



## CLERK, BOARD OF SUPERVISORS

October 10, 2008

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

Dear Board Members:

**SUBJECT:** Claims for Excess Proceeds – 2006 and 2007 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 2006 and 2007, included in Attachment A-D; and direct the Auditor-Controller to distribute excess proceeds detailed in Attachment E pursuant to the Hearing Officer's Decisions:

#### **Claimants**

#### **Parcel No.(s)**

- |  |            |
|--|------------|
| A. Edson Camacho, President c/o Hercules Enterprises   | 41-4148-21 |
| B. Global Discoveries; Cynthia Summerville; and Robert Green                                 | 5-370-4-3  |
| C. Earl T. Brown   | 77-573-46  |
| D. John E. Gregory; Julia Gregory Rodgers, Janet Gregory<br>McCarroll; and John Gregory, Jr. | 8-677-19   |


### **DISCUSSION/SUMMARY**

The Tax Collector conducted sales of tax defaulted properties in 2006 and 2007. 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 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 E 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: EDSON CAMACHO FOR HERCULES ENTERPRISES,  
INC.  
PARCEL: 41-4148-21  
FILE NO: EP 2007 TAX SALE  
HEARING DATE: JULY 24, 2008  
AGENDA NUMBER: ELEVEN  
HEARING OFFICER: JED SOMIT, Esq.

FACTS:

Only the County Counsel's Memorandum, of June 27, 2008, by Claude Kolm, Deputy County Counsel, is in the file.

The Memorandum identifies the excess proceeds as \$77,601.54. It states that the Claim for Excess Proceeds by Hercules Enterprises, Inc., is the only claim. That Claim was received March 19, 2008, and therefore is timely, as the tax deed was recorded April 26, 2007.

The Memorandum states the material in support of the Claim includes a deed recorded November 9, 2006, from Mauricio Camacho to Hercules Enterprises, Inc. An earlier recorded deed has Mauricio Camacho as the grantee. Also, there is a Statement of Information for the California Secretary of State identifying Edson L. Camacho as the CEO of the corporation.

The Memorandum recommends payment of the Claim.

Claimant did not appear at the hearing, instead notifying that Claimant had read the recommendation (apparently of the County Counsel), and concurred with the report. The matter was deemed submitted on the file.

DECISION:

The Claim for Excess Proceeds is granted. The check shall be payable to "Hercules Corporation, Inc."

RATIONALE:

For unknown reasons, the Hearing Officer's file contains only the Memorandum of the County. Inasmuch as Claimant did not appear at the hearing in reliance upon the Memorandum and its recommendation, the Hearing Officer will assume that all of the papers discussed in the Memorandum exist and are as identified in the Memorandum.

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. The Claim filed here was timely.

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."

County Counsel's Memorandum notes that a deed to claimant Hercules Enterprises, Inc. was recorded in 2006, and prior to that, a deed was recorded showing that the grantor (Mauricio Camacho) to Hercules was in the chain of title. Thus, Hercules Enterprises, Inc. is a party of interest of the second priority.

There were no claims of the first priority, nor competing claims of the second priority. All of the excess proceeds should therefore be distributed to Hercules Enterprises, Inc.

Dated: August 12, 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, CYNTHIA SUMMERVILLE,  
ROBERT GREENE  
PARCEL: 5-370-4-3  
FILE NO: EP 2006 TAX SALE  
HEARING DATE: JULY 24, 2008  
AGENDA NUMBER: NINE  
HEARING OFFICER: JED SOMIT, Esq.

FACTS:

There are three claims for the excess proceeds generated by the sale of this tax defaulted parcel.

Robert Greene claims as "Deed Holder (Joint Tenant)". His Claim for Excess Proceeds was filed June 6, 2007. Cynthia Summerville similarly claims as "Deed Holder (Joint Tenant)". Her Claim was also filed on June 6, 2007.

These two Claims are supported by a Corporation Grant Deed, bearing notation that it was recorded with the Alameda County Recorder on February 22, 1983, document 83-028733. The deed grants certain property to Cynthia Summerville and Robert Greene as joint tenants.

A competing Claim for Excess Proceeds was filed by Global Discoveries, Ltd. The package containing this Claim is marked as received on April 4, 2007. The Claim is supported by an Assignment of Rights to Claim Excess Proceeds From the Sale of Tax Deeded Property, tracking the language of Revenue & Taxation Code

Section 4675, and identifying the amount of excess proceeds as "\$48,641.00 +/-". Further information is provided in a Declaration of Peter Bogart, claiming he signed the Corporation Grant Deed as secretary for the Grantor. The Declaration states that there was a purchase money Deed of Trust recorded concurrently with the Grant Deed as document 83-028734; under that Deed of Trust, Interstate Holdings, Inc., is the beneficiary. The declarant states that "Interstate Holdings, Inc." was his dba, and was not actually a corporation. However, the declaration also states that Peter Bogart is the President/Secretary of Interstate Holdings Inc. and Western Land Bank, Inc.

A Lost Note Affidavit states that Mr. Bogart cannot find the original promissory note, but states the terms as 9% interest from 1/23/1983, on principal of \$3,250, with a three year term. The amount of the monthly payment is left blank, and the late payment penalty is claimed to be \$150. A Statement of Amount Due and Owing claims the amount due to the date of the tax sale is \$51,796. There is a statement that no payments were made, but no ledger or accounting or summary of payments on the loan. A copy of the recorded Deed of Trust is provided, which states the indebtedness as \$3,250.

The Hearing Officer's own calculations, assuming simple interest for 23-1/4 years, are that there would be \$6,800.63 interest, and \$3,250 principal, assuming no payments were made, for a total of \$10,050.63. Even using monthly compound interest, the amount due would be only \$26,136.87.

County Counsel's Memorandum, by Claude F. Kolm, Deputy County Counsel, reviews the submissions. It concludes that the Summerville and Greene Claims for Excess Proceeds were not filed timely, and recommends denial of those claims. It notes the Greene and Summerville claims would be of second priority to the Global Discoveries, Ltd., Claim for Excess Proceeds, if that claim is valid.

The Memorandum notes the confusion as to what Interstate Holdings, Inc. is or was. It notes that no Fictitious Business Name Statement seems to be filed for Interstate Holdings, Inc., and also that the use of "Inc." by a non-corporation is not a valid fictitious business name. The Memorandum argues that the prohibition on a person's transacting business or maintaining an action on account of any contract made in any court until the fictitious business name statement has been filed applies to administrative hearings, citing *Hand Rehabilitation Center v. Worker's Compensation Appeals Board* (1995) 34 CA4th 1204, and the holding should apply to this proceeding. The Memorandum argues that if the Claimant is a foreign corporation which has not registered to do business in California, it cannot use the courts under Corporations Code Section 2203. The Memorandum concludes that the corporation, if the assignor was a corporation, had no powers or rights it could assign to Global Discoveries. The Memorandum suggests the Lost Note Affidavit lacks credibility in reciting the terms of a note 25 years old with no confirming evidence.

The County Counsel's Memorandum recommends denial of both claims.



At the hearing Ms. Cynthia Summerville appeared for herself, and Mr. Jed Byerly appeared for Global Discoveries, Ltd.

Mr. Byerly stated that he and his assignor did not contest that other two claimants were owners of record of the property at the relevant time.

Ms. Summerville testified that she wasn't clear on what "year" meant, in the claim form. She stated that she never received any notification from the County of the property's being sold for the tax default, nor any notice that there were any excess proceeds. Everything they (she and Mr. Greene) learned was through their own research and from other companies' contacting them. When they discovered that the property had been sold at a tax sale, she immediately called the County and asked what to do and whether she could get access to the excess proceeds. She did not understand the language on the claim form concerning "prior to end of one year"<sup>1</sup>. Ms. Summerville testified that she called multiple times and talked to different departments at the County. She asked whether they (she and Mr. Greene) could file the Claim for Excess Proceeds "right now" (this would have been shortly after the sale); she testified she was told, "no".

Ms. Summerville testified that she had records with notes of the telephone calls. She testified she called the Assessor's office and spoke with a clerk on

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<sup>1</sup>The front of the Claim for Excess Proceeds form used by Alameda County states at the bottom of the first page: "Claimant must notify the Clerk of the Board of any change of address in order that proper notice may be given at the end of the one year period. Excess proceeds will not be distributed prior to the expiration of one year following the execution of the Tax Collector's deed to the purchaser."

4/27/06 (only a few weeks after the tax sale). On that occasion, the Assessor's office told her that after the final amount of proceeds was determined, and the liens and fines were paid, they (as former owners) would be entitled to excess proceeds. Ms. Summerville testified she asked if they could file the Claim immediately, but that person said no, she would have to wait until one year after the date the deed from the tax sale recorded to file their claim. Ms. Summerville testified she asked if she could send the Assessor a new mailing address, and thereupon faxed a completed form to change her address to the Assessor's office on 4/27/06. During this telephone call, she asked about the procedures for notification of the excess proceeds, and was told that they would be contacted. However, she kept calling back to the Assessor. On these later telephone calls, she said she told the County representative that she needed more clarification. Ms. Summerville testified she told the employee that she wasn't sure that what the clerk said on the previous call was exactly right, it wasn't consistent with the "prior to one year" language. So Ms. Summerville asked to talk to a supervisor. Someone, she believes a supervisor, called her back. The person could have been Susan Muranishi (whose name is at the bottom of the Claim form). This person, possibly Susan Muranishi, called on 4/28/06. Ms. Summerville testified that she asked this person the same questions, explaining that she didn't understand "excess proceeds will not be distributed prior to one year." Again, she asked if they can file the Claim now. Ms. Summerville said the person she believed was Susan Muranishi said they must wait until a year

from the sale has passed. This was a very short conversation.

The Hearing Officer received testimony from Mr. Larkin concerning procedures if people call the number on the Claim form (for the Clerk of the Board). His office receives the call, but his office doesn't generally know the date of recordation of the deed from the tax sale, nor the amount of excess proceeds. His office doesn't keep a record of all such calls; he does not recall talking to Ms. Summerville. Mr. Larkin testified that he doubts Ms. Muranishi returned a call on this subject. He notes that his office has no confusion now about when a Claim for Excess Proceeds must be filed. However, he admitted that April, 2006, was shortly after the time his predecessor, Ms. Tachet, resigned. He testified he couldn't say who would have handled the call at that time, or whether the office was then clear on the time period for filing Claims for Excess Proceeds.

Ms. Summerville testified that she doesn't have notes of the name of the persons she talked to until 5/15/07, when she felt a year had passed and called the County again; she has names for calls then. Prior to that time, she had never been told it was too late to file a Claim. The only time they knew there was a deadline to file Claims was when they actually filed the Claims. Then, they talked to a clerk on the second floor (of 1221 Oak Street), who took the APN for the property, and who then said they are filing the Claim late.

The Hearing Officer allowed Ms. Summerville to present a notebook of her notes and contacts.

Ms. Summerville testified that she faxed a change of address form, and still didn't receive a form from the Assessor (which if sent by the Assessor would have contained the date of sale and a copy of R&T Section 4675).

Mr. Byerly testified that in his experience, he doesn't find much confusion with the people he talks to about when Claims for Excess Proceeds are due. He testified that the claim forms sent out by the County state the assessor's parcel number for the property, the date of sale and the final date on which to file.

Mr. Byerly suggested that the person who called Ms. Summerville may have been Susan Nishimura, rather than Susan Muranishi.

Concerning Global Discoveries' Claim for Excess Proceeds, Mr. Byerly testified that there was a total assignment to the company of all rights of Interstate Holdings, Inc. to the excess proceeds. He could not say how Mr. Bogart recalled the numbers in his declaration, without Mr. Bogart's having a copy of the promissory note or any other supporting writing. Mr. Byerly noted that Mr. Bogart is an elderly gentleman, who put many properties in the name of various companies, all across California. He carried many mortgage notes arising from such sales. Mr. Byerly admitted that in all of his other cases with Mr. Bogart, he had found proper corporate authority and that the named corporate entity was an actual corporation. In this case, a corporation named "Interstate Holdings, Inc." exists, but that corporation is not connected with Bogart. Mr. Byerly testified he researched in Nevada (where Mr. Bogart also formed corporations), but Interstate

Holdings was not on the internet available files; he obtained a corporate number in Nevada for Interstate Holdings, but his service did not research the number.

Mr. Byerly submitted some documents showing that Mr. Bogart had acted on behalf of Interstate Holdings. These documents included: a 1983 Trustee's Deed from Western Land Bank, Inc., as Trustee, to Interstate Holdings, Inc.; two Corporation Grant Deeds recorded in 1983 from Interstate Holdings, Inc. as Grantor; a Grant Deed recorded in 1988 from West Palm Springs, Inc. to Interstate Holdings, Inc.; a Corporation Grant Deed recorded in 2004 with Interstate Holdings, Inc. as Grantor; and, two Abstracts of Judgment from the same case, in different amounts, each with Interstate Holdings, Inc. identified as the Judgment Debtor, recorded in 1993 from a Judgment entered in 1990. All of the grant deeds with Interstate Holdings as the Grantor were signed by Mr. Bogart as Secretary; he was also Secretary of Western Land Bank, Inc. and of West Palm Springs, Inc.

On the Global Discovery claim, a month was allowed to submit any further information or documentation from Nevada (or elsewhere) concerning Interstate Holdings, Inc.'s being a valid corporation, and/or concerning other transactions of Mr. Bogart of the same time frame to show his customary lending terms, and a calculation of what was due (the Hearing Officer pointed out that he could not duplicate Mr. Bogart's calculations).

Ms. Summerville, who testified she believed she paid off the Interstate Holdings purchase money loan, was given 30 days to submit evidence of payment

n the promissory note secured by the Deed of Trust underlying Global Discoveries, Ltd.'s assigned claim to the excess proceeds.

Mr. Kolm, Deputy County Counsel, was given 30 days to submit whatever County Counsel felt was appropriate on the issue of timeliness of the Summerville and Greene claims, and whether if they were given improper information, the County would be estopped to assert that the claims were untimely.

Mr. Larkin testified that the Claim forms which are mailed out don't contain information on the amount of excess proceeds. The Clerk of the Board gets a report from the Auditor's department with excess proceeds amount.

Further information was received after the hearing. Mr. Kolm provided the Notices of Excess of Proceeds to Parties in Interest mailed out for this sale. Included is a Notice sent to Ms. Summerville at "888 W. Knoll Drive" in West Hollywood (this is not the same address as on her Claim for Excess Proceeds). This undated Notice contains the APN, the names of the Assessee (claimants Summerville and Greene), the date the property was sold, the date of recordation of the tax deed, and "Final Date to Submit Claim: May 01, 2007." The Notice clearly states that "your claim must be received within **one year** of the date the deed to purchaser was recorded (shown above). By law, claims filed after the one-year period cannot be accepted." With the Notice is a partially completed Claim for Excess Proceeds, showing the APN and the Date of Sale. A similar set of papers was sent to "Summerville Cynthia & Greene Robert" at an Oakland address (not the

address on either of the subsequent Claims for Excess Proceeds). Several other Notices were sent, including one to Western Land Bank.

The Hearing Officer reviewed Ms. Summerville's notebook. A July 24, 2008, preface notes "[o]ver the past three years we have been in constant contact with the Alameda County Assessor's Office; County Tax Office; Default Land Office, and the Board of Supervisor's Office ... in order to claim the excess proceeds ... ." Consistent with the testimony at the hearing the next day, the preface states "we were consistently given incorrect information ... that we could not file a Claim for Excess Proceeds until one year AFTER the RECORDED TAX DEED." The preface notes the requirement for the County under R&T Section 4676(b) to "make a reasonable effort to obtain the name and last known mailing address of parties of interest", and inquires how other people (including Global Discoveries, Ltd) could get a current address for her and contact her concerning the property, while the County could not. She notes that even after she provided a correct address, the County did not send notification to her at that address.

Ms. Summerville's notebook has entries that TRACKERS USA called her on April 8, 2006, apparently concerning the potential for excess proceeds. It also evidenced that from that date forward, Ms. Summerville and Mr. Greene become aware there might be money due to them. By April 27, 2006, Ms. Summerville was aware of the tax auction and had researched the issue on the internet. Her notebook has evidence of a call to the Alameda County Treasurer-Tax Collector on

April 27, 2006, and the Assessor's Office on the same date. She has evidence of a slip of paper containing the fax number to use for a change of address, and information about when she faxed the change of address form. Other notes suggest telephone calls took place on April 27, 2006, and a call was received on April 28, 2006. There is then a lapse of documented contact until May 25, 2007 (the last timely date to file a Claim for Excess Proceeds was May 1, 2007), when exhibits show further telephone calls. The telephone bill printouts support the narrative of being referred from one office to another.

One of the exhibits evidences that Trackers "did a genealogy search on the internet", identifying two parties (neither of whom was Cynthia Summerville), and eventually locating a number for Ms. Summerville's mother.

A Property Tax Statement (year is not certain) is among the exhibits. A Dunford Lane in Inglewood address is crossed out and "8800 Dartford Place" is written in, but no city is stated. A number of \$48,641 is written on the same exhibit. "Must file 1 year after" is also handwritten. A Mailing Address Change Request is the next exhibit, which clearly states the new address. A note (probably written later) says this was faxed on 4/27/06 at 2:56 p.m. An email of 4:03 p.m. on the same day, to Mr. Greene, states, "I faxed a change of address" to the Assessor. The email says "we must wait for 1 year before filing this claim because 'excess proceeds' will not be distributed prior to the expiration of one year following the execution of the Tax Collector's deed to the purchaser. They will



notify us at the end of the 1 year period.” The email notes that she printed the Claim for Excess Proceeds from the website (thus, it is not clear whether the information she gives is based upon the telephone calls or her reading of the Claim form).

The Notebook also includes a message from a Nathan Wong, noting that she may have an interest in a property scheduled for an upcoming tax foreclosure sale. This notice, dated March 18, 2006, was sent to Ms. Summerville and Mr. Greene at the address on Ms. Summerville’s later claim (that is, to a correct address but not any of the addresses to which the County sent Notices of the excess proceeds). Global Discoveries, Ltd. mailed a letter to the same address on April 25, 2006.

Ms. Summerville and Robert Greene also submitted a post-hearing notebook entitled “Proof of Note Payment”. Of interest in that material is a Notice of Default and Election to Sell recorded 11/13/1985, stating that \$388.37 is due. There is a Notice of Rescission of the Notice of Default, recorded December 26, 1985. While there is much discussion as to the meaning and implication of these documents, there is little further evidence submitted showing payments. The narrative states that the banks did not keep records more than 7 years old, so checks or statements for 1983-1986 could not be obtained.

Mr. Kolm also submitted a post-hearing letter-brief, dated August 22, 2008. It argues that even if misstatements about the filing deadline occurred (which the

letter does not admit, but rather argues there is a lack of proof), that would not be sufficient to constitute equitable estoppel against the County. Several appellate cases on this point were mentioned; the Hearing Officer has reviewed many of them.

No further documentation was received from Global Discoveries, Ltd.

#### DECISION:

The Claim for Excess Proceeds of Global Discoveries, Ltd. is denied.

The Claims for Excess Proceeds of Ms. Summerville and of Mr. Greene are granted. Each is to receive 50% of the excess proceeds (the odd penny to go with Ms. Summerville's share).

#### 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(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."

*I. Claim of Global Discoveries, Ltd.*

The Claim for Excess Proceeds of Global Discoveries, Ltd. is a claim of the first priority, and therefore will be analyzed first.

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 Peter Bogart's dba Interstate Holdings, Inc.'s share (if any) of excess proceeds, and verified that the mandatory language is included. The conclusory declarations by the assignor that all facts each is aware of regarding the value of the rights being assigned have been disclosed will be accepted in this case, where there is no objection, nor any contention that relevant facts were not disclosed to each assignor.

There are certainly some issues as to whether "Interstate Holdings, Inc." is either a properly formed corporation, and if so, if it is in good standing or whether its corporate powers, including the power to file a claim, are suspended, or whether it is a foreign corporation not registered to do business in California (and the effect of that on making a Claim for Excess Proceeds grounded on a recorded Deed of Trust), or whether the name is a valid fictitious business name for Mr. Bogart, and if not valid, the effect of that, etc.

An analysis of these issues is not necessary. The Global Discoveries Claim for Excess Proceeds will be denied on the merits. Global Discoveries, Ltd. did not prove its entitlement to any of the excess proceeds.

No copy of the promissory note was provided. Instead, a Lost Note Affidavit was provided. On that Affidavit, the term of the note was stated to be three years, with the first payment due 3/1/1983. The monthly payment is left blank. A late fee of \$150 after 30 days is claimed. No evidence was presented as to why Mr.

Bogart could remember any of the information beyond the original principal amount.

The Statement of Amount Due and Owing claims \$51,796.00 is due on the original indebtedness of \$3,250. The Amount Due and Payable Calculation lists \$41,760 in late fees. Since only 36 payments were due, it would seem that no more than \$5,400 in late fees could be charged. From the other information, it would seem the monthly payment (assuming an amortized payment schedule) would be about \$100. A \$150 late fee on a payment of \$100 simply will not be enforced. Civil Code Sections 2954.4 (if residential property), 2954.5, and 1671.

The basis for Mr. Bogart's statement that no payments were made is not revealed. No accounting or payment sheet was provided. The statement was contested by Ms. Summerville, who claims she and Mr. Greene "fully paid" for the property. However, she also failed to produce documentary evidence, citing the bank's policy of destroying documents older than 7 years. She did produce evidence of the recording of a Notice of Default and Election to Sell Under Deed of Trust on November 13, 1985. That document states that the amount due as of 10/23/83 was \$388.37, including allowable costs and expenses. This suggests that as of that date, perhaps one payment was missed. The second page of that document states that the underlying default is the payment of principal and interest due September 23, 1985, and all subsequent installments. This strongly suggests that the prior payments (approximately 30 of the 36 total due) were made.

Ms. Summerville also produced a recorded Notice of Rescission of the Notice of Default. While this document does not state any payment was made, in light of

the alacrity with which the Notice of Default was recorded on November 14, 1985 (signed November 4, 1985) for a payment missed on September 23, 1985, the strongest implication is that payment was made. It seems that Mr. Bogart moved quickly to enforce his rights. The lack of further Notices of Default suggest that the remaining payments were also made. (The principal balance as of September 23, 1985, would have been approximately \$500.)

In light of the recorded documents, Mr. Bogart's statements simply fail to meet his burden of proof, or to overcome the trustors' statement of full payment. His statements, without explanation of the source of his recollection, do not satisfy the burden of proof (preponderance of the evidence) that any amounts were owing on Interstate Holdings, Inc.'s recorded lien. Global Discoveries, Ltd.'s assigned claim fails.

## *II. Claim of Cynthia Summerville and Robert Greene.*

On the merits, these Claims are fairly straightforward. These claimants produced a recorded deed showing that they were the owners of the property. Global Discoveries, Ltd. expressly conceded their standing. No evidence was presented that their title ownership terminated before the recording of the deed from the tax sale.

The problem is that these Claims were not timely filed. They were not filed within a year from the recordation of the deed from the tax sale. There is no dispute on this issue.

Ms. Summerville testified that she made many calls to the County of Alameda after discovering this potential asset. She asserts that she was told in several of the telephone calls that she *could not* file the Claim for Excess Proceeds until after a year had passed. She provided significant support that such telephone calls occurred on April 27<sup>th</sup> and 28<sup>th</sup>, 2006. Although she claims she was constantly in touch thereafter, and received the same advice, there is no supporting evidence of any further calls to the County made until May 15, 2007, when a claim was already untimely. Ms. Summerville claims that she was told as late as May 15, 2007, that there was no deadline for filing a Claim, or at least was not informed of a deadline in calls of that date.

Ms. Summerville notes that she did not receive notice of the tax default, or impending tax sale, and points to the supposed ease by which the professional asset locator firms found her. However her evidence shows that one firm used "genealogical data" to find her mother. The duty placed upon the County is to send notices to the last known address, and to make a "reasonable effort" to obtain the name and last known mailing address of parties of interest. R&T Section 4676 (Notice of right to claim excess proceeds); §3365 ("reasonable effort ... including, but not limited to, an examination of the assessment of this property ..., an examination of the most recent telephone books in the county in which the tax-defaulted property is located, and an examination of the telephone book covering the area of the last known address of the last assessee." There was no showing that such a search would have located a current address for her or Mr. Greene, and

the manner in which she was located by Ms. Metzger suggests that such a search would not have proven fruitful.

Of more concern is the failure of the County to send a notice pursuant to Section 4676 after Ms. Summerville faxed notice of her current address. This omission is unexplained. A Notice of Excess Proceeds was sent to these claimants *at the property address*. Although the Notice is not dated, it could not have been sent prior to May 1, 2006, since the recording of the deed on that date is noted. Ms. Summerville faxed a change of address on April 27, 2006. This failure is not determinative, however. The statute only requires "notice of the right to claim the excess proceeds" be given. No requirement is imposed in the statute to state the last date on which a timely Claim for Excess Proceeds can be filed. The potential statutory violation is not directly tied to the issue here: Ms. Summerville's confusion as to the claim filing deadline. However, had the Notice been sent to the new address, and the Claim for Excess Proceeds still not have been filed on time, Ms. Summerville's equitable estoppel theory would be unavailable, because even if not mandated, the County's Notice does clearly indicate the "Final Date to Submit Claim: May 01, 2007".

The determinative issue is whether the late filing of the claims can be excused. The only basis for this is the concept of equitable estoppel.

The case of *J.H. McKnight Ranch, Inc. v. Franchise Tax Board* (2003) 110 CA4th 978, 990-993 contains a discussion of whether the government can be equitably estopped to raise a procedural bar to recovery of an amount otherwise



due a taxpayer:

The doctrine of equitable estoppel "rests firmly upon a foundation of conscience and fair dealing." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488 (*Mansell*).) "At common law, estoppel was unavailable against the government. We have long held, however, that estoppel may be asserted against the government 'where justice and right require it' (*City of Los Angeles v. Cohn* (1894) 101 Cal. 373, 377), and we have applied the doctrine against government entities in a variety of contexts." (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, fn. omitted (*Lentz*).)

The standard for applying estoppel against the government is settled. "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*Mansell, supra*, 3 Cal.3d at pp. 496-497.) [footnote omitted] *Mansell* and its progeny thus establish a two-part inquiry. First, a court must determine whether the traditional elements necessary for assertion of an estoppel against a private party are present. These elements include the following: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) Second, the court must weigh the equities and consider the impact on public policy of permitting an estoppel in a given case. The existence of an estoppel is a factual question (*Aetna Casualty & Surety Co. v. Humboldt Loaders, Inc.* (1988) 202 Cal. App. 3d 921, 930); thus, we review the trial court's conclusion for substantial evidence.

[footnote omitted] Under this standard, estoppel may be appropriate when "a government agent has negligently or intentionally caused a claimant to fail to comply with a procedural precondition" to recovery and denial of recovery would cause great hardship. (*Lentz, supra*, 49 Cal.3d at pp. 401-402; see *Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226, 244 [collecting cases in which government was estopped after it misled claimants].) Thus, for example, a government agency that leads a private party to inaction through correspondence and verbal assurances concerning the resolution of a dispute may be estopped from asserting failure to comply with administrative claim procedures as a defense. (*Ocean Services Corp. v.*

*Ventura Port Dist.* (1993) 15 Cal.App.4th 1762 (*Ocean Services*).) In *Ocean Services*, Ocean Services Corporation entered into a joint venture with the Ventura Port District to develop the Ventura Harbor. (*Id.* at p. 1768.) When problems developed with the venture, the port district asked Ocean Services Corporation to wait for resolution of any claim. Ocean Services Corporation agreed. (*Id.* at p. 1776.) When litigation ensued, the port district asserted that any claim was barred by Ocean Services Corporation's failure to file a timely administrative claim. (*Id.* at p. 1775.) The court disagreed, and held that the port district's actions estopped it from asserting the procedural defense.

This case is analogous to *Ocean Services*. Here, there was substantial evidence that the Board introduced the possibility of an early termination of McKnight's claim as a way to expedite resolution in court. When the parties could not reach agreement on the merits, Greve sought additional information, but also "asked if, given that [he] could not make a settlement offer, and no one else at FTB was in a position to offer a settlement did you wish to continue the audit or did you wish for me to deny the claim so you could continue on to court or the [State Board of Equalization]?" McKnight accepted the offer of an early termination and filed suit. The trial court could conclude that Greve made the offer with the expectation that it might be accepted, and that McKnight might proceed directly to court in reliance on this offer. Having proposed an early termination so that McKnight could proceed to court, the Board cannot now be heard to argue that the early termination is insufficient and that McKnight was required to do more to exhaust its claims.

In addition, we consider the equities in favor of an estoppel compelling. On the one hand, denial of an estoppel would permit the Board to retain approximately \$ 97,000 that was never owed by the taxpayer. On the other hand, a ruling in favor of the taxpayer would not impair the public policy in favor of exhaustion of remedies significantly. The exhaustion of remedies doctrine exists to allow an agency to apply its expertise before court resources are called upon, with the expectation that some lawsuits will be rendered unnecessary (because the agency corrects a mistake) and the remainder will proceed on a better-developed record. (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 85; *Preston, supra*, 25 Cal.4th at p. 206.) Here, the Board was alerted to the relevant legal principle and had facts before it showing that legal principle entitled McKnight to a refund. Over the course of years of proceedings, it had the opportunity to change its mind and obviate the need for a lawsuit. It nevertheless adhered to its position that the tax was owed up until this appeal. Ruling for the Board on exhaustion grounds would do little to encourage administrative resolutions in the future.

The Board contends that it should be exempt from application of the doctrine of estoppel because of the strong public policy in favor of protecting the public fisc. *Transamerica Occidental Life Ins. Co. v. State Board of Equalization* (1991) 232 Cal. App. 3d 1048 (*Transamerica*) spells out this policy. In *Transamerica*, an insurance company brought a refund action, claiming that the lower of two tax rates should apply to certain premiums. The insurer contended, inter alia, that the Department of Insurance and the Board of Equalization had indicated that the lower rate applied, and that it relied upon this advice. The court rejected the argument, pointing out that "[a]lthough equitable estoppel may apply to government actions where justice and right so require, 'estoppel will not be applied against the government if the result would be to nullify a strong rule of policy adopted for the benefit of the public [citations] or to contravene directly any statutory or constitutional limitations. [Citation.]' " (Id. at p. 1054, quoting *People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal. App. 3d 526, 551 .) "Specifically," the court explained, " 'the state is not estopped from collecting a tax which was due and owing, even though the state's representatives may have previously adopted an incorrect interpretation of the law and advised the public that no taxes would become due on a particular transaction or transactions.' " (*Transamerica*, at p. 1055, quoting *Fischbach & Moore, Inc. v. State Bd. of Equalization* (1981) 117 Cal. App. 3d 627, 632 (*Fischbach & Moore*); accord, *Woosley v. State of California* (1992) 3 Cal.4th 758, 785.) The Board argues that under *Transamerica*, it cannot be bound by its representative's actions in processing the refund claim.

The Board overlooks a critical distinction between this case and cases like *Transamerica*. In *Transamerica*, tax was in fact owed. The bar against estoppel in such cases is "designed to discourage corrupt collusion between government officers and taxpayers to the detriment of the state's revenues." (*Fischbach & Moore, supra*, 117 Cal. App. 3d at p. 632.) Here, in contrast, as a matter of substantive tax law no tax was due. McKnight seeks to invoke estoppel against assertion of a procedural barrier to recovery. As the Supreme Court recognized in the context of welfare benefits in *Lentz*, there is a world of difference between invocation of estoppel to excuse a procedural precondition to recovery and invocation of estoppel to defeat substantive limitations on recovery. "Estoppel against [the government's] assertion of purely procedural preconditions and limitations on benefits, when the [government] itself is responsible for the procedural default, will not defeat the underlying statutory policy of safeguarding accurate and orderly administration of the welfare system. The policy considerations may well be different, however, when substantive preconditions of benefits are at issue." (*Lentz, supra*, 49 Cal.3d at p. 401.) [footnote omitted] Because this case

involves the use of estoppel to defeat a procedural barrier to the recovery of money never owed, equity will allow it, and "justice and right require it." (Id. at p. 399.)

First, then, we must see if the regular elements of estoppel are satisfied as to Ms. Summerville (and by extension, Mr. Greene).

*(1) the party to be estopped must be apprised of the facts.*

There is no question that the County of Alameda, through the Clerk of the Board, County Counsel, and the Tax Collector, actually know the time period in which claims for excess proceeds must be filed for this property. This is demonstrated by the Notice of Excess of Proceeds to Parties of Interest sent out, which contains the "Final Date to Submit Claim."

*(2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended.*

This fact is established if all of Ms. Summerville's testimony is credited. She testified that during the first set of calls, she repeatedly asked directly *if* she could immediately file a claim, and was told not to file, that a claim could not be filed until a year had passed. From Ms. Summerville's point of view, she was asking a direct question of the employees of the entity with which she had to file a claim, and they were giving her directions, and she felt she should rely upon those directions. She certainly did rely, since after a whirlwind of activity to make sure she identified the asset and found out how to claim it, she took no further action for more than a year after this set of calls. Her notes indicate that she believed she

could not file for a year, as does her email to Mr. Greene.

There is the issue of whether the wrong advice was actually given. Ms. Summerville is consistent and insistent on this. Her notes of the calls reflect her understanding that she was told she could not file for a year. Of some importance, the Hearing Officer has in other cases heard testimony that in the same period, other potential claimants for excess proceeds were given similar incorrect advice. It appears that during this time, the person long in charge of excess proceeds claims had recently resigned, and her duties had not clearly devolved onto any specific person. The question is a close call, but the Hearing Officer will conclude Ms. Summerville (and through her, Mr. Greene) was given incorrect advice by the County employees.

Another close issue is whether any employee actually intended that the advice (whatever was actually said) was intended to be relied upon. Given the narrowness of the issue, questions as to when a claim for excess proceeds must be filed do not automatically elicit a "we cannot give legal advice" reply, but usually get a fairly direct answer. I think if the advice was given, it was meant to be relied upon. For a similar reason, I do not think this situation falls within any "erroneous construction of a statute" exception to equitable estoppel. The time in which to file a claim for excess proceeds is the type of basic question, not really involving interpretation of the law, which the public has every reason to believe they can ask of the responsible government department, and receive a correct answer to guide their conduct.

Although the evidence is not overwhelming, the Hearing Officer will find that claimants have established this element.

*(3) the other party must be ignorant of the true state of facts.*

There seems no doubt that Ms. Summerville and Mr. Greene were actually ignorant of the duty to file within a year.

Of course, it can be argued that since the filing deadline is set out in R&T §4675, and it is presumed that one knows the law, claimants cannot be "ignorant" of the true fact. However, equitable estoppel is an equitable doctrine, not to be defeated by technicalities divorced from reality which, under the circumstances, would work an injustice.

Ms. Summerville consulted the Claim for Excess Proceeds online. It is not clear that the online claim form contains the text of R&T §4675, which is on the Claim sent out with the Notices usually sent to parties of interest. In the absence of R&T §4675, the Claim form does not contain any language which indicates that the alleged advice is not correct. In fact, the language at the bottom of the form is stated in footnote 1. Although there is nothing incorrect about this advice, provided that one understands "claimants" as meaning persons who have already filed a claim (rather than people intending or wanting to file), the language can be interpreted as consistent with a rule that the Claim itself need not be filed before the expiration of the year before which no distribution will be made.

*(4) he must rely upon the conduct to his injury.*

This element is obviously established. After intense energy devoted to this issue, after the set of calls with the County, Ms. Summerville writes Mr. Greene that no claim can be filed now, but must await passage of a year, and thereafter takes no further steps for that period. When she does contact the County, it is not with a feeling that she is approaching a deadline, but with a feeling that some reasonable time is left.

After the usual elements of estoppel are established, the next step is to weigh the equities and consider the impact on public policy of permitting an estoppel in a given case. Here, that is fairly straightforward and easy. There is no "tax" involved, and no real effect on the public fisc. Under current law, the excess proceeds are given to a claimant who timely files; the County does not assume that excess proceeds will default to it, nor does it have any remaining claim (its claim is satisfied before reaching "excess") on the proceeds. The County loses nothing to which it was entitled; claimants escape no financial burden which they should shoulder.

Of course, one does not easily waive a filing requirement, or set a precedent that a statutory deadline shall not be enforced. The Hearing Officer finds, however, that under the circumstances of the substantial forfeiture which would result to the claimants, and the County's lack of any claim or expectation of receiving these proceeds, the equities in the situation favor the claimants.

For these reasons, the second priority claims of Mr. Greene and Ms. Summerville are granted. Each shall receive 50% (reflecting their equal title ownership) of the excess proceeds, with Ms. Summerville receiving the extra cent as inadequate compensation for her taking the lead in this proceeding.

Dated: September 17, 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: EARL T. BROWN  
PARCEL: 77-573-46  
FILE NO: 2007-058024  
HEARING DATE: JULY 24, 2008  
AGENDA NUMBER: FOUR  
HEARING OFFICER: JED SOMIT, Esq.

## FACTS:

Applicant Earl T. Brown asks for a refund of taxes for tax years 1999-2007, identifying "Parent/Child Exclusion" as the basis for the request. He attached to his Claim for Refund a letter dated May 29, 2007, stating in relevant part that he refinanced his property in 1999. "Through an error, and no fault of mine, I was not given a Parent-Child Exclusion." A "one-time assessment of \$691.62" was placed upon the property transfer. The letter states that he was not notified of the assessment, nor the penalties and interest. In February, 2007, he received notice that a tax lien existed of \$2,502.64, of which \$1,600.70 was due to the original error. He paid the tax in full and filed the request for refund.

The Assessor's Memorandum by Irene M. Hagebusch, Assessment Roll Manager reviews the changes of ownership. In 1978, two couples acquired the property, apparently in joint tenancy or two joint tenancies. On February 3, 1999, an Affidavit of Death of Joint Tenant was filed for the death of Susan B. Brown (one of the owners) on 11/21/1985. No reappraisal was generated since Susan's

25% interest passed to her husband. On the same date, the remaining joint tenants transferred all their interests in the property to Earl T. Brown, Jr., one of the grantees of the 1978 Deed and the recipient of Susan B. Brown's interest. No Preliminary Change Of Ownership Report was submitted when this deed was recorded and there was no suggestion of a parent-child transfer on the face of the deed. Therefore, a 50% reappraisal was generated, as of the 1999 transfer.

The Assessor's Memorandum notes that a Claim for Reassessment Exclusion for Parent-Child Transfer under Revenue & Taxation Code Section 63.1 was signed by applicant and the two 1999 grantors on February 16, 2007, and approved by the Assessor on March 2, 2007. The other grantors of the 1999 Deed were identified in the Claim as applicant's in-laws. Since the filing was beyond the three year deadline of Section 63.1(e)(1)(B) or (C), the Memorandum concludes, relief could be granted only prospectively under Section 63.1(e)(2)(A). Therefore, the Memorandum concludes, the request for refund should be denied.

County Counsel, through the Memorandum of Claude F. Kolm, Deputy County Counsel, concurred in the Assessor's recommendation that the Claim for Refund be denied.

Mr. Brown appeared at the hearing and testified. He stated that his claim for refund encompasses only the years for which the parent-child exclusion was not granted. He testified at the hearing, similarly to his letter, that he refinanced the property in 1999. Through some error -- "no fault of my own" -- he was not given

a parent-child transfer exemption. He testified he was not aware of the parent-child exemption at that time. He testified that he thinks the County should accord some relief and adjust the taxes and penalties. Mr. Brown stated that he feels the original error was the title company's error. He also felt that the mailings to him should have been certified, although it was not clear how this would have helped him acquire earlier notice. He testified that he had no knowledge for 7 years of the additional tax.

It appeared from Mr. Brown's testimony that the Assessor's notices were sent to the property address. Mr. Brown moved from the property shortly after the 1999 transfer; he testified he changed his address with the United States Post Office, but not with the Assessor.

Irene Hagebusch, Assessment Roll Manager, testified for the Assessor. She noted that there was no indication of a parent-child transfer on the 1999 deed. This was unfortunate, since the Assessor has a policy to send notices and forms for the parent-child exclusion if the deed or PCOR suggests the potential. No PCOR was filed when the deed was recorded. Ms. Hagebusch did not know whether a Change of Ownership Statement was later filed, but testified that under the Assessor's policy, if a COS contained an intimation that a parent-child transfer was involved, the Assessor would have sent out the claim form.

Mr. Brown testified that the major mistake was made by the title company, which has become bankrupt, so he has no recourse against it. The title company was informed that the grantors were his parents, and that the grant was a gift. Mr. Brown didn't realize the ramifications. He stated that he trusted the title company. He testified that if the transfer was a gift from parent, the appraisal should not have changed. He noted at the end of his testimony that he would take responsibility for the basic \$691 assessment, but he felt the penalty and interest assessments are unfair.

Deputy County Counsel Claude Kolm was not certain as to what authority the Hearing Officer has to waive interest and penalties. He felt that Revenue & Taxation Code Sections 4081 *et seq.* should be consulted.

#### DECISION:

The Claim for Refund is denied.

#### RATIONALE:

A number of unfortunate events lead to applicant's predicament. The deed contained no statement or suggestion of a parent-child transfer, and no PCOR (which contains a box to be checked if a parent-child transfer is involved) was filed. Either circumstance would have triggered communication from the Assessor's office noting the need to file a Claim for Exclusion. A later unfortunate event was

applicant's failure to keep the Assessor notified of a current address for property tax mailings.

The refinancing of the property concurrent with the transfer of the remaining 50% to applicant, and the fact that the transfer was a gift, are not relevant to the current analysis.

The primary issue here is whether an untimely claim for the parent-child exclusion can be entertained or granted. The statute provides no such discretion.

Revenue and Taxation Code Section 63.1 governs the situation. Subsection (a) limits the relief provided in the section to transfers "for which a claim is filed pursuant to this section". This is restated and emphasized in subsection (d), which provides that, "[t]he exclusions provided for in subsection (a) shall not be allowed unless the eligible transferee ... files a claim with the assessor for the exclusion sought" and supplies specific information.

Subsection (e) of Section 63.1 concerns the time period in which a claim "shall" be filed. "Shall", as used in statutes, generally connotes a mandatory provision. This subsection has been amended to extend and modify the time within which the claim must be filed, in response to criticism that otherwise eligible taxpayers were denied the benefits by late filings. Of significant importance, even after such amendments, no suggestion appears in the statute that a late filing could be excused for any reason, no matter how grave or weighty, including any failure of the taxpayer to be aware of the consequences of the underlying transfer on his tax

This Hearing Officer cannot grant relief not allowed by statute. For this reason, the Claim for Refund must be denied in its entirety.

Dated: August 12, 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: JOHN E. GREGORY, JOHN GREGORY, JR, JULIA  
GREGORY ROGERS, JANET GREGORY  
McCARROLL  
PARCEL: 8-677-19  
FILE NO: EP 2006 TAX SALE  
HEARING DATE: JULY 24, 2008  
AGENDA NUMBER: ELEVEN  
HEARING OFFICER: JED SOMIT, Esq.

## FACTS:

There are several claimants to the excess proceeds for the 2006 tax default sale of this parcel.

Claimant Janet M. Gregory-McCarroll claims the excess proceeds from the sale of this tax defaulted property as "an heir before and during the sale of the property." Her claim was filed May 1, 2007, for the April 5, 2006 tax sale. The Claim is supported by a Judgement of Final Distribution on Waiver of Accounting from Alameda Superior Court Case 251448-2, captioned "Estate of Rosie Lee Gregory, Decedent". That Judgment provides that "real estate" be distributed "to living children of the decedent": Julia Ann Gregory 33%, John Earl Gregory: 50%; Janet Mariea Gregory 17%. Parcel 2 of the real estate identified in the Judgment has the same APN as the defaulted property. (In any event, the Judgment further provides that the residuary estate is to be distributed to the same persons in the same percentages.) There was no showing with the filed Claim that the Judgment of Final Distribution was recorded.

sale. The recommendation is to give claimants more time to supplement their claims.

Janet Gregory-McCarroll appeared at the hearing. She identified herself as the same person as Janet Mariea Gregory in the probate Judgment. Julia Ann Gregory, as denominated in the Judgment, is claimant Julia Gregory Rogers. John Earl Gregory, in the Judgment, is claimant John E. Gregory.

Ms. Gregory-McCarroll testified that claimant John Gregory Jr. (not a specified beneficiary for the property nor a residuary beneficiary in the Judgment) is her father. He is alive. He lives in Alabama. In response to a question about why he thinks he has a claim to the excess proceeds, Ms. Gregory-McCarroll replied that he thinks he is an heir.

Ms. Gregory-McCarroll thought the probate Judgment had been recorded. She was given one week to produce a recorded copy. She submitted the recorded Judgment (document 2005061441) on the same day as the hearing; it was recorded February 14, 2005, prior to the sale of the property.

DECISION:

The following Claims for Excess Proceeds are granted as to the following amounts or percentages (percentages are primary; amounts are based on assumption of \$19,589.94 in excess proceeds):

Janet Gregory-McCarroll	17%	\$3,330.29
Julia Gregory Rogers	33%	\$6,464.68



John E. Gregory                      50%                      \$9,794.97.

The Claim of John Gregory Jr. is denied.

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. Here, there are several claims, which together claim all of the excess proceeds.

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. All the Claims here were timely filed.

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."

No claims within the first priority were filed.

The Claims of Janet Gregory-McCarroll, as to 17%, Julia Gregory Rogers, as to 33%, and John E. Gregory, as to 50% of the excess proceeds are supported by the recorded Judgement of Final Distribution in the Estate of Rosie Lee Gregory. The Judgement has the effect of passing title of the property to the beneficiaries specifically identified in the Judgement. It provides that the property be distributed to the named claimants in the percentages stated. The Judgement was recorded prior to the recordation of the deed from the tax sale. There is no evidence of any later transfer than the recording of the Judgement. This establishes these claimants as within the second priority of R&T §4675.

The Claim for Excess Proceeds of John Gregory Jr. is denied for failure of proof. There is no showing that he was an owner of record prior to the recordation of the tax deed to the purchaser.

Dated: August 19, 2008

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

Jed Somit, Esq.  
Hearing Officer

**ATTACHMENT E****Excess Proceeds Distribution From Tax Defaulted Property Sale – 3/07**

<b>Claimant</b>	<b>Parcel Number</b>	<b>Amount</b>	<b>Suspend Payment 90 Days</b>
A. Edson Camacho, President c/o Hercules Enterprises	41-4148-21	\$77,601.54	No
B. Cynthia Summerville	5-370-4-3	\$23,069.62	No
Robert Green	5-370-4-3	\$23,069.61	No
C. Global Discoveries	5-370-4-3	\$0	N/A
D. Earl T. Brown	77-573-46	\$0	N/A
E. John E. Gregory	8-677-19	\$9,794.97	No
Julia Gregory Rodgers	8-677-19	\$6,464.68	No
Janet Gregory McCarroll	8-677-19	\$3,330.29	No
John Gregory, Jr.	8-677-19	\$0	N/A