

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

COLETTE JEANNE BARFF,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1824
)	
STATE ESCHEATOR,)	
)	
Respondent.)	

DECISION AND ORDER

Petitioner Colette Jeanne Barff has filed a petition appealing the respondent State Escheator’s notice of determination (“NOD”). The NOD found that petitioner is entitled to the proceeds arising from the sale of 4,326 shares of Microsoft Corporation common stock (the “Shares”) that were escheated to and sold by the respondent in 2015 plus escheated dividends related thereto, but no further relief.

Respondent has moved to dismiss petitioner’s appeal on the ground that respondent has offered petitioner all the relief petitioner is entitled to under Delaware’s unclaimed property law in effect in 2015. For the reasons set forth below, we agree with the respondent and hereby grant respondent’s motion. Petitioner’s petition is dismissed.

FACTUAL BACKGROUND

The following is based on the facts set forth in the petition unless otherwise indicated. We accept these facts as true only for purposes of deciding this motion.

Petitioner is a resident of South Africa. From 1999 to 2022, she worked for Microsoft Corporation's South African affiliate. During her employment, petitioner was awarded the Shares as part of her compensation. Petitioner held the Shares through an account she maintained at Morgan Stanley.

On March 17, 2015, Morgan Stanley escheated the Shares and dividends thereon to respondent.¹ Petitioner's briefing states that prior to the escheatment Morgan Stanley mailed notice of its intent to escheat the Shares to petitioner at her address in South Africa, but that she never received the notice due to poor postal delivery in that country.

On June 10, 2015, respondent sold the Shares on the open market. Petitioner alleges that respondent did not contact petitioner upon receiving the Shares or before selling them, but acknowledges that respondent contends she mailed a letter to petitioner's address in South Africa.

More than seven years later, on September 27, 2022, petitioner filed a claim with respondent asking that the Shares be returned to her. On January 9, 2023,

¹ Petitioner's brief states that Morgan Stanley escheated the Shares on February 6, 2015. For purposes of this motion, the date set forth in the petition controls over the date stated in the brief. Which of these two dates is correct has no impact on the outcome here.

respondent issued the NOD, which approved petitioner's claim, did not return the previously sold Shares and capped her recovery at \$209,784.09, the amount received when the Shares were sold plus dividends thereon and other credits. Petitioner has received this sum and deposited it without prejudice to her right to pursue this appeal.

Petitioner's appeal seeks the return of the Shares or replacement securities for the Shares, which petitioner claims have a current market value of almost \$2 million. Petitioner contends that the respondent erred when issuing the NOD because: (i) respondent "had no authority to receive or dispose of my property in 2015" because "the statute did not provide for the receipt of foreign-address property" in 2015; (ii) her security account was active at the time the Shares were escheated and, therefore, the Shares were not abandoned property and should not have been escheated to respondent in 2015; and (iii) respondent erred by liquidating the Shares without first providing notice to petitioner and, even if notice was sent, by failing to pursue other means of contacting petitioner. Petition ¶¶8-9. Petitioner's briefing further claims that respondent "violated federal law ... when she accepted and liquidated the Petitioner's property" and that "Delaware's procedure for providing notice" to unclaimed property owners "does not provide adequate due process under the United States Constitution."

ANALYSIS

Statutory Framework: JLI Invest, S.A. v. Gregor, TAB Docket No. 1652

On January 18, 2017, this Board issued its decision in *JLI Invest, S.A. v. Gregor*, Tax Appeal Board Docket No. 1652. Like here, the *JLI* foreign-domiciled petitioners alleged that the respondent improperly sold stock that had been improperly escheated, and respondent argued that petitioners' claim had no merit because they had received all the relief to which they were entitled (i.e., the proceeds from the sale) under Delaware's then applicable unclaimed property statutes.

When ruling in respondent's favor, the Board summarized Delaware's pre-2017 unclaimed property law. In pertinent part, the Board stated:

Delaware, like all 50 states, has enacted laws that govern the treatment of abandoned property. The Delaware laws related to escheats are codified at 12 *Del. C.* §§ 1101 *et seq.* and, among other things, contain provisions related to: (i) the reporting of abandoned property to the State Escheator, (ii) the delivery of abandoned property to the State Escheator, (iii) the obligation of the State Escheator to sell abandoned property delivered to him, (iv) the right of an owner to file a claim seeking the return of the abandoned property from the State Escheator, and (v) what a claimant can recover from the State Escheator on account of its claim.

A. Reporting of Abandoned Property

Section 1199 of the Delaware Escheats Law requires every holder of any property deemed to be abandoned property to report such property to the State Escheator. Specifically, Section 1199 requires every "holder of funds or other property, tangible or intangible, deemed abandoned" to "file with the State Escheator, on or before March 1 of each year . . . a report with respect to such property" held as of December 31 of the preceding year. 12 *Del. C.*

§ 1199. The holder, not the State Escheator, determines what property in its possession has been abandoned and must be reported pursuant to Section 1199.

In pertinent part, a holder is “any person having possession, custody or control of the property of another person For purposes of this subchapter, the issuer of any intangible ownership interest in a corporation, whether or not represented by a stock certificate, which is registered on stock transfer or other like books of the issuer or its agent, shall be deemed a holder of such property.” 12 *Del. C.* § 1198(7). A holder is different than an “owner.” An owner is the person who or the entity which has legal or equitable title to the property. *Id.* and 12 *Del. C.* § 1198(8).

Abandoned property is defined as “property against which a full period of dormancy has run.” 12 *Del. C.* § 1198(1).

Property includes “personal property . . . of every kind or description, tangible or intangible, in the possession or under the control of a holder . . . and includes . . . intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities” 12 *Del. C.* § 1198(11).

Effective June 30, 2008, Section 1198(9)a of the Delaware Escheats Law was amended (“New Section 1198(9)a”) . . . to state, in pertinent part:

“Period of dormancy” means the full and continuous period of 5 years, except a period of 15 years for traveler’s checks, during which an owner has ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. Notwithstanding the foregoing, “period of dormancy” means the full and continuous period of 3 years with respect to intangible ownership or indebtedness in a corporation or other entity whether or not represented by a stock certificate

Thus, for securities, the 2008 amendment to Section 1198(9)a reduced to three years the period during which an “owner [must have] ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property[.]”

B. Holders Must Deliver Abandoned Property to the State Escheator

Section 1201 of the Delaware Escheats Law requires holders of abandoned property to pay or deliver such property to the State Escheator and, in the case of certificated securities, to deliver the original stock certificate or a replacement certificate evidencing the certificated security to the State Escheator. 12 *Del. C.* § 1201(a) (“On or before the date required for the filing of the report pursuant to § 1199 of this title, every holder of abandoned property shall pay or deliver to the State Escheator all abandoned property specified in the report The holder of any intangible ownership interest in a corporation deemed abandoned under this subchapter shall, when making the delivery contemplated by this section: (1) If such interest is a certificated security as defined in § 8-102(a) of Title 6 deliver either the original stock certificate evidencing the abandoned property, if such is in its possession or a duly issued replacement certificate evidencing such property in a form suitable for transfer”).

Under Section 1144 of the Delaware Escheats Law, when a holder pays or delivers property that the holder deems to be abandoned to the State Escheator, the holder “shall immediately and thereafter be relieved and held harmless from any and all liability for the property so paid and no action shall be maintained against [the holder] or [the property;]” provided, however, that “[n]othing in [Section 1144] shall be construed to relieve [the holder] . . . from liability for . . . [d]amages for negligence . . . [that occurred] prior to the time such funds or property are paid to the State Escheator.” 12 *Del. C.* §§ 1144(b) and (c).

If a holder delivers property that technically is not “abandoned property” to the State Escheator, the State Escheator is nonetheless required to treat such property as abandoned property:

Whenever, because of some mistake of fact, error in calculation or erroneous interpretation of a statute, any person pays or delivers to the State Escheator any moneys or other property not required by this subchapter to be so paid or delivered, such moneys or other property shall, for the purposes of this subchapter, be deemed to be abandoned property, unless and until refunded or redelivered by the State Escheator to the person who paid or delivered the same.

12 *Del. C.* § 1144(e).

Property that is paid or delivered to the State Escheator as abandoned property must be deposited into the State of Delaware’s general fund, 12 *Del. C.* § 1131(a), and is held by the State of Delaware “for the benefit of those entitled to receive the same” 12 *Del. C.* § 1144(a)....

C. The State Escheator Must Sell Abandoned Property

The Delaware Escheats Law also requires that “[a]ll abandoned property, other than money, delivered to the State Escheator under this subchapter shall be sold or disposed of in accordance with § 1143 of this title.” 12 *Del. C.* § 1204(a). Section 1143(a) of the Delaware Escheats Law provides, in relevant part, that:

All abandoned property . . . delivered to the State Escheator pursuant to this subchapter may be sold or disposed of in such manner and at such times as the State Escheator, in the Escheator’s discretion, shall determine to be in the best interests of the State. In the case of stocks, bonds or other securities, disposition may be made by sale through a registered broker on a recognized security exchange or over the counter market or, if there is no ready market for such security, by negotiation or public auction.”

12 *Del. C.* § 1143(a). The proceeds of any sale, less any costs associated therewith, “shall be held in the place of such property” 12 *Del. C.* § 1143(b). These proceeds, like all other money or proceeds of property received by the State Escheator, must be deposited in the State of Delaware’s general fund. 12 *Del. C.* § 1131(a).

D. Claims to Abandoned Property

A person or entity who has legal or equitable title to abandoned property worth \$3 or more that has been paid or delivered to the State Escheator can file a claim for the property with the State Escheator. 12 *Del. C.* § 1146(a). The General Assembly has given the State Escheator “full and complete authority to determine all such claims” 12 *Del. C.* § 1146(b).

If a claimant submits a valid claim for abandoned property that has been sold as required by Sections 1143 and 1204 of the Delaware Escheats Law, then such claimant “shall be entitled only to the money so received [as a result of the sale], less lawful service charges.” 12 *Del. C.* § 1143(b). The State of Delaware is responsible for paying any claim recognized by the State Escheator. 12 *Del. C.* § 1144(a).

JLI, opinion at 2-9.

Delaware’s unclaimed property statutes were materially revised in 2017 and many of the above provisions and principles have changed; however, the above statutory provisions apply to property escheated to respondent prior to the effective date of the 2017 amendments, such as the Shares.²

² The parties disagree as to whether provisions in 12 *Del. C.* § 1160, adopted in 2017, related to what a claimant can recover from the respondent apply to securities that were escheated under the pre-2017 statute and are then claimed under the post-2017 amended statute. As detailed below, the Board need not and is not resolving that issue.

Respondent Has Complied with Delaware's Unclaimed Property Law

Respondent's determination that petitioner can recover \$209,784.09 adheres to Delaware unclaimed property statutes in effect when the Shares were escheated. As detailed above, that law provides that when a holder delivers property that the holder deems to be abandoned property to the State Escheator, the State Escheator may sell such property and retain the proceeds for the benefit of the legal or equitable owner. The law further provides that the legal or equitable owner can make a claim for that property and the State of Delaware is required to pay such claims; provided, however, that "any claimant for abandoned property shall be entitled only to the money so received [as a result of the sale], less lawful service charges." 12 *Del. C.* § 1143(b) (2015).

The language of Section 1143(b) is unambiguous and caps what petitioner can recover from the State of Delaware for the Shares. By determining petitioner can recover \$209,784.09 from the State of Delaware on account of her claim, respondent adhered to Delaware's unclaimed property law in effect when the Shares were escheated.

In her brief, petitioner argued that she is entitled to have the Shares "replaced" pursuant to 12 *Del. C.* § 1160(a)(2), a section added to Delaware's unclaimed property statutes in 2017. Section 1160(a)(2) permits an owner of escheated stock that was sold to obtain "the 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” if the owner files a claim to the security within 558 days after the post-escheatment, pre-sale notice is mailed to the owner (as is now required under the post-2017 version of Delaware’s unclaimed property laws).

The parties dispute whether Section 1160(a)(2) applies to securities escheated to respondent in 2015, but the Board need not resolve that issue. Assuming, without deciding, that Section 1160 applies here, petitioner still cannot obtain replacement shares because she did not submit a claim to the Shares within 558 days of being deemed to have received notice from respondent.

Under the 2015 version of Delaware’s escheat laws, respondent had no duty to notify petitioner that the Shares had been escheated. This fact has consequences under Section 1160. Specifically, by the express terms of Section 1160(c)(2), because “no notice was required” in 2015, petitioner is deemed to have received notice 30 days after the Shares were escheated to respondent. 12 *Del. C.* § 1160(c)(2) (“For the purpose of this section, the following apply: ... (2) The date notice was mailed by the State Escheator to the rightful owner ... is deemed to be 30 days after the property was delivered to the State Escheator . . . if no notice was required.”).

The Shares were escheated to respondent no later than March 2015, a time when respondent was not required to issue post-escheatment, pre-sale notice to petitioner. Thirty days after that is still in 2015. Petitioner did not file a claim for

the Shares until 2022, much more than 558 days after being deemed to have received notice under Section 1160(c)(2). Because she did not file a claim to the Shares within 558 days of receiving notice, even if Section 1160(a)(2) applies, petitioner cannot recover replacement securities, or the value of the Shares at the time she filed her claim in 2022, under Section 1162(a)(2).

Petitioner's Objections Lack Merit

Petitioner's contention that respondent "had no authority to receive or dispose of my property in 2015" because "the statute did not provide for the receipt of foreign-address property" is incorrect. The pre-2017 version of Delaware's unclaimed property law made no distinction between whether the abandoned property owner resided within or without the United States. Section 1201(a) of the operative unclaimed property law stated that "every holder of abandoned property shall pay or deliver to the State Escheator all abandoned property" 12 *Del. C.* § 1201(a) (2015) (emphasis added). Section 1201(a) does not draw any distinction between types of abandoned property, let alone one based on where the owner resides. Thus, respondent had the right to receive the Shares.

Respondent also had the right to dispose of the Shares. Sections 1204(a) and 1143(a) of the pre-2017 unclaimed property law permitted the State Escheator to sell

or dispose of escheated property, and again these sections draw no distinction based on where the owner resides. 12 *Del. C.* § 1143(a) (2015).³

Petitioner's contention that the Shares were not abandoned property and should not have been escheated to respondent because her security account was active at the time the Shares were escheated--*i.e.*, the three year dormancy period had not expired such that the Shares were not abandoned property--is likewise unavailing. The holder, not the respondent, decided whether the Shares were abandoned property, including whether the three year dormancy period had been satisfied. *See* 12 *Del. C.* § 1199 (2015). Even if the holder erred when making that decision, the respondent was required to treat the Shares as abandoned property for purposes of Delaware's unclaimed property statutes. *See* 12 *Del. C.* § 1144(c)

³ Petitioner relies on 12 *Del. C.* § 1131 to support her argument that Delaware's unclaimed property law does not apply to property held in a foreign country. This reliance is misplaced as Section 1131 was not adopted until 2017 and petitioner has not identified similar statutory text that was operative in 2015. Also, contrary to petitioner's contention, nothing in the legislative history suggests current Section 1131 applies retroactively. *Chrysler Corp. v. State*, 457 A.2d 345, 351 (Del. 1983) (statutes operate prospectively unless a contrary legislative intent "clearly appears from the express language of the act[] or by necessary or unavoidable implication").

Petitioner also relies on 12 *Del. C.* §§ 1157 and 1180 to argue that foreign owned property cannot be escheated to respondent. Neither statutory section supports that conclusion. Section 1157 addresses presumptions arising when property is held by the federal government, a federal agency or an officer or appointee thereof. Section 1180 addresses escheatment of funds due under life insurance policies. Neither section applies to the Shares and neither has anything to do with whether foreign owned property can be escheated to Delaware.

(2015). Thus, even if petitioner is correct that the Shares were not abandoned property, it provides her no relief here.

Finally, petitioner contends that respondent erred by liquidating the Shares without first providing notice to petitioner and, even if notice was sent, by failing to pursue other means of contacting petitioner. While the 2017 amendments to Delaware's unclaimed property laws require respondent to notify owners that the respondent is holding the owner's property before selling it, the 2015 version of Delaware's unclaimed property law contained no such notice requirement. 12 *Del. C.* §§ 1101 *et seq.* (2015); *JLI*, opinion at 32-33 (rejecting argument that State Escheator erred by not attempting to confirm stock was abandoned and failing to contact owner pre-sale and holding that State Escheator has no obligation to determine "whether the owner can be located"). Respondent did not err by selling the Shares without first notifying petitioner.⁴

⁴ Petitioner complains that she received inadequate notice because at the time of the escheatment and sale of the Shares "the relevant statute required Respondent to publish notice in a newspaper that it held the unclaimed Microsoft Shares." Nothing in the statute required pre-sale publication in a newspaper. Also, petitioner fails to note that the Shares were escheated in early 2015, sold in mid-2015 and, by statute, respondent was required to publish its annual notice of held property in October, and in newspapers circulated in Delaware, not South Africa. 12 *Del. C.* § 1142(a) (2015) ("In the month of October of each year the State Escheator shall publish in a daily newspaper of this State a statement of abandoned or unclaimed property ..."). Thus, even if respondent erred by not including the Shares in its annual newspaper publication, this does not change the result here as the Shares were sold (and petitioner's remedy was capped) before that notice would have been published.

***The Board Lacks Jurisdiction Over Petitioner's
Federal Common Law and Due Process Claims***

Citing four United States Supreme Court opinions and a decision by the Third Circuit Court of Appeals, petitioner contends that federal common law “prohibits the escheatment of the Microsoft Shares” because they “are property owned by a foreign national” and that “Delaware’s procedure for providing notice does not provide adequate due process under the United States Constitution.”

The Board lacks jurisdiction over common law and due process claims of this nature. Administrative bodies like the Board lack the authority to resolve constitutional due process questions. *JLI*, opinion at 24-26. The Board is a body of limited jurisdiction. *JLI*, opinion at 26-29. For purposes of this appeal, its function is limited to reviewing the notice of determination and deciding if respondent misapplied Delaware unclaimed property law when issuing that notice. *Id.* at 26.

Here, the notice of determination did not address petitioner’s federal common law or due process claims and, as a result, there is no underlying decision on these issues for the Board to review. Further, nothing in the record suggests these issues were raised with the respondent before the notice of determination was issued. Petitioner may have the ability to bring claims of this nature against respondent in a court of law, but the Board lacks the authority to adjudicate them. *Id.* at 26-29 (“The Board is not a court, let alone a court of general jurisdiction. Rather, it is an administrative body, and, for purposes of this case, its jurisdiction is limited to

hearing the appeal from the notice of determination issued by the Respondent with respect to the claims filed by the Petitioners. ... [T]he statutory framework of the Delaware Escheats Law does not contemplate the litigation of common law ... claims before the Respondent or the Board.”).

For the foregoing reasons, petitioner’s petition is dismissed.

SO ORDERED this 30th day of September, 2024.

Paul C. Selt

M. Lynn Fuller

Jean M. Winter

J. L. P. Direct

Robert M. Schirmer / es