

GLEND A. BRATHOVD § STATE OF ALABAMA
12175 Miller Lane DEPARTMENT OF REVENUE
Grand Bay, Alabama 36541, § ADMINISTRATIVE LAW DIVISION
Petitioner, § DOCKET NO. MISC. 95-358
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department's Unclaimed Property Section refused to distribute to Glenda A. Brathovd ("Petitioner") the proceeds from the sale of eight shares of Western Atlas, Inc. stock. The Petitioner appealed to the Administrative Law Division, and a hearing was conducted on December 5, 1995. The Petitioner represented herself at the hearing. Assistant Counsel Dan Schmaeling represented the Department.

This is an unclaimed property case.

As discussed below, the Department received eight shares of Litton Industries stock as abandoned property in November 1993. The stock had belonged to the Petitioner's husband, Leonard Earl Brathovd. The Department subsequently received eight shares of Western Atlas stock as a stock distribution from the Litton shares.

The Department sold both the Litton and Western Atlas stock as abandoned property as provided at Code of Ala. 1975, §35-12-38. The Department distributed the proceeds from the sale of the Litton stock to the Petitioner. The issue in this case is whether the Petitioner is also entitled to the proceeds from the sale of the Western Atlas stock.

The Litton Industries stock in issue was registered in the name of Leonard Earl Brathovd on June 28, 1968. The address on the stock certificate was Route 2, Box 175, Grand Bay, Alabama.

Leonard Earl Brathovd passed away on August 29, 1969. The Petitioner thereafter started to have the stock transferred to her children. However, she was advised not to by an attorney because of the cost involved. The stock thus remained in her deceased husband's name.

In 1993, Litton Industries conducted a voluntary compliance audit for the purpose of discovering any dormant or unclaimed stock. Litton notified the Petitioner by letter dated August 19, 1993 concerning the eight shares of Litton stock in question. The letter noted Litton's obligation to turn over any unclaimed shares of stock to the Revenue Department. The letter further stated as follows:

In order to avoid having your account reported as abandoned and the assets transferred to your state of residence, please complete and sign the bottom portion of this letter and return it in the enclosed return envelope . . . If we do not hear from you by September 10, 1993, we will report these assets to the state of residence . . . Thereafter, any claim you may have as to these assets will have to be made directly to that state.

The Petitioner received the above notice, but failed to take any action concerning the stock at that time. Consequently, Litton cancelled the shares in the name of Leonard Earl Brathovd on November 18, 1993, and thereafter reissued the shares in the name of the State of Alabama. The stock certificate evidencing the

shares was actually delivered to the Department in January 1994.

On February 25, 1994, the Department mailed notice to the address shown on the stock certificate that the stock had been delivered to the Department as abandoned property. The notice was not returned by the United States Postal Service, although the Petitioner claims that she never received it.

In March 1994, the Department, as required by Code of Ala. 1975, §35-12-32, advertised the stock in the largest newspaper in Baldwin County.

On March 17, 1994, the Department received a stock distribution of one share of Western Atlas stock for each share of Litton Industries stock, for a total of eight Western Atlas shares.

On March 2, 1995, the Department sold the Litton and Western Atlas stock in accordance with Code of Ala. 1975, §35-12-38. The Litton stock was sold for \$35.00 a share, or a total of \$280.00, and the Western Atlas stock was sold for \$40.625 a share, or a total of \$325.00. The Department thereafter paid the Petitioner the \$280.00 received for the Litton stock, plus \$52.06 in dividends that had accrued prior to delivery of the stock to the Department.

However, the Department refused to remit to the Petitioner the \$325.00 received for the Western Atlas stock. The Petitioner subsequently appealed to the Administrative Law Division.

The Department argues that the Petitioner is not entitled to

the Western Atlas sale proceeds based on Code of Ala.1975, §35-12-

35. I must agree. Section 35-12-35 reads as follows:

When property is paid or delivered to the commissioner of revenue under this article, the owner is not entitled to receive income or other increments accruing thereafter.

The Litton stock in the name of Leonard Earl Brathovd was cancelled in November 1993, and thereafter reissued in the name of the State of Alabama. The stock was actually delivered to the Department in January 1994. The stock distribution of the eight shares of Western Atlas stock was thereafter received by the Department in March 1994. That stock distribution constituted "other increments" of the Litton stock accruing after the stock was distributed to the Department. Consequently, pursuant to §35-12-35, the Petitioner is not entitled to receive the sale proceeds from the Western Atlas stock.

The Petitioner claims that she is entitled to the proceeds because the Litton stock was in the constructive possession of the Mobile County Probate Judge effective February 1994. The Mobile County Probate Court issued an "Order On Petition For Summary Distribution" on February 16, 1994 stating that "All other personal property of the Decedent (Leonard Earl Brathovd) shall be considered to be within the constructive possession of the Court; . . ." as of that date.

Unfortunately for the Petitioner, when the Probate Court's Order was issued, the Litton stock had already been delivered to

and reissued in the name of the State. Code of Ala. 1975, §35-12-34 provides that upon delivery of any unclaimed property to the Department, the Department "shall assume custody and shall be responsible for the safekeeping thereof." The Department thus had both actual and legal possession of the stock after that date.

Any person thereafter claiming an interest in any property delivered to the Department must file a claim with the Department as specified at Code of Ala. 1975, §35-12-40 and related regulations. The Petitioner failed to file a claim for the Litton stock prior to the Western Atlas stock distribution. Consequently, pursuant to §35-12-35, she lost all rights concerning the Western Atlas stock.

The above considered, the Department properly refused to pay to the Petitioner the proceeds from the sale of the Western Atlas stock in issue.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered January 19, 1996.

BILL THOMPSON
Chief Administrative Law Judge