, in the case of a will, that “[t]he death of the testator is the event that vests the right to devise unless the testator in the will has provided that some other event must happen before a devise vests.” *See also Sorrels v. McNally*, 89 Fla. 457, 466-67 (1925) (holding that devises vest at the death of testator, unless there is a clear intent to postpone vesting).

36. Thus, it is clear that Leggiero’s existing interest in the proceeds of the unclaimed property vested in her heirs upon her death on May 27, 2020.

37. The fact that Leggiero was alive on the date the claim was filed and that the claim was complete when filed does not mandate that the

Department shall approve the claim, or pay it out to Choice Plus or its client. The Department's obligations and responsibilities extended beyond that.

38. One pertinent fact in this case is that Leggiero died on May 27, 2020-- *before* the Department had fulfilled its full statutory obligation and *before* it investigated or made any determination of entitlement.

39. Because Leggiero was deceased at the time the Department reviewed the claim, the Department exercised the appropriate caution and properly determined that the rights to the unclaimed funds had already vested in her estate or heirs. *See* §§ 732.101(2) (intestate) and 732.514 (testate), Fla. Stat.

40. It would be illogical and shortsighted to conclude that chapter 717, or a rule promulgated under that chapter, required the Department to hastily approve a pending claim for unclaimed property when it had evidence that the claimant is not alive and no longer in a position to accept the property.

41. The Department could not legally disburse funds to a person or entity who is not entitled to them. Furthermore, no statute or rule supports Choice Plus's assertion that a claim must be reviewed and considered retroactively to the date the claim was filed.

A Power of Attorney Terminates Upon the Death of the Principal

42. Choice Plus filed the claim on behalf of Louis Nardi, as attorney-in-fact for Felicia R. Leggiero. Consistent with section 717.135, it also submitted a LPOA executed by Louis Nardi. The authority of Louis Nardi to act on behalf of Leggiero was under a separate durable power of attorney.

43. A power of attorney creates a principal and agent relationship between the person who grants the power and the person who holds the power. *See Kotsch v. Kotsch*, 608 So. 2d 879, 880 (Fla. 2d DCA 1992). Notably, a power of attorney terminates upon the occurrence of certain events, including the death of the principal. § 709.2109(1)(a), Fla. Stat.

44. Similarly, the agent's authority is exercisable until the authority terminates, including when the power of attorney terminates. § 709.2109(2)(c), Fla. Stat.

45. Here, both the durable power of attorney and the LPOA terminated upon Felicia R. Leggiero's death on May 27, 2020. Thus, Choice Plus's claim, although complete when filed, required further investigation and a determination as to entitlement. Choice Plus no longer had the authority to act on behalf of Louis Nardi. Similarly, Louis Nardi no longer had authority to act on behalf of Leggiero.

46. Additionally, when the Department learned that Leggiero died, it had an obligation to pause and carefully determine who may be entitled to the funds under other provisions of the law, including, as mentioned, Florida's probate laws.

47. Choice Plus argues that the Department should pay the claim, less Choice Plus's fees, and submit the remainder to Leggiero's estate. *See* T. 26:24-27:1 and 27:24-25. But Choice Plus has not demonstrated that an estate for Leggiero has even been established nor has it demonstrated that the estate, Leggiero's heirs, or a probate court, have authorized payment of any portion of the estate to it.

48. Choice Plus does not have a LPOA from Felicia R. Leggiero's *estate or her heirs* (the putative and current beneficial owners of the property). Therefore, Choice Plus has shown no legal basis to claim the account on behalf of, or charge a fee to, Leggiero's estate or heirs.

Arguments Advanced by Choice Plus

49. As a matter of law, Choice Plus's contention that its unclaimed property claim on behalf of its client was complete upon filing, and should be paid out, is incorrect. That contention overlooks and ignores the Department's responsibility to investigate and determine entitlement. Determining that a claim is complete precedes, and is separate from, a determination of entitlement to the funds.

50. Completeness of the claim filing is in the nature of a condition precedent before a review on the merits begins. The Department then makes the entitlement determination, not the claimant or the claimant's

representative. See *Atwater v. Mortg. Elec. Registration Sys., Inc.*, 98 So. 3d 1191, 1192 (Fla. 3d DCA 2012)(“The Department of Financial Services is vested with the sole authority to make financial determinations as to unclaimed funds.”)(citations omitted).

51. Choice Plus’s central premise underlying its claim--relation back to the filing of its claim--is based on a misreading of rule 69G-20.0021(2), which provides:

The Department will only review the merits of a claim that has been deemed complete as filed. The Department will determine whether the claimant has established ownership *and* entitlement to the unclaimed property.

Id. (Emphasis added.)

52. This is clearly a multi-step process involving (1) a completed claim filing by the claimant, followed by, (2) a review, with an ultimate determination of entitlement being made by the Department.

53. Section 717.124(1)(c) expressly provides the Department with 90 days in which to review a claim. Furthermore, section 717.124(1)(a) and rule 69G-20.0021(1)(d)-(e) reasonably provides that if the claim is incomplete as submitted, the Department may request additional information or return the submitted documents to the claimant. If the documents are returned, the claimant may refile the claim when it has additional evidence that may entitle it to the property. *Id.*

54. Also noteworthy in the analysis of this case is the recognition that a claim will not be approved or paid until *after* the Department has reviewed the claim on the merits and determined that the supporting documents establish the claimant’s entitlement to the unclaimed property. § 717.124(4)(a), Fla. Stat.; Fla. Admin. Code R. 69G-20.0021(2)(a)(2016). There is nothing in section 717.124 or rule 69G-20.0021 that makes the Department’s claim determination retroactive to the date of filing.

55. The fact that a claim is complete as filed does not necessarily mean that the claimant is entitled to the unclaimed funds, or that the Department's work has come to an end.²

56. Rather, when the claim is complete, the Department must then review the claim on the merits to determine if the claimant has demonstrated entitlement to the unclaimed funds.

57. The Department's review may determine that entitlement has been established and the claim will be approved and paid.

58. The Department's review may also show that while the claimant has submitted a complete claim, some of the information the claimant provided, such as a social security number, a date of birth, or an address does not match the reported information. In that event, the claim will be denied because the claimant is not the same person as the reported owner, and, therefore, is not entitled to the funds.

59. Finally, as in this case, upon learning of the death of the benefactor, the Department may reasonably conclude that there are beneficiaries entitled to the unclaimed property whose interest must be considered and protected.³

60. The entitlement to unclaimed funds requires, in part, a legal analysis. That analysis may include the source of the funds in the unclaimed property account. It may also include consideration of other legally significant circumstances, such as the underlying merits of the owner's claim and, in some circumstances, the rights or competing interests of beneficiaries or heirs of a deceased owner.

61. Next, Choice Plus asserts that the Department has failed to treat similar claims in the same manner. It cites to Claim Nos. 7165211 and 7299596 filed with the Department, which are related to one another,

² Petitioner has provided no statutory or case authority to suggest otherwise.

³ This concern may be heightened when the claim representative returns no probate or trust documentation after receiving the RFI.

but are distinguishable from the claim filed by Choice Plus in this proceeding.⁴

Kaczer Claim cited by Choice Plus

62. Claim No. 7165211 cited by Choice Plus was filed by International Locator Service on behalf of Simon Kaczer, for property reported in the name of Irvin Kaczer. After the Department determined entitlement and issued payment in the name of Simon Kaczer, Simon Kaczer's daughter, Matilde Barish ("Barish"), informed the Department that her father had died, and, therefore, the funds could not be deposited into his bank account.

63. Thereafter, on June 16, 2017, after Simon Kaczer's death, Barish, as trustee of The Simon Kaczer Family Trust, filed Claim No. 7299596 and requested that the warrant be *reissued* to The Simon Kaczer Family Trust.

64. The supporting documentation submitted to the Department included a copy of the Trust, evidencing Barish's right to act on behalf of the Trust, a copy of Barish's driver's license, and a copy of her father's death certificate. The Department determined that Barish's claim was complete and that Barish, as trustee, was entitled to receive the unclaimed property.

65. The history, facts, and outcome of the Kaczer trust claim are distinguishable from the case at bar.

Morrison Claim cited by the Department

66. More analogous to the facts of this case is Claim No. 6799375. It was filed by Choice Plus on behalf of Mary Morrison on May 9, 2016. When the Department began its review of the claim in June, it learned that Mary Morrison had died on June 8, 2016.

67. On June 22, 2016, the Department sent an RFI to Choice Plus indicating that its claimant was deceased. On June 28, 2016, Choice Plus responded to the Department's RFI by providing a death certificate for

⁴ While these cases, and others at the Department, are not necessarily binding on the undersigned, they provide useful and persuasive authority to consider.

Mary Morrison's mother. The claim was denied and Choice Plus requested a hearing.

68. At the hearing and in its Proposed Written Report and Recommended Order, Choice Plus argued, among other things, that the claim was complete when filed, and since the claimant died after the completed claim was filed with the Department, the claim should have been approved. That argument is nearly identical to the facts and arguments made by Choice Plus in this case.

69. In a well reasoned and concise order, the hearing officer properly rejected Choice Plus's argument finding that it would be illogical to conclude that the Act, or a rule promulgated thereunder, would require the Department to approve even a completed claim when it had evidence that the claimant is not entitled to the property.

70. The hearing officer's Findings of Fact and Conclusions of Law were adopted by Final Order on March 27, 2017. Choice Plus appealed the Final Order to the First District Court of Appeal arguing that the Department erred in denying the claim, regardless of the claimant's death, because the claim was complete when filed.

71. On January 19, 2018, the First District Court of Appeal per curiam affirmed the Department's Final Order denying the claim. *See Choice Plus, LLC*, 239 So. 3d 343, 347-48.

Shedroff Claim cited by the Department

72. Claim No. 7152814 was filed by Choice Plus on behalf of Ramona Shedroff on February 28, 2017. When the Department began its review of the claim in April 2017, it learned that Ramona Shedroff had already died on March 9, 2017.

73. As part of its review, the Department sent an RFI to Choice Plus on April 21, 2017, indicating that its claimant was deceased.

74. As it did in this case, Choice Plus sent the Department a response to the RFI on June 19, 2017, stating, "[i]t is our position that the claim was

complete when filed.” The claim was denied and Choice Plus requested a hearing.

75. At the hearing and in its Proposed Written Report and Recommended Order, Choice Plus argued that the claim was complete when filed, and since the claimant died after the completed claim was filed with the Department, the claim should have been approved. Again, these arguments were nearly identical to the arguments raised in this case.

76. The hearing officer rejected Choice Plus’s argument finding that it would be illogical to conclude that the Act, or a rule promulgated thereunder, would require the Department to approve a claim when it has evidence that the claimant is no longer entitled to the property. The hearing officer’s Findings of Fact and Conclusions of Law were adopted by Final Order, with unrelated limited exceptions, on October 18, 2018.

77. Thus, despite Choice Plus’s claims to the contrary, the Department has treated similarly situated claims in the same manner. Moreover, Director Graham also confirmed that claims similar to the claim at issue have been treated in the same manner.

78. As a claimant’s representative, Choice Plus is only entitled to a fee when a claim is determined in favor of its claimant. In fact, the plain language of the LPOA executed by Louis Nardi as attorney-in-fact for Leggiero states, “If CP fails to document Claimant’s entitlement, nothing will be owed to CP.” Furthermore, the Department is merely “authorized” to make distribution to a claimant’s representative in accordance with the LPOA, it is not required to do so. Section 717.124(4)(a)-(b) provides, in relevant part:

(a) Except as otherwise provided in this chapter, if a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property the department actually received....

(b) If an owner authorizes ... a private investigator licensed under chapter 493, and registered with the

department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with such power of attorney

Id.

79. In this proceeding, Choice Plus did not establish entitlement to the property on behalf of its claimant. As such, pursuant to section 717.124 and the plain language of its LPOA, Choice Plus is not entitled to a fee.

CONCLUSION

80. The fact that Leggiero was alive on the date the claim was filed and that the claim was complete when filed does not mandate that the claim must be paid to Choice Plus.

81. The relevant fact is that Leggiero was deceased before the Department made any determination of entitlement. Because Leggiero was deceased at the time the Department reviewed the claim, the Department correctly determined that, as a matter of law, she no longer had any legal or beneficial entitlement to the unclaimed funds as entitlement already had vested in her estate. §§ 732.101(2) and 732.514, Fla. Stat.

82. Choice Plus provided no documentation demonstrating that it represented Felicia R. Leggiero's estate, the personal representative of her estate, or her heirs.

83. Pursuant to section 717.124(4), a claimant's representative is only entitled to a fee when a claim is determined in favor of its claimant. Due to the unforeseen death of Leggiero, Choice Plus cannot successfully recover the unclaimed property account on behalf of its claimant and is, therefore, not entitled to a fee.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order affirming the denial of Petitioner's claim. However, it is recommended that the Department should accept and consider the submission of a supplemental claim by any lawful beneficiaries or heirs of Felicia Leggiero to determine entitlement pursuant to the provisions of chapter 717 and other provisions of law.

DONE AND ENTERED this 3rd day of March, 2021, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of March, 2021.

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.