

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

CARMEN DUCHESNEAU)	
)	
Petitioner,)	
)	
v.)	Docket No. 1813
)	
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 Carmen Duchesneau (“Petitioner”). The issues the Board must resolve are: (i) whether Petitioner timely appealed the State Escheator’s May 20, 2022 determination by mailing her appeal from Canada on September 16, 2022 using registered mail; and (ii) if Petitioner’s appeal is timely, whether Petitioner has stated a claim for relief.

For the reasons set forth below, the Board determines that Petitioner filed a timely appeal, but that her petition does not otherwise state a claim for relief because she has received all the relief she is entitled to under Delaware’s unclaimed property statutes and because her other objections lack merit or are not properly before the Board. Accordingly, the petition is dismissed.

Statement of Facts

The facts set forth herein are taken from the petition and its exhibits unless otherwise noted.

Petitioner is a resident of Canada. Petition ¶1. Prior to October 2, 2020, shares of stock of Advansix Inc., Garrett Motion Inc., Honeywell International Inc. and Resideo Technologies Inc. (the “Shares”) that Petitioner owned were escheated to the State Escheator. Petition Exs. A and B. The petition does not identify the date the Shares were escheated to the State Escheator, the date the State Escheator notified Petitioner that the State Escheator was holding the Shares or how long thereafter Petitioner filed her claim, but the parties’ briefing concedes that Petitioner filed her claim within 558 days of the date the State Escheator sent Petitioner a statutorily-mandated notice. Respondent’s Opening Brief at 6; Petitioner’s Answering Brief at ¶¶12 and 13; Petitioner’s Sur-Reply at Ex. 3 (“I began interacting with your organization in September 2020 having received a letter from the Delaware’s Office of Unclaimed Properties (OUP) in late June” 2020).

On October 2, 2020, Petitioner submitted a claim to the State Escheator related to the Shares. Petition ¶4 and Ex. A. On May 20, 2022, the State Escheator sent Petitioner a determination letter explaining that her claim had been approved for payment in the amount of \$21,464.87. Petition ¶6 and Ex. B. The determination letter included a check in this amount and stated, “you may appeal this determination

within 120 days of this notice by applying for a hearing and determination of the claim by the Tax appeal Board.” Petition Ex. B.

One hundred and twenty days from May 20, 2022 is Saturday, September 17, 2022. On September 29, 2022, the Secretary for the Board received an envelope that contained Petitioner’s petition appealing the decision in the determination letter. The Secretary date stamped the envelope on the day she received it. The envelope contained two other markings. The first was a Canadian postmark reflecting that the envelope had been deposited in the mail in Canada on September 16, 2022. Respondent’s Opening Brief at ¶15 (“The Petition appears to have been mailed from Canada on September 16, 2022”). The second was a large Canada Post shipping label reflecting a date of “2022 09 16,” a “USPS Tracking” bar code and the tracking number LM 178 290 135 CA below the bar code. Canada Post is the federal entity that delivers mail in Canada and this shipping label demonstrates that the envelope and its contents were sent by registered mail. Respondent’s Opening Brief Ex. 2. A Canada Post tracking receipt that Petitioner submitted with her Answering Brief reflects that package “LM178290135CA” was “accepted” by Canada Post on September 16, 2022, arrived in the United States on September 19, 2022, and was delivered on September 23, 2022. Petitioner’s Answering Brief Ex. 1.

Petitioner’s petition acknowledges that her “claim was approved” in the determination letter, but further notes that she “disputes the value of the

determination.” Petition ¶5. Exhibit C to the petition acknowledges that the \$21,464.87 figure is based on the market value of the Shares on October 2, 2020, the date Petitioner submitted her claim, but contends the Shares should be valued as of September 3, 2021, the “day when the petitioner submitted evidence from the [Delaware unclaimed property statutes] that confirmed the value of the property is based on the day the claim is made” Exhibit C to the petition further states that the Petitioner seeks an award “of \$29,648.88, the value at the close of September 3, 2021. Since \$21,464.87 has been disbursed to the petitioner, a minimum of \$8,458.50 in proceeds is being appealed.”

The petition and its supporting exhibits contend that unnamed agents of Delaware’s Office of Unclaimed Property (“OUP”) did not respond to Petitioner’s inquiries in a timely or competent manner and that the agents misrepresented the date on which the Shares would be valued for purposes of determining the amount that would be returned to Petitioner. Specifically, Petitioner contends that the OUP agents advised her that she could recover the value of the Shares on the date they were escheated to the respondent, when, in the circumstances of this case, Delaware’s unclaimed property statutes actually allow her to recover the value of the Shares on the date she submitted her claim. Petitioner implies that this alleged misstatement caused her to file a claim on October 2, 2020, a date on which the Shares allegedly had a low market value. Petitioner contends that the alleged

misstatement coupled with the resulting loss arising from the date on which she submitted her claim violated her Constitutional rights.

Analysis

I. Petitioner's Petition Was Filed Timely

The first issue the Board must address is whether the petition was filed 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 pertinent part, Tax Appeal Board Rule IV provides:

4a. For all documents to be filed with the Board, the documents must be filed either by depositing such documents in the United States mail, postage prepaid and properly addressed, or by personal delivery in the office of the secretary of the Board during business hours

The date of the United States postmark stamped on the cover in which such document is mailed shall be deemed the date of delivery of such document. The Board's secretary shall conspicuously note on each document received by the Board (a) the postmark stamped on the cover of each document mailed to the Board; or (b) the date received if such document is personally delivered or the postmark on the cover of the document is illegible.

4b. *A document mailed to the Board will be deemed to be timely filed if the postmark stamped on the cover in which such document is mailed is dated on or before the required date of filing.* When the last day for filing any document falls on a Saturday, Sunday, or legal holiday in the State of Delaware, a document will be deemed timely filed if the document is personally delivered (or the postmark stamped on the cover in which such document is mailed is dated) on or before the next

succeeding day that is not a Saturday, Sunday, or legal holiday in the State of Delaware. (italics added)

Rules 4a and 4b are not consistent as to the type of postmark required. Rule 4a states that the date of the “United States postmark” shall be deemed the date of delivery, while Rule 4b states if the “postmark” is dated on or before the due date, then the document “will be deemed to be timely filed.” Although the State Escheator’s opening brief asserts the absence of a “United States postmark” on the envelope containing Petitioner’s petition demonstrates that the petition was not timely filed, the State Escheator did not address the text of Rule 4b. Respondent’s Opening Brief at ¶¶16-17. Neither party has identified any legislative history related to Rule IV that might shed light on this inconsistency and the Board has not located any.

Notwithstanding the inconsistency and the lack of legislative history, the purpose of Rule IV is clear from its text: to ensure that the Board has an objective and reliable data source that is not susceptible to manipulation by the parties identifying the point in time when an envelope enters the mail service. This data point, in turn, ensures that the Board can easily determine if a document has been filed timely.

Given this purpose and the increasing number of foreign inbound mailings that the Board receives as a result of Delaware’s unclaimed property statutes, the Board believes that, absent issues of fraud or forgery, when assessing whether a

foreign inbound mailing was filed timely, the Board should look to Rule 4b and deem a document timely filed so long as the envelope in which the document arrives is stamped with a foreign postmark that is dated on or before the due date. This holding is consistent with a ruling by the Internal Revenue Service, which found that a federal income tax return with a timely foreign postmark is timely filed. Rev. Rul. 2002-23, 2002-1 C.B. 811.¹

In the Board's experience, most foreign inbound mail is not stamped with a United States Postal Service ("USPS") postmark. See *Boulton v. C.I.R.*, 2011 WL 94744, at *3 (U.S. Tax Ct. Jan. 11, 2011) (noting that USPS manuals do not require a United States postmark to be affixed to inbound foreign mail). In 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 a foreign postmark when determining if a foreign inbound mailing is timely.

¹ Respondent's Opening Brief also notes that 30 *Del. C.* §551(a) provides that if a "document required to be filed . . . within a prescribed period or on or before a prescribed date under the authority of any provision of the revenue laws of this State," then "the date of the United State postmark stamped on the cover in which such document is mailed shall be deemed to be the date of delivery . . ." Section 551(a) does not apply here because this dispute involves the timeliness of Petitioner's submission under Delaware's unclaimed property statutes, 12 *Del. C.* §1167(a), not its revenue laws.

Even if Rule IV required Petitioner to show that a USPS postmark was present, the record before the Board reveals that condition was satisfied here. *See Boulton*, 2011 WL 94744, at *3 (“extrinsic evidence is admissible” to determine timeliness of mailing “if a U.S. postmark date is either illegible or missing”). The 120th day following May 20, 2022, was Saturday, September 17, 2022. As the last day of the appeal period fell on a Saturday, the due date is extended to Monday, September 19, 2022 under Tax Appeal Board Rule IV. The Canada Post postmark and the registered mail shipping label on the envelope both reflect that the envelope was delivered to Canada Post on September 16, 2022, prior to the due date. The Canada Post tracking receipt reflects that the envelope was delivered to the USPS on September 19, 2022, the day it was due. The data on the tracking receipt is “tantamount to, and/or the functional equivalent of, a U.S. Postal Service postmark.” *Id.* at *5.

As Petitioner has submitted sufficient evidence of timely delivery of her petition under Rule IV, her petition will not be dismissed for failure to file before the due date. *Id.* (finding mailing from Canada that included Canada Post postmark and a registered mail sticker but not a USPS postmark was timely when the Canada Post postmark and tracking information showed that the envelope had been originally mailed and received by the USPS prior to the due date).

II. Petitioner's Petition Does Not State a Claim for Relief

Although the law related to unclaimed property is not familiar to many people, every state has statutes that govern the disposition of unclaimed property. The applicable Delaware statutes specify the relief Petitioner is entitled to under the circumstances. As the State Escheator has given Petitioner all the relief she is statutorily entitled to receive, the petition fails to state a claim for relief.

With regard to securities like the Shares, Delaware's unclaimed property statutes provide, in pertinent part, that:

- a corporation that issues shares of stock to investors is a "holder" of those shares for purposes of Delaware's unclaimed property statutes, 12 *Del. C.* §1130(10);
- every holder of shares must determine on an annual basis whether the shares it has issued to owners/investors are presumed abandoned and submit a report identifying the presumptively abandoned shares to the State Escheator, 12 *Del. C.* §§1133(13), 1136(b) and (f) and 1142;
- if an owner/investor does not respond to a notice issued by a holder of presumably abandoned shares, then the holder "shall pay or deliver to the State Escheator the" shares of stock, 12 *Del. C.* §1152(a), *see also* 12 *Del. C.* §§1148 and 1149;
- once the State Escheator receives escheated shares of stock, she must send notice to the owner/investor that she is holding shares of stock that appear to be owned by the owner/investor, 12 *Del. C.* §1150;
- for shares of stock delivered to the State Escheator on or after July 1, 2017, "the State Escheator shall, subsequent to satisfying the notice requirements . . . , sell the security on any established stock exchange or by such other means as the State Escheator deems advisable," 12 *Del. C.* §§1159 and 1152(c)(2); and

- the State Escheator then holds the proceeds of the sale for the benefit of the owner/investor, 12 *Del. C.* §1158(c), provided, however, if the owner/investor submits a valid claim within 558 days of the date the State Escheator mailed her notice, then the owner/investor is entitled to receive “replacement of the security or the market value of the security at the time the claim is filed, at the option of the State Escheator” 12 *Del. C.* §1160(a)(2).

Here, Petitioner filed a claim to the Shares on October 2, 2020, within 558 days of when the State Escheator notified Petitioner that the State Escheator was holding the Shares. Consistent with the above statutory scheme, the State Escheator had the option of paying Petitioner \$21,464.87, the market value of the Shares on October 2, 2020, the date Petitioner submitted her claim. The State Escheator sent Petitioner a check in that amount. The State Escheator adhered to the statutory scheme and sent Petitioner what she was entitled to under Delaware’s unclaimed property statutes. As the State Escheator has given Petitioner all the relief she is entitled to receive under the Delaware unclaimed property statutes, Petitioner’s request for further relief—a monetary award equal to the market value of the Shares on September 3, 2021—fails to state a claim.

Petitioner raises three arguments in an attempt to avoid dismissal. First, she contends that the date she filed her claim is uncertain. Petitioner’s Sur-Reply at ¶¶5, 13. The petition and briefing on the motion to dismiss show that Petitioner filed her claim on October 2, 2020. Petition ¶4; Petition Ex. A dated October 2, 2020; Petition Ex. C (“[t]he claim was initiated October 2, 2020” and “[t]he October 2, 2020 date

reflects the date the claim was initiated”); Petitioner’s Sur-Reply Ex. 2 at September 3, 2021 email (“prior to submitting my claim on October 2, 2020”). Petitioner’s own filings defeat her attempt to avoid dismissal by claiming there is uncertainty regarding the date she filed her claim.

Second, she claims that she has been injured because OUP agents gave her incorrect advice regarding Delaware’s unclaimed property statutes, including by telling her that the Shares would be valued as of the date they were escheated to the State Escheator, not the date Petitioner filed her claim. Petitioner’s Sur-Reply Brief at ¶¶3, 7 and Ex. 3 Feb 9, 2021 email; Petitioner’s Answering Brief ¶20. OUP agents are not agents of Petitioner and, to the extent they attempted to assist Petitioner in the claim process, they owed her no duties. Case law also suggests that their statements, even if erroneous and resulting in damage to the recipient, do not bar Delaware or the State Escheator from adhering to controlling statutory language. *See Conway v. Wolf Liquor Co.*, 200 A.2d 831, 834 (Del. 1964) (state could collect liquor taxes pursuant to new legislation notwithstanding fact a government official had erroneously stated that new legislation would not take effect until a later date because “a State or its agencies cannot be estopped by the unauthorized acts of its officers”).

Even if the OUP agents owed duties to Petitioner and if their statements could bind the State Escheator, this Board is not the proper venue to resolve Petitioner’s damages claim. As explained in *JLI Invest, S.A. v. Gregor*, Dkt. 1652, Tax Appeal

Board Decision and Order (Jan. 18, 2017), this Board is an administrative body with limited jurisdiction. A claim that OUP agents' conduct injured Petitioner effectively asserts a common law claim against those agents for damages. The State Escheator did not consider or rule on such a claim when she issued her determination letter, and this Board lacks jurisdiction to hear such a claim on appeal. *Id.* at 26-29 (explaining that Tax Appeal Board lacks jurisdiction over common law claims).

Third, to the extent that Petitioner asserts a constitutional challenge to the conclusions set forth in the determination letter, this Board, an administrative body, lacks the jurisdiction to resolve such disputes, *id.* at 24-26 (Tax Appeal Board lacks jurisdiction over facial and as applied constitutional challenges), and this issue was not addressed in the determination letter and, therefore, is not properly before the Board.

The Board has considered all of the issues and arguments raised by the parties. Petitioner's petition was filed timely, but her petition fails to state a claim and must be dismissed.

SO ORDERED this 28th day of April, 2023.

Lull C. S. D.

John R. M. B.

Juan M. Winters

Robert Shavir / yes

M. Lynn Fuller