

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
THE O'BOISE CORPORATION) CASE NO. 98-10318
)
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on January 8, 2009.

This matter is before the court on an application for payment of unclaimed funds that have been deposited with the clerk of this court. To obtain such funds the applicant is required to demonstrate "full proof of the right thereto." 28 U.S.C. § 2042. This court's local rule B-3011-1 provides guidance as to how that demonstration can be made. See, N.D. Ind. L.B.R. B-3011-1. See also, In re Chochos, 2007 WL 1810556 (Bankr. N.D. Ind. 2007). As explained below, the present motion fails to make a sufficient demonstration of the applicant's right to the funds in question.

To begin with, the motion does not adequately demonstrate that the applicant has a present entitlement to the funds. N.D. Ind. L.B.R. B-3011-1(b). The funds in question were deposited for the use and benefit of Provantage Prescription Benefit Management Services. While the applicant, Merck & Co., claims to be the successor to Provantage Health Services, Inc., there is nothing in the motion, beyond a similarity of names, that suggests Provantage Health Services is the same entity as Provantage Prescription Benefit Management Services. That is not enough. Chochos, 2007 WL 1810556 *4. Even if it were, there is no evidence worthy of the name demonstrating that Merck is the successor to Provantage. The only things that have been offered in an effort to do so are copies of news articles printed from some website which states that Merck & Co. agreed to acquire

Provantage Health Services, Inc. Aside from the fact that these articles are nothing more than hearsay, even accepting what they say as being true, they do not prove that the acquisition was actually completed, only that it had been agreed to. If Merck wants to claim that it is the rightful descendant of Provantage Prescription Benefit Management Services, it will have to trace its lineage with greater precision and do so with more persuasive evidence, such as affidavits executed by someone having knowledge of the facts being sworn to. In re App. Unclaimed Funds Submitted in Cases Listed in Exhibit "A", 341 B.R. 65, 71-72 (Bankr. N.D. Ga. 2005).

The request also fails to demonstrate that the individual executing the affidavit that has been given to the court was authorized to do so on the claimant's behalf, and of the capacity in which he acted. N.D. Ind. L.B.R. B-3011-1(c). That affidavit was executed by a Timothy Lynch of Merck & Company. Yet there is nothing beyond the content of Mr. Lynch's affidavit (and a photocopy of a business card) that substantiates his assertion. Once again, that is not enough. Chochos, 2007 WL 1810556 *5.

For all of these reasons, the motion for payment of funds, filed by Merck & Co., on October 15, 2008, is DENIED, without prejudice.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court