

**BEFORE THE TAX APPEAL BOARD  
OF THE STATE OF DELAWARE**

JASMAL KAUR SAUDAGAR SINGH,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 1805
	)	
STATE ESCHEATOR,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

This is an unclaimed property dispute where the respondent State Escheator has moved to dismiss the petition filed by Jasmal Kaur Saudagar Singh (“Petitioner”). The issues the Board must resolve are: (i) whether Petitioner timely appealed the State Escheator’s May 14, 2022, determination by mailing her appeal from the United Kingdom on July 4, 2022; and (ii) if Petitioner’s appeal is timely, whether the Board has jurisdiction over Petitioner’s claims.

For the reasons set forth below, the motion is granted in part and denied in part. The Board hereby determines that Petitioner filed a timely appeal, and that the Board has jurisdiction over the Petitioner’s claim that the State Escheator never sent a written notice to Petitioner that the State Escheator was in possession of escheated securities that appear to be owned by Petitioner. To the extent the petition asserts other claims, the motion is granted.

## Statement of Facts

The petition is not a model of clarity. The facts set forth herein are the Board's understanding of the facts alleged in the petition, its exhibits and information the parties have attached to their briefing related to jurisdictional issues.

Petitioner resides outside of the United States.

Prior to 2017, Petitioner acquired shares of stock in an unidentified Delaware corporation (the "Shares"). In 2017, Morgan Stanley escheated the Shares to the State Escheator. In August 2017, the State Escheator liquidated the Shares by selling them on the market for \$6,370.05.

Citing 12 *Del. C.* § 1150 ("Section 1150"), which requires the State Escheator to notify property owners that the State Escheator is holding property that belongs to them, the Petitioner contends that the State Escheator violated Delaware's unclaimed property laws because "notice was never mailed to her by the State." Petition, page 1. *Id.* at 2 ("1150. Notice to owner by State Escheator: Notice was not sent to Mrs. Kaur's last known address").<sup>1</sup>

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<sup>1</sup> Section 1150 was amended effective June 30, 2022. In pertinent part, the pre-June 30, 2022, version of Section 1150 stated, "the State Escheator shall send written notice to an owner *prior to liquidation* that a security . . . that . . . appears to be owned by the owner is held by the State Escheator under this chapter." (emphasis added). As amended, Section 1150 reads (underlined text added and stricken text removed): "as soon as the State Escheator deems practical after delivery [of property from a holder], the State Escheator shall send written notice to an owner ~~*prior to liquidation*~~ that a security . . . that . . . appears to be owned by the owner is held by the State Escheator under this chapter." The bill amending Section 1150 states that

Petitioner filed a claim with the State Escheator related to the Shares on October 17, 2021. *Id.* On March 14, 2022, the State Escheator issued a written notice of determination finding that Petitioner was entitled to recover \$6,370.05, the liquidation value, for the Shares. The notice of determination stated that Petitioner had 120 days to appeal the notice of determination.

One-hundred and twenty days from March 14, 2022, is July 12, 2022. Pursuant to Tax Appeal Board Rule 4(b), in order for an appeal of the notice of determination to be timely, the envelope containing the Petitioner's petition had to be postmarked on or before July 12, 2022.

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these changes “apply retroactively to any claims, examinations, voluntary disclosure agreements or litigation pending as of the effective date of the Act.” State Escheator's Motion to Dismiss at Ex. D page 7.

Thus, as a result of the 2022 amendment to Section 1150, the State Escheator no longer has to notify an owner that the State Escheator is holding securities that appear to belong to the owner prior to liquidating the securities; yet, even under amended Section 1150, she still must provide such notice at some time. As Petitioner's claim and the litigation-appellate process related thereto were pending when Section 1150 was amended, amended Section 1150 applies here.

The State Escheator asserts without any supporting documentation that she provided the requisite notice and did so prior to the liquidation of the Shares, State Escheator Motion to Dismiss at 8, n.4, but that notice is not part of the petition and, even if it had been attached to the briefing, cannot be considered at this stage of the proceeding. As in *Sharma v. State Escheator*, Dkt. 1787 (TAB Final Decision and Order Jan. 3, 2023), after discovery, the State Escheator may be able to prove that she sent the Section 1150 notice required by Delaware's unclaimed property law. At this stage of the proceeding, however, we must accept Petitioner's allegation that no such notice was sent.

On July 18, 2022, the Board's secretary received an envelope containing Petitioner's petition. The secretary stamped the envelope with the July 18, 2022 date. State Escheator's Motion to Dismiss at Exhibit B. The envelope had a United Kingdom "Customs Declaration" label indicating that the envelope was mailed from the United Kingdom on July 4, 2022. *Id.* It also had a "International Tracked" label bearing the image of the late Queen Elizabeth, dated July 4, 2022. *Id.* The envelope did not bear a United States Postal Service ("USPS") postmark; however, the Petitioner submitted a USPS tracking record with her answering brief reflecting that the envelope was deposited in the mail in the United Kingdom on July 4, 2022, was received by the USPS in New York on July 6, 2022, and was delivered to the State Escheator's P.O. Box in Wilmington, Delaware on July 7, 2022. Exhibit to Petitioner's Response to Respondent's Motion to Dismiss.

In addition to alleging that the State Escheator did not send Petitioner a Section 1150 notice regarding the Shares, Petitioner also contends that "[t]he holder of [Petitioner's] property," Morgan Stanley, "never contacted her at her address and the State had a requirement to confirm this had been done before taking her property in trust." Petition, page 2 (citing 12 *Del. C.* § 1148 ("Section 1148"), which requires the holder of property to notify the supposed owner of the property that it will escheat the property to the State Escheator if the owner does not claim the property). The petition further contends that "the Delaware State Office of Unclaimed Property

should not have taken ownership of ... property of a non-US citizen,” the State Escheator should not have sold the Shares, and “the State Escheator has not followed due process.” The petition asks that the Board award Petitioner “\$17,288 (based on a share price of \$43.22 at close of market on 15 October 2021),” two days before the date she alleges she filed her claim.

The State Escheator has moved to dismiss pursuant to Superior Court Rule 12(b)(1) arguing that the petition was untimely (based on the absence of a USPS postmark on the envelope containing Petitioner’s petition) and that the Board otherwise lacks jurisdiction over Petitioner’s claims.<sup>2</sup>

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<sup>2</sup> The State Escheator’s reply brief argues that Petitioner’s response to the Motion to Dismiss should be stricken because it was not signed by Petitioner and that the case should be dismissed because non-party Simran Sidhu, a foreign resident who is assisting Petitioner with her claim, has engaged in the unauthorized practice of law before the Board. The Board disagrees. Petitioner’s response was submitted by Petitioner using her email address and the lack of a signature on the response did not prejudice the State Escheator in any manner and easily could be cured if necessary. As to the unauthorized practice of law, when, as here, the alleged violation does not improperly prejudice the fairness of the proceeding or the fair or efficient administration of justice, only the Delaware Supreme Court and its agents at the Office of Disciplinary Counsel or the Unauthorized Practice of Law Subcommittee of the Board of Professional Responsibility may govern and discipline lawyers and non-lawyers appearing before Delaware Courts or the Tax Appeal Board. *See In re Appeal of Infotechnology, Inc.*, 582 A.2d 215, 216-17 (Del. 1990); *Delaware State Bar Ass’n v. Alexander*, 386 A.2d 652, 660 (Del. 1978) (“the Delaware Supreme Court has both the authority and the exclusive right to punish the unauthorized practice of law”). The Board explained to Ms. Sidhu the extent to which she can assist the Petitioner in these proceedings and since receiving that explanation Ms. Sidhu has not overstepped.

## Analysis

### I. Petitioner's Petition Was Filed Timely

The first issue the Board must address is whether Petitioner filed her petition before the 120 day appeal period ran. If the appeal was not timely filed, this Board lacks jurisdiction over the matter and the petition must be dismissed.

In *Duchesneau v. State Escheator*, Dkt. No. 1813 (TAB Decision and Order April 28, 2023), this Board addressed facts almost identical to those presented here. There, a foreign resident mailed her petition from outside the United States. The envelope containing the petition did not contain a USPS postmark, but it did have a timely foreign postmark and the foreign resident produced mail tracking information showing the envelope had been mailed timely. In *Duchesneau*, the Board held that the petition was timely and stated, “[i]n future unclaimed property cases involving foreign inbound mail, absent fraud, forgery or other grounds to question the authenticity of the foreign postmark, the Board will consider the date of the foreign postmark when determining if a foreign inbound mailing is timely.” The Board further found that the extrinsic evidence demonstrated the petition was mailed timely.

The reasoning of *Duchesneau* applies fully here. Both the foreign labels on the envelope and the mail tracking record demonstrate Petitioner's petition was timely filed.

## **II. The Petition States a Narrow Claim for Relief**

As described above, the petition contends that the State Escheator never sent Petitioner the notice required by Section 1150 and, as a result, should not have sold the Shares. Except as noted in footnote 1, the State Escheator's motion does not address why this claim should be dismissed and for this reason alone it survives.

Even if the State Escheator had moved to dismiss the Section 1150 claim based on failure to state a claim, that motion would have been denied. While amended Section 1150 gives the State Escheator discretion as to the timing of such a notice, such a notice is still required. Accordingly, the Board determines that the Petitioner has stated a claim to the extent she contends that the State Escheator violated Delaware's unclaimed property laws by selling the Shares without ever sending the notice required by Section 1150.

## **III. Petitioner's Other Claims Must Be Dismissed**

To the extent that Petitioner asserts a claim under Section 1148 based on the contention that "[t]he holder of [Petitioner's] property," Morgan Stanley, "never contacted her" before escheating the Shares to the State Escheator, and that "the State had a requirement to confirm this had been done before taking" the Shares, the petition is deficient. Delaware's unclaimed property laws do not require the State Escheator to confirm if holders have satisfied their statutory duties, and this Board lacks jurisdiction over such a claim, which essentially is a claim that the holder

violated Delaware law and potentially gives rise to a claim by the Petitioner against the holder that cannot be adjudicated before this Board.

Likewise, the contention that “the Delaware State Office of Unclaimed Property should not have taken ownership of ... property of a non-US citizen” does not assert a valid claim. Non-US citizens are not exempt from Delaware’s unclaimed property laws.

Finally, to the extent the petition contends that “the State Escheator has not followed due process,” constitutional claims of this nature are beyond the scope of the Board’s jurisdiction. *JLI Invest., S.A. v. Gregor*, Dkt. 1652 (TAB Decision and Order Jan. 18, 2017) (Board “does not have jurisdiction to resolve facially or as applied constitutional challenges”).

As this case will proceed on the narrow Section 1150 claim noted above, the Board directs the parties to meet, confer and prepare a factual stipulation consistent with Tax Appeal Board Rules.

SO ORDERED this 18<sup>th</sup> day of July, 2023.

Paul C. Seltzer

Robert W. Slavin

Jean M. Winters

Robert W. Slavin

M. Lynn Fuller