



CLERK, BOARD OF SUPERVISORS

June 11, 2008

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

Dear Board Members:

SUBJECT: Claims for Excess Proceeds – March 2005 Tax Defaulted Property Sales

RECOMMENDATIONS:

Pursuant to the applicable provisions of the Revenue and Taxation Code, it is recommended that your Board approve the Hearing Officer's decisions regarding excess proceeds claims from tax defaulted property sales of March 2005, included in Attachment A; and direct the Auditor-Controller to distribute excess proceeds detailed in Attachment B pursuant to the Hearing Officer's Decisions:

- | | Parcel No.(s) |
|--|----------------------|
| 1. Fred Jackson, Tonya Flowers, James Flowers, and Global Discoveries LTD. | 41-4133-7 |
| 2. Shaves Rose, Maurice Rose, Charles Rose, Regina Rose, Lawrence Fontenot, Charlie Fontenot, and Global Discoveries, LTD. | 4-63-11 |


DISCUSSION/SUMMARY

In March 2005, the Tax Collector conducted sales of tax defaulted properties. 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. All claimants were given the opportunity for a hearing before the Assessment Hearing Officer on March 27, 2008 to establish the priority and extent of their claims. The Assessment Hearing Officer has rendered his written decisions on these claims and they are now being submitted to your Board for approval and ratification. Your approval of the decisions presented in Attachment B will result in the Auditor-Controller distributing the excess proceeds.

FINANCING:

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

Sincerely,


Crystal Hishida Graff
Clerk, Board of Supervisors

CHG/acb

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Attachments

cc: County Counsel
Auditor-Controller
Tax Collector
Claimants

DECISION OF ASSESSMENT HEARING OFFICER
COUNTY OF ALAMEDA

APPLICANT: GLOBAL DISCOVERIES, LTD., FRED JACKSON,
TONYA FLOWERS AND JAMES FLOWERS
PARCEL: 41-4133-7
FILE NO: EXCESS PROCEEDS MARCH 2005
HEARING DATE: MARCH 27, 2008, after several continuances from
JULY 19, 2007
AGENDA NUMBER: THIRTEEN
HEARING OFFICER: JED SOMIT, Esq.

FACTS:

There are several related Claims for Excess Proceeds to the approximately \$52,000 in excess proceeds from the sale of this tax defaulted parcel in March, 2005. Global Discoveries, Ltd., is representing all of the claimants and has assignments from each. Several of the claims were filed August 16, 2005; the Claim of Freddie Jackson was not filed until the March 28, 2008, hearing.

One Claim for Excess Proceeds is by James Flowers, as Heir to the Estate of Frank Flowers; this claim stated it was for 67% of the amount of excess proceeds, also stating that 33% is assigned to Global Discoveries, Ltd. Global Discoveries, Ltd. submitted a corresponding claim for 33% of the excess proceeds. The Assignment was reflected in an Assignment of Rights to Claim Excess Proceeds from the Sale of Tax Deeded Property, signed by James Flowers as Heir to the Estate of Frank Flowers, and containing the usual statements, assigning 33% of the excess proceeds to Global Discoveries, Ltd. The amount of the excess proceeds

eligible for distribution is stated as \$28,556 (apparently using 50% of the available proceeds, as the share due James Flowers).

The Claim was initially supported by an Affidavit for Collection of Personal Property Under California Probate Code §§13100-13106. The Affidavit states Frank Flowers died on or about 12/31/1990, that his entire estate is worth less than \$100,000, that "there is no real property in the estate", that the estate consists of \$57,112 in cash from the sale of the decedent's property, that James Flowers, the son and successor as defined in Probate Code Section 13006, is entitled to 50% of the estate, and, that no other person has a superior right to the interest of the decedent.

James Flower's Claim is further supported by a Certificate of Death of Elzina Flowers, showing her death on August 18, 1968, and a Certificate of Death of Frank Flowers, showing his death on December 31, 1990. A Certificate of Live Birth identifies James Edward Flowers as the son of Frank Flowers and Elzina Lindsey (maiden name).

Finally, a Grant Deed, recorded in Book 8716, Page 69, Alameda County Recorder, was presented, establishing that the property was deeded to Frank Flowers and Elzina Flowers, his wife, as joint tenants on June 20, 1958.

The next Claim is filed by Fred Jackson, Heir to the Estate of Frank Flowers and/or Estate of Mary Jackson. Again, this claim is for 67% of the excess proceeds, and states an assignment of 33% to Global Discoveries, Ltd. Global

Discoveries filed its own claim for 33%. The amount of excess proceeds stated reflects the intestate portion which Fred Jackson believed due to him.

This Claim is supported by a Certificate of Live Birth of Fred LaNell Jackson, identifying him as the child of Mary Ellen Flowers and Fred Lee Jackson. Also submitted was a Certificate of Death for Mary Ellen Jackson, where the informant was James Flowers, brother. Mary Ellen Jackson's father is identified as Frank Flowers, and mother as Elzina Lindsey. A Certificate of Marriage of Freddie Lee Jackson and Mary Ellen Flowers was also presented. A Birth Certificate for Mary Ellen Flowers was also presented, showing her to be the daughter of Frank Flowers and Elzina Lindsey (maiden name). This Certificate states there are 4 other children of this mother now living, with one child dead, as of November 26, 1945. The Certificates of Death for Elzina Flowers and Frank Flowers are also presented.

Also supporting the Claim is an Affidavit under Probate Code Sections 13100-13106, stating that Fred Jackson is the grandson and successor in interest of the decedent's estate and is entitled to 25% of the proceeds.

There was no clear family tree presented.

The Memorandum of the Office of the County Counsel by Claude F. Kolm, dated April 30, 2007, recognized that there is no evidence as to how many children Frank Flowers had, and therefore a lack of evidence as to what share each claimant is entitled.

A further Claim for Excess Proceeds was submitted with the other two, but was not in the Hearing Officer's file before the first hearing on July 19, 2007. It was discussed at that hearing that the Hearing Officer doubted that the Probate Code Section 13101 Affidavit procedure could be used when less than all of the heirs join in the Affidavit. Further, it was not clear that all of the heirs had joined in making the claim and/or in the Probate Code Section 13101 Affidavits, even considered in the aggregate. The Hearing Officer doubted that Probate Code Section 13101 Affidavits, each stating the single declarant was entitled to all or a portion of the estate, would comply with Section 13101; at a minimum, the Affidavits had to be consistent. For all of these reasons, the case was continued to September 20, 2007, with the proviso that the Hearing Officer could grant, but not deny, the Claims for Excess Proceeds upon review of the file in the interim.

At the first hearing, a Claim for Excess Proceeds, similar to the two others, was presented on behalf of Tonya Jackson, another child of Mary Ellen Flowers and Freddie Jackson; again, this Claim was accompanied an assignment of 33% of claimant's rights to Global Discoveries, Ltd.

The Hearing Officer noted that claimants had to establish that the only children of Frank Flowers (who outlived Elzina and thus succeeded to the joint tenancy property) were James and Mary Ellen Jackson (although Elzina's death certificate suggests more children of her); also, in the absence of participation in the Claim or Affidavit by Freddie Jackson, husband of Mary Ellen Flowers Jackson,

it had to be shown he predeceased or divorced Mary Ellen; finally, it had to be shown that the only children of Mary Ellen Jackson were Tonya Jackson and Fred Jackson.

By the next hearing date of September 20, 2007, Jed Byerly of Global Discoveries, Ltd., submitted a Probate Code Section 13101 form, which he contended was signed by all heirs. This new filing was accompanied by a Declaration of James Flowers, who identified four children in total of Elzina, and two children of Frank Flowers (himself and Mary Ellen Flowers, deceased). The Declaration did not answer the question of what children Mary Ellen Flowers had, and what happened with her spouse, Freddie Jackson. A further continuance was granted.

At the hearing on March 27, 2008, Jed Byerly appeared and submitted further papers. A Declaration of Facts, signed by James Flowers, Fred Jackson, Sr., Tonya Jackson and Fred Jackson, Jr., noted that Frank Flowers died intestate, with two children, James Flowers and Mary Ellen Jackson. Mary Ellen Jackson died intestate in 1995, leaving a surviving spouse (Fred Jackson, Sr. or Freddie Jackson), and two children, Tonya Jackson and Fred Jackson. The heirs concur that the excess proceeds should be distributed (temporarily ignoring the assignment to Global Discoveries, Ltd.) 50% to James Flowers, and the remaining 50% divided with 16-2/3% each to Mary Ellen Jackson's surviving spouse and to each of the two children. The same persons join in an Affidavit for Collection of Personal

Property under Probate Code Section 13101 for the Estate of Frank Flowers.

Further new papers presented were: an Assignment of Rights from Fred Jackson, Sr., of 33% of his claim to Global Discoveries, Ltd., with the usual language; a Claim for Excess Proceeds (dated November 15, 2007) on behalf of Fred Jackson; a corresponding claim by Global Discoveries, Ltd. for its assigned share; and, identification for Freddie Jackson (as was submitted for the other claimants).

Since Mr. Freddie Jackson's Claim for Excess Proceeds was filed after the deadline, the Assessor and/or County Counsel were given until April 11th to submit a letter brief on whether his claim is untimely, or is timely as merely a supplement to timely claims, and concerning the consequential effect on the other claims. The matter was otherwise submitted.

No timely brief was received.

DECISION:

The Claims for Excess Proceeds are granted. The excess proceeds shall be distributed 33% to Global Discoveries, Ltd. The remainder shall be distributed 50% to James Flowers, 16.67% to Fred Jackson, Sr. (also known as Freddie Jackson), the surviving spouse of Mary Jackson, and 16.67% each to Mary's two children, Tonya Jackson and Fred Jackson (Jr.).

RATIONALE:

Revenue & Taxation Code §4674 directs the application of excess proceeds from the sale of tax defaulted property as provided by section 4675; if not claimed within one year, the remaining amount shall be distributed as provided in section 4673.1(b), after deduction of administrative costs.

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.

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 own behalf."

The Hearing Officer has inspected the several assignments by which claimant Global Discoveries, Ltd. acquired its right to claim 33% of the excess proceeds, and verified that the mandatory language is included. The conclusory declarations by the assignors that all the required disclosures have been made will be accepted in this case, where there is no objection, nor any contention that relevant facts were not disclosed to each assignor. There is some confusion as to whether the "amount of excess proceeds" to be disclosed is the entire amount, or the assignor's share, but the Assignments here served the statutory purpose of giving the relevant information to the assignors.

Section 4675(e) defines the parties of interest who may make a claim: "For the purposes of this article, parties of interest and their order of priority are: (1) First, lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority. (2) 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."

The Hearing Officer has examined the file, and determines that the claimants all claim through Frank Flowers, who was a person with title of record to the property prior to the recordation of the tax deed to the purchaser. No claims within the first priority were filed.

Section 4675(f) provides: "In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds." Under Probate Code Section 13101, this form can be submitted for small estates by the "successor in interest of the decedent".

Section 13006(b) of the Probate Code defines "successor in interest of the decedent" for an intestate situation to be "the sole person or all of the persons who succeeded to the particular item of property of the decedent under Section 6401 and 6402" Section 13101 notes the statutory language may have to be modified when more than one person joins in the Affidavit. Under these sections, becomes clear that: 1) all intestate heirs must join the Section 13101 Affidavit; and, 2) the procedure does not allow some of the heirs to join in as to only their partial interest in the estate.

Thus, the initial Probate Code Section 13101 Affidavits were incorrect (and inconsistent). The Probate Code Section 13101 Affidavit submitted at the March 27, 2008, hearing did include all of the heirs of Frank Flowers (including those claiming through Mary Ellen Flowers Jackson), as defined by Probate Code Sections 6501(c)(3)(C), and 6402.

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The sole remaining question is the effect of Freddie Jackson's joining in the Affidavit, and formally filing a Claim for Excess Proceeds, beyond the one year deadline for claims under R&T Section 4675(a).

The Hearing Officer, following the logic of Probate Code Section 13101, determines that when that procedure is used, there is one Probate Code Section 13101 claim made by the "successor in interest of the decedent", even if several heirs must join in the Affidavit. A Claim for Excess Proceeds made by any one, supported by a Probate Code Section 13101 Affidavit signed by all heirs who together constitute the "successor in interest", is sufficient. However many people file, there is actually only one claim made for the interest of the deceased property owner, and the claimant is impressed with the obligation to divide the property so obtained by the Affidavit according either to intestate succession or the agreement of the heirs. This makes the situation parallel to when a personal representative is appointed, who may claim on behalf of the estate, and need not join all beneficiaries or heirs in the Claim for Excess Proceeds.

Consequently, the late addition of Freddie Jackson to the Claim for Excess Proceeds does not result in a forfeiture either of all the Claims for Excess Proceeds, nor of his share.

Dated: April 23, 2008

A handwritten signature in black ink, appearing to read "Jed Somit", written over a horizontal line.

Jed Somit, Esq.
Hearing Officer

DECISION OF ASSESSMENT HEARING OFFICER
COUNTY OF ALAMEDA

APPLICANT: GLOBAL DISCOVERIES, LTD, SHAVES ROSE,
MAURICE ROSE, CHARLES ROSE, REGINA ROSE,
LAURENCE FONTENOT AND CHARLIE FONTENOT
PARCEL: 4-63-11
FILE NO: EXCESS PROCEEDS MARCH 2005
HEARING DATE: MARCH 27, 2008, continued several times since
JULY 19, 2007
AGENDA NUMBER: FOURTEEN
HEARING OFFICER: JED SOMIT, Esq.

FACTS:

This is a Claim for Excess Proceeds from the March, 2005, auction sale of this tax defaulted property. The amount of excess proceeds is \$43,752.78.

A Memorandum from the Office of the County Counsel, dated April 19, 2007, by Claude Kolm, Deputy County Counsel, states that six descendants of the former owner have submitted claims, and all have assigned to Global Discoveries, Ltd., a portion of their rights to claim the excess proceeds. The Memorandum concludes the claims submitted were timely. It concludes that each of the four children of Doretha Campell, the last owner of record, has a 25% interest; one of the children predeceased her, but it is not known if he had heirs. Another child died in 2002, with potentially a surviving husband. No estate has been administered. The Memorandum recommends distribution of 16.25% to each of Lawrence Fontenot and Charlie Fontenot, and 17.5% to Global Discoveries

(assignee of 35% of each claim).

At the initial hearing, not all the claim forms and other documents were in the Hearing Officer's file. Also, it was not clear that all of the intestate heirs had joined in the claim or provided a single (or coordinated) affidavit under Probate Code Section 13100 *et seq.*

After that time, further paperwork was submitted by claimants. A declaration of Charlie Fontenot, Lawrence Fontenot, Regina Rose, Charles Rose, Shaves Rose and Maurice Rose, notes that Doretha Campell Fontenot died intestate on July 28, 1993; she had three children who survived her. One child, Joyce Rose, subsequently died, leaving four surviving grandchildren of Doretha. The declarants agree that the estate should be distributed in equal shares to the three children, with the four grandchildren dividing the share the deceased child (taking by right of representation).

A Probate Code Section 13101 affidavit was submitted from the six claimants, claiming through Doretha Campbell Fontenot; the affidavit contains the required averments that there is no administration of the decedent's estate, that the current gross fair market value of the estate does not exceed \$100,000, and that all of the heirs join in the affidavit. A second Probate Code Section 13100 affidavit was submitted by the four children of the deceased child, Joyce Rose.

The Claims for Excess Proceeds were from Lawrence Fontenot, Charles Rose, Shaves Rose, Maurice Rose, Charlie Fontenot, Regina Rose, with each claim

accompanied by a Claim by Global Discoveries, Ltd., for 35% of the excess proceeds each individual claimant is due. Assignments of Rights were submitted by each claimant making an assignment of 35% of the claimant's recovery to Global Discoveries, Ltd.

The matter was submitted

DECISION:

The Claims for Excess Proceeds are granted. Global Discoveries, Ltd. shall receive 35% of the excess proceeds, by assignment from the other claimants. The remainder shall be divided: 1/3 to Charlie Fontenot; 1/3 to Lawrence Fontenant; 1/12 to each of Regina Rose, Shaves Rose, Charles Rose, and Maurice Rose.

RATIONALE:

Revenue & Taxation Code §4674 directs the application of excess proceeds from the sale of tax defaulted property as provided by section 4675; if not claimed within one year, the remaining amount shall be distributed as provided in section 4673.1(b), after deduction of administrative costs.

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.

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 own behalf."

The Hearing Officer has inspected the assignments by which claimant Global Discoveries, Ltd. acquired its right to claim 35% of the excess proceeds, and verified that the mandatory language is included. The conclusory declarations by the assignors that all the required disclosures have been made will be accepted in this case, where there is no objection, nor any contention that relevant facts were not disclosed to each assignor.

Section 4675(e) defines the parties of interest who may make a claim: "For the purposes of this article, parties of interest and their order of priority are: (1) First, lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority. (2) 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."

The Hearing Officer has examined the file, and determines that the claimants all claim through Doretha Campbell Fontenot, who was the person with title of record to the property prior to the recordation of the tax deed to the purchaser; she received the property by a Grant Deed recorded in 1964. There is no showing of any subsequent transfer. No claims within the first priority were filed.

Section 4675(f) provides: "In the event that a person with title of record is deceased at the time of the distribution of the excess proceeds, the heirs may submit an affidavit pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, to support their claim for excess proceeds."

At first, the matter was continued because the claimants filed inconsistent Probate Code Section 13101 affidavits, each individual affidavit claiming that the solitary claimant was entitled to the entire estate. Probate Code 13101(b) suggests that all heirs should join in one affidavit. This problem was corrected and the heirs to Doretha Campbell's estate joined on one affidavit, and the heirs to Joyce Rose's estate joined in another affidavit.

Only a few problems remained. There was no information on whether Freddie Lofton, Doretha's child who predeceased her, left any surviving issue. If so, that issue would be entitled to a share of the estate under Probate Code Section 6402(a). Another issue was that the death certificate submitted for Joyce Rose stated that she was married at the time of her death. She died after Doretha. Her 1/3 share of Doretha's estate (assuming no surviving issue for Freddie Lofton) would pass, under Probate Code Section 6402, 1/3 to her husband and the remainder to her four children. Her husband, Charles Edward Rose, is not a claimant, and did not join in either of the Probate Code Section 13100 affidavits.

The Hearing Officer has decided that these issues do not require that the Claims for Excess Proceeds be denied. Probate Code Section 13105 states that the persons executing the Probate Code Section 13101 affidavit are entitled to have the property described in the affidavit delivered or transferred to them. Probate Code Section 13106(a) discharges the holder of the property which is the subject of the affidavit from any further liability which respect to the money or property. "The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit".

The first set of affidavits were inconsistent on their face, and therefore it was impossible for the Hearing Officer to rely upon them in good faith. However, there is no inconsistency in either of the affidavits submitted later. There is no evidence that Freddie Lofton left any surviving issue. The statement on Joyce

Rose's death certificate that she was married at the time of her death is hearsay; although the informant was her husband. There is evidence of a proper marriage, in that the marriage certificate was submitted. Aside from the Death Certificate there is no evidence that the marriage was not dissolved prior to Doretha's death. There is no showing whether Charles Edward Rose is still alive (if he died with only the same children as are claimants here, the resulting inheritance rights would be the same). This is not a situation in which the Hearing Officer has actual knowledge contradictory to the statements in the affidavits, or the affidavits on their face omit a known heir.

The Hearing Officer is entitled to rely "in good faith" on the affidavits, if they otherwise comply with Probate Code Section 13101, and proper evidence of the decedent's ownership of the property, and of the identity of the declarants, are provided as required in compliance with sections 13102 and 13103. Whether the affidavits can be accepted when there is some indication of possible other heirs is a case by case determination. The heirs (and potentially the assignee as well) who receive property remain statutorily liable to any person with superior rights, and a treble penalty can be imposed. Probate Code Sections 13110(a),(b). This would be in addition to any liability under common law principles of fraud, breach of fiduciary duty, conversion and/or unjust enrichment.

With seven descendants of Doretha Campbell joining in the claims and affidavits, and considering the statutory protections afforded to protect any omitted heirs, the Hearing Officer has determined to rely on the affidavits and grant the claims for excess proceeds in this instance.

Dated: April 23, 2008

A handwritten signature in black ink, appearing to read "Jed Somit", with a horizontal line drawn underneath it.

Jed Somit, Esq.
Hearing Officer

ATTACHMENT B**Excess Proceeds Distribution From Tax Defaulted Property Sale – 3/05**

| Claimant | Parcel Number | Amount | Suspend Payment 90 Days |
|--|----------------------|---------------|--------------------------------|
| 1. Global Discoveries LTD. | 41-4133-7 | \$17,160.00 | NO |
| 2. James Flower | 41-4133-7 | \$17,420.00 | NO |
| 3. Fred Jackson, Sr. (AKA Freddie Jackson) | 41-4133-7 | \$5,807.00 | NO |
| 4. Tonya Jackson | 41-4133-7 | \$5,807.00 | NO |
| 5. Fred Jackson, Jr. | 41-4133-7 | \$5,807.00 | NO |
| 6. Global Discoveries LTD. | 4-63-11 | \$15,313.00 | NO |
| 7. Charlie Fontenot | 4-63-11 | \$9,385.00 | NO |
| 8. Lawrence Fontenot | 4-63-11 | \$9,385.00 | NO |
| 9. Regina Rose | 4-63-11 | \$2,417.00 | NO |
| 10. Shaves Rose | 4-63-11 | \$2,417.00 | NO |
| 11. Charles Rose | 4-63-11 | \$2,417.00 | NO |
| 12. Maurice Rose | 4-63-11 | \$2,417.00 | NO |