



CLERK, BOARD OF SUPERVISORS

January 28, 2021

Honorable Board of Supervisors
 County of Alameda
 1221 Oak Street, Suite 536
 Oakland, CA 94612

Dear Board Members:

SUBJECT: CLAIM FOR EXCESS PROCEEDS - 2016 TAX DEFAULTED PROPERTY SALES

RECOMMENDATION

Pursuant to the applicable provisions of the Revenue and Taxation Code, it is recommended that your Board approve the Hearing Officer's decision regarding the Excess Proceeds Claim from tax defaulted property sales of 2017, included in Attachment A and authorize the Auditor- Controller to distribute the excess proceeds to the affected claimants pursuant to the Hearing Officer's decisions detailed in Attachment B.0

Claimants

A. California Department of
 Toxic Substances Control

Parcel Nos.

9-710-38

DISCUSSION/SUMMARY

The Tax Collector conducted sales of tax defaulted properties in 2017. Any excess in the proceeds of these sales, over and above the amounts collected to satisfy the tax delinquencies, were deposited by the Tax Collector in a delinquent tax sale trust fund.

The excess proceeds were subject to claims made by parties of interest in accordance with applicable provisions of the California Revenue and Taxation Code. The claimants were given the opportunity for a hearing before the Hearing Officer to establish the priority and extent of their claims.

The Hearing Officer has rendered her written decisions on the claim, which is now being submitted to your Board for approval. Approval of the decisions listed in Attachment B will result in the Auditor-Controller distributing the excess proceeds.

January 28, 2021

FINANCING

There is no impact on the General Fund. Excess proceed claims are paid from funds held in trust.

VISION 2026 GOAL

The expeditious disbursement of excess supports the County's shared vision of having a thriving and resilient population and meets the 10X Goal pathway of accessible infrastructure in support of our shared vision of a prosperous and vibrant economy.

Sincerely,



Cheryl Perkins, Asst. Clerk,
Board of Supervisors

CP:db

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Attachments

cc: Auditor-Controller
Claimants
File

DECISION OF LEGAL HEARING OFFICER
COUNTY OF ALAMEDA

CLAIMANTS: CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL; MELANIE GENTRY;
GLOBAL DISCOVERIES, LTD.; FRANCHISE TAX
BOARD
PARCEL: 9-710-38
FILE NO: 2017-94010; 2017-94029; 2017-94006
HEARING DATE: MAY 28, 2020
AGENDA NUMBERS: SIX, SEVEN, EIGHT
HEARING OFFICER: ÉLAN CONSUELLA LAMBERT, ESQ.

FACTS

Claims

In March 2017, the Tax collector sold APN 9-710-38 (hereinafter Property). The March 2017 tax default auction sale of the Property created \$70,855.05, in excess proceeds and attracted three Claims for Excess Proceeds

A. 2017-94010, California Department of Toxic Substances Control/Henry Wong

This Claimant asserts status for the Property as a lienholder based upon a lien recorded on June 3, 2013. The claim was filed on July 25, 2017, with a lien amount listed as \$1,976,598.39. In support thereof, the Claimant provided the following documents:

1. A County of Alameda Claim for Excess Proceeds referencing the Property, from the California Department of Toxic Substances Control. The Claim form indicates the claim is based upon a lien recorded against the Property on June 3, 2013. The claim was received on July 25, 2017.
2. A letter from the Department of Toxic Substances Control stating it is a lienholder of record for the Property, dated July 25, 2017.
3. A copy of a lien for \$1,976,598.39 against the Property recorded in Alameda County on June 3, 2013. The lien states that the Property is the site of a hazardous substance release and was notarized on November 16, 2012.

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B. 2017-94029, Melanie Gentry

This Claimant asserts party of interest status for the Property based on the assignment of Astro 1, a Nevada state corporation, for which Melanie Gentry is the President and only officer according to the documents submitted with her claim. The claim was filed on March 30, 2018. In support thereof, the Claimant provided the following documents:

1. A Claim for Excess Proceeds for the Property from Melanie Gentry that asserts a Nevada state corporation, Astro 1, is the titleholder of the property. Melanie Gentry is the sole shareholder and President of Astro 1, and has assigned to herself the claim of excess tax proceeds for the Property. The claim lists the documents attached as proof of claim to excess tax proceeds. The County received the claim on March 30, 2018.
2. A copy of a Grant Deed believed to be recorded on April 24, 2007 (the date is difficult to read on the copy) for this Property along with three other parcels of land. The Grand Deed indicates "31 LLC" grants to "Astro Corp, Inc., a Delaware Corporation" all four parcels listed on the Deed. The Grant Deed comes with a description for each parcel referencing the lots in the Office of the County Recorder of Alameda County's map books but does not provide a copy of the parcel maps.
3. A copy of a Trustee's Deed Upon Sale recorded on October 20, 2009. The Trustee's Deed lists "Melanie D. Gentry" as Trustee for the Property, and the three other parcels included in the Grant Deed above, who conveys title of the Property to "Astro 1 Corp, Inc., a Nevada Corporation." The Trustee's Deed was notarized in Oregon on October 13, 2009. The Trustee's Deed also includes the same description of the four parcels as attached to the Grant Deed listed above.
4. A copy of a Nevada for-profit corporation Initial/Annual List of Officer, Directors, and State Business License Application for "Astro 1" for the period of September 2012 to September 2018. Ms. Gentry is listed as the President, Secretary, Treasurer, and Director for "Astro 1." The Application is signed by Melanie Gentry, President, on December 21, 2017.
5. A copy of a Statement of Change of Registered Agent by Represented Entity for "Astro 1" naming "Resident Agents of Nevada, Inc." as their registered commercial agent for service of process. The Statement of Change is signed on 12/21/17.
6. An Assignment of Claim to Excess Sale Proceeds from "ASTRO 1 CORPORATION INC., a Nevada State corporation ('ASTRO 1')" to "Melanie Gentry ('MG')" effective March 1, 2018. The assignment states Astro 1 had a security interested converted to a foreclosure deed in "certain assets including Excess Funds from the sale of [the Property]."

7. A copy of an Oregon Department of Human Services Center for Health Statistics Certificate of Death for "Wilford Powell Gentry" on August 29, 2008. Melanie Gentry is listed as the Spouse of the decedent.
8. A copy of a California Driver License for Melanie Dixon Gentry, stating the date of birth August 24, 1957, and expiration date August 24, 2021.

C. 2017-94006, Global Discoveries Ltd./Eleanor Richard

This Claimant asserts status for the Property as the Assignee of the titleholder of the Property, Eleanor Richards. The claim was filed on June 21, 2017, in the amount of \$89,284.00. In support thereof, the Claimant provided the following documents:

1. A Claim for Excess Proceeds for the Property from assignee Global Discoveries, Ltd. The County received the claim on June 21, 2017. The amount of the claim is \$89,284.00.
2. A Claim Summary Statement for the Property from Global Discoveries, Ltd. to the Alameda County Treasurer and Tax Collector that lists the documents attached as proof of claim to excess tax proceeds. The claim states that assignor Eleanor Richard is entitled to 100% of the excess proceeds totaling \$89,284.00. The statement is dated May 11, 2017.
3. A copy of a Tax Deed to Purchaser of Tax Defaulted Property recorded on May 21, 2010, for the Property. The Tax Deed indicated the Tax Collector of Alameda County conveys to the purchaser "Rev. Eleanor Richard, a married woman as sole owner" the Property on March 31, 2010.
4. A copy of a Secured Property Tax Statement from Alameda County for the Property for July 1, 2016, through June 30, 2017, addressed to Richard, Eleanor.
5. An Affidavit from Eleanor Richard dated and notarized on March 28, 2017. Eleanor Richard declares she is the same individual on the Tax Deed recorded on May 21, 2010, in Alameda County. Eleanor Richard also states she assigned the excess proceeds for the Property to Global Discoveries, Ltd.
6. An Assignment of Right to Collect Excess Proceeds, signed and notarized by Eleanor Richard on March 28, 2017, and signed and notarized by Jed Byerly (of Global Discoveries, Ltd.) on May 15, 2017. The assignment is from "Eleanor Richard" to "Global Discoveries, Inc." It estimates the amount of excess proceeds for distribution to be \$89,284.00. It states that Assignee has advised Assignor(s) of the right to file a claim for excess proceeds on their own behalf.
7. A copy of a California Driver License for Eleanor Richard, stating the date of birth August 8, 1935, and expiration date August 8, 2020.

County Counsel Memorandum

Deputy County Counsel, Farand C. Kan, and Associate County Counsel, Kathleen J. Hall, provided a Memorandum dated April 8, 2020, for the Office of County Counsel. The Memorandum notes that the tax sale resulted in excess proceeds of \$70,855.05 and reviews the Claims for Excess Proceeds. The claims in this matter were noted to be timely.

- A. The Claim of the California Department of Toxic Substances Control is analyzed. The County Counsel Memorandum reviews the claim. Although the claim was timely filed the Memorandum notes that the claim is deficient in that they failed to provide a certified copy of the original lien, and proof of the outstanding amount lien, including the amount of any payments, received reducing the initial amount of the lien that was still due and payable on the date of the sale of the Property. The Memorandum notes the requirement that excess proceeds be distributed first to lienholders in order of priority and that lienholder's claims take priority over any titleholders of record.
- B. The Claim of Global Discoveries, Ltd., is analyzed. The County Counsel Memorandum reviews the claim. Although the claim was timely filed, the Memorandum notes that the claim is deficient in that it did not include original recorded document demonstrating the titleholder status of Eleanor Richard, nor the necessary business documents of Global Discoveries, Ltd.
- C. The Claim of Melanie Gentry is analyzed. The County Counsel Memorandum reviews the claim. Although the claim was timely filed, the Memorandum notes that the claim is deficient because the subsequent Tax Deed of Elanor Richarch disproves the titleholder claim and that they failed to submit documents establishing the legal standing for Astro 1 Corp.

Proceedings

The parties appeared at the May 28, 2020, hearing. At the Hearing, the California Department of Toxic Substances Control was represented by Henry Wong. Attorney Johnson represented Global Discoveries, Ltd. Mr. Wong presented the following Exhibits:

1. A certified copy of the original recorded lien, recorded June 3, 2013;
2. The notarization of the original recorded lien;
3. A statement of account for the period of October 1, 2016, through February 28, 2017, showing the amount of the lien at the time of the tax-defaulted sale;
4. An invoice balance report for the lien showing no payments on the lien through March 2020; and
5. A color copy, front, and back of evidence of Mr. Wong's photographic evidence, with

the original for comparison.¹

DECISION

The Claim for Excess Proceeds of the California Department of Tox Substances Control is granted in the total amount of the excess proceeds, or \$70,855.05. The Claim for Excess Proceeds by the California Department of Toxic Substances Control exhausted the excess proceeds. The claims of Global Discoveries Ltd. and Melanie Gentry are denied. Additionally, the claim of Melanie Gentry is further denied based upon their failure to appear at the Hearing.

RATIONALE

Revenue & Taxation Code §4674 directs that excess proceeds may be claimed by parties of interest in the property as provided in Section 4675. Unclaimed excess proceeds may be transferred to the county general fund.

Revenue & Taxation Code §4675(a) provides that any party of interest in the Property may file with the County a claim for the excess proceeds, in proportion to his or her interest held with others of equal priority in the Property at the time of sale, at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser. The claims here were timely filed.

Section 4675(b) continues: "After the Property has been sold, a party of interest in the Property at the time of the sale may assign his or her right to claim the excess proceeds only by a dated, written instrument that explicitly states that the right to claim the excess proceeds is being assigned, and only after each party to the proposed assignment has disclosed to each other party to the proposed assignment all facts of which he or she is aware relating to the value of the right that is being assigned. Any attempted assignment that does not comply with these requirements shall have no effect"

Section 4675(c) adds further requirements for assignment: "Any person or entity who in any way acts on behalf of, or in place of, any party of interest with respect to filing a claim for any excess proceeds shall submit proof with the claim that the amount of excess proceeds has been disclosed to the party of interest and that the party of interest has been advised of his or her right to file a claim for the excess proceeds on his or her behalf directly with the county at no cost."

Section 4675(e)(1) defines the parties of interest who may make a claim:

[T]he excess proceeds shall be distributed on order of the board of supervisors to the parties of interest who have claimed the excess proceeds in the order of priority set forth in subdivisions (a) and (b). For the purposes of this article, parties of interest and their

¹ As the claimant was appearing in the professional capacity for the California Department of Toxic Substances Control, the Hearing Officer redacted his home address from the exhibit and ordered the Clerk to do so on the remaining copies submitted.

order of priority are:

(A) First, lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority.

(B) Second, any person with title of record to all or any portion of the Property prior to the recordation of the tax deed to the purchaser.

Proof of status as a person with title of record can be based on evidence other than a recorded deed, such as a combination of testimony that a deed was submitted for recording, and evidence showing that the Claimant or a decedent of whom the Claimant is an heir, the Assessor and/or financial institutions or others conducted themselves as if a grant deed had been recorded. *Carloss v. County of Alameda* (2015) 242 Cal. App. 4th 116.

A claimant is entitled to only the share of the excess proceeds corresponding to the Claimant's ownership interest (assuming no claims of a higher priority), even when the other owner fails to file a claim for the excess proceeds. *First Corporation, Inc. v. County of Santa Clara* (1983) 146 CA3d 841.

The priority of lien interests in real property is usually determined by the date the security document is recorded, under the "first in time, first in right" standard, although there are many exceptions. Civil Code Sections 1213, 1214, 2897; *Friery v. Sutter Buttes Savings Bank* (1998) 61 CA4th 869, 878.

Claim documents provided by the California Department of Toxic Substances Control asserts a claim based upon a lien recorded on the Property on June 3, 2013, with first priority. Exhibits provided at the Hearing, establish the original recorded lien, a statement setting forth the initial amount of the lien, the total amount of payments received reducing the original amount of the lien, and the amount that was still due and payable on the date of the sale of the tax-defaulted property. Additionally, the lien holder submitted photographic proof of identity at the Hearing.

Accordingly, the California Department of Toxic Substances Control has perfected all the elements of their first priority claim. Therefore, the California Department of Toxic Substances Control is entitled to the total amount of the excess proceeds, or \$70,855.05. As this claim exhausts the entirety of the excess proceeds, the remaining claims of Global Discoveries Ltd. and Melanie Gentry are hereby denied. The claim of Melanie Gentry is also denied based upon a failure to appear at the Hearing.



Dated: 15 July 2020

Elan Consuella Lambert
Legal Hearing Officer, Alameda County

Attachment B

Excess Proceeds Distribution
Tax Defaulted Property Sale of 2017

	Claimant	Parcel Number	Appeal No.	Amount	Wait 30 days before
A.	Department of Toxic Substances Control 1001 I Street, 21 st Floor PO Box 806 Sacramento, California 95812-0806	9-710-38	2017-94010	\$70,855.05	No