

IJC/jr
3/19/80

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

WELDED RING PRODUCTS, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
WALTER PARKS,)
)
Defendant.)

Civil Action No.
79-C-587-E

FILED
MAR 31 1980

JOURNAL ENTRY OF JUDGMENT

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOW on this 28 day of March, 1980, the above-entitled matter came on regularly for hearing. Plaintiff appeared by its attorneys, Ungerman, Conner, Little, Ungerman & Goodman; the defendant appeared by his attorneys, Chapel, Wilkinson, Riggs, Abney, & Keefer. The Court thereupon found that it had jurisdiction in the premises.

Thereupon, the Court being fully advised in the premises, found that the defendant, Walter Parks, has agreed to allow judgment to be taken against him in the principal amount of \$6,381.23 in full settlement of this cause.

The Court further finds that said defendant, Walter Parks, shall pay said judgment in monthly installments of \$237.50, the first installment due and payable on or before the 15th day of April, 1980, and thereafter on or before the 15th day of each month until the total indebtedness is paid in full. PROVIDED that should any of the installment payments remain unpaid for a period of 30 days following the date that said payment is due, then judgment shall be entered against Walter Parks for the amount of \$22,790.11, together with interest thereon at the rate of 7 1/2% per annum until paid, together with all costs of the action, as originally prayed for in plaintiff's Complaint on the cause herein.

That this judgment is entered by agreement of the parties as against the defendant, Walter Parks. That the amount of this judgment is made contingent upon the defendant complying with the payout agreement as recited in this Journal Entry of Judgment.

LAW OFFICES
UNGERMAN
CONNER,
LITTLE
UNGERMAN &
GOODMAN

1710 FOURTH NATIONAL
BANK BUILDING
TULSA, OKLAHOMA
74119

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED BY THE COURT that the plaintiff have and is hereby granted against the defendant, Walter Parks, a judgment in the sum of \$6,381.23 in settlement of the cause herein.

IT IS FURTHER ORDERED that the defendant shall pay said judgment in monthly installments of \$237.50, the first installment payable on or before the 15th day of April, 1980, and each following installment due on or before the 15th day of each month, until the total indebtedness is paid in full.

IT IS FURTHER ORDERED that if the defendant shall fail to make any monthly installment when it falls due after a period of 30 days has elapsed from the due date, the plaintiff shall have a judgment against the defendant in the principal sum of \$22,790.11, together with interest thereon at the rate of 7 1/2% per annum until paid, this amount representing the amount sued for in plaintiff's original Complaint.

S/ JAMES O. ELLISON

JUDGE

APPROVED AS TO FORM AND CONTENT:

UNGERMAN, CONNER, LITTLE, UNGERMAN & GOODMAN

By JJ Corn
Attorneys for Plaintiff

CHAPEL, WILKINSON, RIGGS, ABNEY & KEEFER

By John M. Zuper
Attorneys for Defendant

I, WALTER C. PARKS, the Defendant above-named, hereby certify and acknowledge that I have read the above and foregoing "Journal Entry of Judgment"; that the terms and provisions of such document have been fully explained to me by my attorney; and that I hereby request approval of such document by the Court as my free, voluntary act and deed.

Walter C. Parks
Walter C. Parks
Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 31 1980

J.

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 VIRGIL L. CURRY, a/k/a)
 VIRGIL LEWIS CURRY,)
)
 Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 79-C-538-C^B ✓

DEFAULT JUDGMENT

This matter comes on for consideration this 28th
day of March, 1980, the Plaintiff appearing by Robert
P. Santee, Assistant United States Attorney for the Northern
District of Oklahoma, and the Defendant, Virgil L. Curry, a/k/a
Virgil Lewis Curry, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Virgil L. Curry, a/k/a
Virgil Lewis Curry, was personally served with Summons and
Complaint on March 7, 1980, and that Defendant has failed
to answer herein and that default has been entered by the
Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as
to the Complaint has expired, that the Defendant has not
answered or otherwise moved and that the time for the Defendant
to answer or otherwise move has not been extended, and that
Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED
that the Plaintiff have and recover Judgment against Defendant,
Virgil L. Curry, a/k/a Virgil Lewis Curry, for the principal
sum of \$845.65, plus the accrued interest of \$141.42, as
of July 2, 1979, plus interest at 7% from July 2, 1979, until
the date of Judgment, plus interest at the legal rate on

the principal sum of \$845.65, from the date of Judgment
until paid.


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

LORENZA A. CROSS,)
)
Plaintiff,)
)
-vs-)
)
TIONA TRUCK LINES, INC.,)
)
Defendant.)

MAR 31 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 79-C-553-BT ✓

ORDER OF DISMISSAL

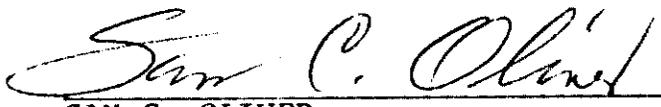
On this 31 day of March, 1980, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

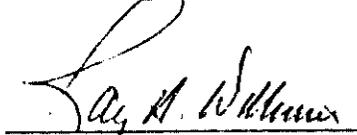


JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT

APPROVED AS TO FORM:



SAM C. OLIVER
Attorney for Plaintiff



RAY H. WILBURN
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 28 1980

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

FITZGERALD, DeARMAN & ROBERTS, INC. :
KEITH R. FITZGERALD :

Defendants. :

Civil Act ~~Jack C. Silver, Clerk~~
File No. ~~U.S. DISTRICT COURT~~

80-C-162-E

ORDER OF PERMANENT
INJUNCTION

Plaintiff, SECURITIES AND EXCHANGE COMMISSION (COMMISSION), having filed its Complaint herein, there having been no trial of this matter; defendants FITZGERALD, DeARMAN & ROBERTS, INC. (FD&R) and KEITH R. FITZGERALD (FITZGERALD) having acknowledged in the attached Stipulation and Consent receipt of the Summons and Complaint filed in this matter; having admitted the in personam jurisdiction of this Court over them, and the jurisdiction of this Court over the subject matter of this action; having acknowledged that they are represented by counsel who has entered a general appearance; having waived the entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure with respect to the entry of this Order of Permanent Injunction; having agreed, without admitting or denying any of the allegations of the plaintiff COMMISSION'S Complaint, except as set forth herein, to the entry of this Order; it appearing that this Court has jurisdiction over the parties and the subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises; and no just cause for delay appearing;

I

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their respective officers, agents, servants, employees, attorneys, and those persons in active

concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them are permanently enjoined and restrained, directly or indirectly, singly or in concert, from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange while and at a time when the aggregate indebtedness of defendant FD&R to all other persons exceeds 1500 per centum of its net capital as computed in the manner required by Section 15(c)(3) of the Securities Exchange Act of 1934, as amended, (Exchange Act) [15 U.S.C. 78o(c)(3)] and Rule 15c3-1 [17 C.F.R. 15c3-1] thereunder, or while and at a time when defendant FD&R does not have or does not maintain net capital of not less than \$25,000.

II

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, directly and indirectly, singly or in concert, from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities exchange while and at a time when:

(a) defendant FD&R has failed to compute in accordance with the formula for determination of reserve requirements for brokers and dealers as required by Rule 15c3-3(e)(1) under the Exchange Act [17 C.F.R. 240.15c3-3(e)(1)], or at any time, to maintain, amounts to be deposited in the Special Reserve Bank Account for the Exclusive Benefit of Customers (Reserve Bank Account);

(b) defendant FD&R has failed to timely compute and timely deposit in the Reserve Bank Account the amounts referred to in subparagraph (a) above as required by Rule 15c3-3(e)(3) under the Exchange Act [17 C.F.R. 240.15c3-3(e)(3)]; and

(c) defendant FD&R has failed to notify the COMMISSION, Securities Investor Protection Corporation (SIPC) and the National Association of Securities Dealers, Inc. (NASD), by telegram and confirm such communication in writing, of defendant FD&R's failure to make the deposits in its Reserve Bank Account, pursuant to Rule 15c3-3(e)(3) under the Exchange Act [17 C.F.R. 240.15c3-3(e)(3)], as required by Rule 15c3-3(i) under the Exchange Act [17 C.F.R. 240.15c3-3(i)].

III

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, directly and indirectly, singly or in concert, from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) otherwise than on a national securities

exchange while and at a time when defendant FD&R has failed to buy-in all unresolved short security differences within 45 days after the date of an examination, count, verification and comparison of securities, pursuant to Rule 17a-13 under the Exchange Act [17 C.F.R. 240.17a-13], as required by Rule 15c3-3(h) under the Exchange Act [17 C.F.R. 240.15c3-3(h)].

IV

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, directly and indirectly, singly or in concert, from failing to accurately make and keep current books and records of defendant FD&R including, but not limited to:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, and all receipts and deliveries of securities (including certificate numbers). Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of defendant FD&R, all purchases, sales, receipts, and deliveries of securities for such account and all other debits and credits to such account;

(d) Ledgers or other records reflecting securities failed to receive and failed to deliver;

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safe-keeping) carried by defendant FD&R for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried; and

(f) A record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with Rule 15c3-1 under the Exchange Act [17 C.F.R. 240.15c3-1].

V

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, directly and indirectly, singly or in concert, from:

(a) failing to give telegraphic notice on the same day that defendant FD&R's net capital is less than required by Rule 15c3-1(a) under the Exchange Act [17 C.F.R. 240.15c3-1(a)], to the COMMISSION in Washington, D.C., the Fort Worth Regional Office of the COMMISSION and the NASD;

(b) failing to file Part II of Form X-17A-5 as determined in accordance with the standards set forth in Rule 17a-5(a)(2)(ii) under the Exchange Act [17 C.F.R. 240.17a-5(a)(2)(ii)], within 24 hours after the duty to notify arises pursuant to Rule 17a-11 under the Exchange Act [17 C.F.R. 240.17a-11]; and

(c) failing to give immediate telegraphic notice to the COMMISSION in Washington, D.C., the Fort Worth Regional Office of the COMMISSION and the NASD of failure of defendant FD&R, at any time, to accurately make and keep current the books and records required to be maintained under Rule 17a-3 under the Exchange Act [17 C.F.R. 240.17a-3], and file within 48 hours of such telegraphic notice a report stating what steps have been and are being taken to correct the situation; all as required by Rule 17a-11(c) under the Exchange Act [17 C.F.R. 240.17a-11(c)].

VI

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants FD&R and FITZGERALD, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, directly and indirectly, singly or in concert, from, at least once in each calendar quarter-year, failing to:

(a) account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to its control or direction but not in its physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(b) verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to its control or direction but not in its physical possession, where such securities have been in said status for longer than thirty days;

(c) compare the results of the physical counts of securities and verification referred to in subparagraph (b) above with its records; and

(d) record on its books and records all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in Rule 17a-13(c) under the Exchange Act;

all as required by Rule 17a-13 under the Exchange Act [17 C.F.R. 240.17a-13].

VII

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and decrees that may be entered herein or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Entered this 28th day of March, 1980


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION :	Civil Action
Plaintiff, :	File No. 182-E
vs. :	STIPULATION AND
FITZGERALD, DeARMAN & ROBERTS, INC.:	CONSENT OF DEFENDANTS
KEITH R. FITZGERALD :	FITZGERALD, DeARMAN &
Defendants. :	ROBERTS, INC. AND
:	<u>KEITH R. FITZGERALD</u>

Defendants FITZGERALD, DeARMAN & ROBERTS, INC. (FD&R) and KEITH R. FITZGERALD (FITZGERALD) consent to the entry of the Order of Permanent Injunction in the form attached hereto and stipulate as follows:

1. Defendants FD&R and FITZGERALD admit the jurisdiction of this Court over them and over the subject matter of this action; and admit service of the Summons and Complaint upon them;

2. Defendants FD&R and FITZGERALD admit that they are represented by counsel who herewith enters a general appearance;

3. Defendants FD&R and FITZGERALD waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure;

4. Defendants FD&R and FITZGERALD certify that they enter into this Stipulation and Consent voluntarily, and that no promises, threats or assurances have been made by plaintiff SECURITIES AND EXCHANGE COMMISSION or by any of its members, officers, agents or representatives to induce defendants FD&R and FITZGERALD to enter into this Stipulation and Consent;

5. Defendants FD&R and FITZGERALD without admitting or denying any of the allegations of the Complaint except as noted herein, consent to the entry of the Order of Permanent Injunction, in the form attached hereto, which permanently enjoins them from violating Sections 15(c)(3) and 17(a) of the Securities Exchange Act of 1934, as amended, [15 U.S.C. 78o(c)(3) and 78q(a)], and Rules 15c3-1, 15c3-3, 17a-3, 17a-11 and 17a-13 [17 C.F.R. 240.15c3-1, 240.15c3-3, 240.17a-3, 240.17a-11 and 240.17a-13].

6. The Order may be presented by plaintiff COMMISSION to the Court without further notice; and

7. Defendants FD&R and FITZGERALD agree that the Court shall retain jurisdiction over them and over the subject matter of this action in order to implement and carry out the terms of all Orders and decrees that may be entered herein or to entertain any suitable application or motion by the COMMISSION for additional relief within the jurisdiction of the Court.

Signed this 28 day of MARCH, 1980.

FITZGERALD, DeARMAN & ROBERTS,
INC.

By: Keith R. Fitzgerald
Keith R. Fitzgerald
Chairman of the Board

By: Keith R. Fitzgerald
Keith R. Fitzgerald
Individually

APPROVED AS TO CONTENT AND FORM:

Robert W. Blair
Attorney-At-Law
Sneed, Lang, Trotter, Adams, Hamilton
& Downie
Thurston National Building
Tulsa, Oklahoma 74103

Robert W. Blair
ROBERT W. BLAIR
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
8th Floor, Neil P. Anderson Building
Fort Worth, Texas 76102

United States District Court

MAR 27 1980

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JANDEBEUR'S MOTOR COMPANY, INC.

CIVIL ACTION FILE NO. 78-C-168-E

vs.

JUDGMENT

AMERICAN HONDA MOTOR COMPANY, INC.

This action came on for trial before the Court and a jury, Honorable James O. Ellison, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict, for the Plaintiff.

It is Ordered and Adjudged that having found in favor of the Plaintiff and against the Defendant assesses damages in the sum of \$22,125.00.

Dated at Tulsa, Oklahoma
of March , 19 80.

, this 27th day

JACK C. SILVER, CLERK

By *Mayone L. Garrison*
* Chief Deputy Clerk of Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 26 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MARRIETTA DANIELS,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-544 BT

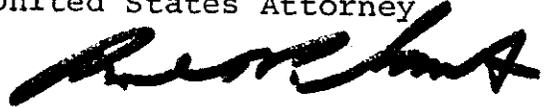
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 26th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

In re:

ROBERT DIXIE HAYMES,
d/b/a Tri-County
Construction Co., and
WILMA T. HAYMES,

Bankrupts,

JOHN B. JARBOE, Trustee,

Plaintiff,

vs.

UTICA NATIONAL BANK & TRUST CO.,
Tulsa, Oklahoma, L. B. SMITH,
INC., and KEYSTONE ACCEPTANCE
CORPORATION,

Defendants.

FILED

MAR 25 1980

WARREN L. McCONNICO, CLERK
U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 79-C-220-BT

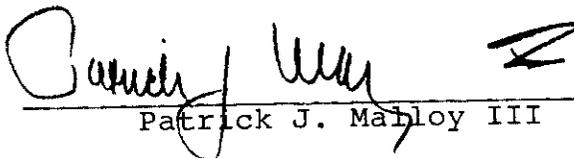
FILED

MAR 25 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

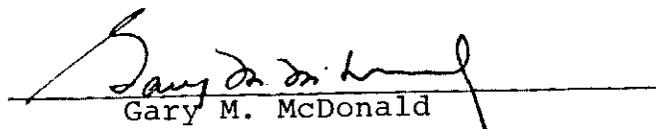
PARTIES' STIPULATION OF DISMISSAL

It is hereby stipulated by each of the parties herein,
pursuant to Rule 41(a)(1)(ii), F. R. Civ. P., that the Plaintiff's
Complaint and all the Plaintiff's claims based thereon be dismissed
with prejudice, each party to bear his or its own costs and
attorneys' fees.


Patrick J. Malloy III

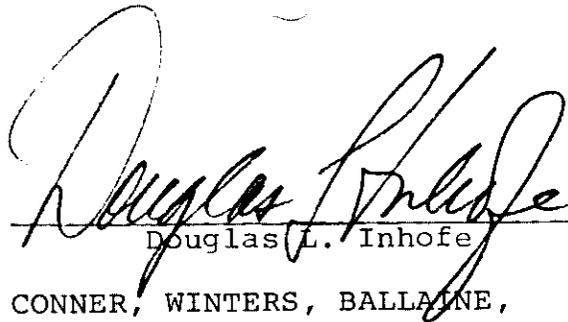
MALLOY, THOMPSON & MALLOY
1924 South Utica, Suite 810
Tulsa, Oklahoma 74104

Attorney for the Plaintiff
JOHN B. JARBOE, Trustee


Gary M. McDonald

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1200 Atlas Life Building
Tulsa, Oklahoma 74103

Attorney for Defendant
UTICA NATIONAL BANK & TRUST CO.



Douglas L. Inhofe

CONNER, WINTERS, BALLAINE,
BARRY & MCGOWEN
2400 First National Tower
Tulsa, Oklahoma 74103

Attorney for Defendants
L. B. SMITH, INC., and
KEYSTONE ACCEPTANCE CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 25 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DOUGLAS R. McLENDON,)
)
Defendant.)

CIVIL ACTION NO. 79-C-430-D

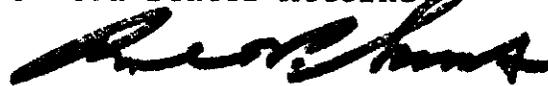
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice

Dated this 25th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT E. WILLIAMS, et. al.,)
)
 Defendants.)

CIVIL ACTION NO. 80-C-52-C

✓
MAR 25 1980

O R D E R

J.
U. S. DISTRICT

NOW, on this 25th-day of March, 1980, there came on for consideration a Stipulation of Dismissal filed by the parties hereto. Based on such stipulation, the Court finds this action should be dismissed, without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this action be and the same is hereby dismissed, without prejudice.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILMA DICKERSON,

Plaintiff,

vs.

THE HUGHES GROUP, a corporation,

Defendant.

and

FIRST NATIONAL BANK OF ARIZONA,

Garnishee.

FILED

MAR 25 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. C 78-597-C

JOURNAL ENTRY OF JUDGMENT

Now, on this 25TH day of March, 1980, this matter comes on pursuant to regular setting upon the motion of the plaintiff herein for default judgment, and the Court finds that the Clerk of this Court has entered herein the default of the garnishee, First National Bank of Arizona, and certified that the record reflects personal service by certified mail upon said garnishee, together with notice to said garnishee that the garnishee's failure to answer according to law within 10 days from the date of service of summons upon it could result in judgment for the total amount herein, plus costs being entered against said garnishee; but that said garnishee has wholly failed to file its answer herein, within the statutory period of time, and therefore, the Court finds said garnishee to be in default. Thereupon the Court examined the pleadings herein and being fully advised in the premises, finds that the plaintiff herein should be granted judgment against the garnishee, First National Bank of Arizona, in the amount of \$19,050.00, together with costs in the principal action and costs of this garnishment proceeding.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Wilma Dickerson, have judgment against the garnishee, First National Bank of Arizona, in the amount of \$19,050.00, together with the costs of the principal action and costs of this garnishment proceeding, for all of which let execution issue.


Judge of the District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES EDWARD JENNINGS,)
)
 Petitioner,)
)
 vs.) No. 79-C-654-C ✓
)
 NORMAN B. HESS, Warden,)
 et al.,)
)
 Respondents.)

O R D E R

FILED
MAR 24 1980
Jack C. Silver, Clerk
U.S. DISTRICT COURT

This proceeding is brought pro se pursuant to the provisions of Title 28, U.S.C. §2254 by a state prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence rendered by the District Court of Tulsa County, State of Oklahoma in Case No. CRF-75-2854. Petitioner was convicted by a jury therein of First Degree Robbery, and sentenced to a fifty-year term of imprisonment. Petitioner's judgment and sentence were affirmed on direct appeal to the Oklahoma Court of Criminal Appeals. Jennings v. State, 561 P.2d 987 (Okla. Cr. 1977). Petitioner also applied to the Tulsa County District Court for post-conviction relief. That application was denied and the denial was affirmed on appeal. Jennings v. State, No. PC-78-696 (Okla. Cr. Mar. 6, 1979). The petitioner has previously petitioned this Court for a writ of habeas corpus pursuant to Section 2254. That petition was denied and the case dismissed. Abdullah v. Hess, No. 78-C-225-C (N.D.Okla. Mar. 19, 1979). The petitioner raises different grounds in support of his present petition than were raised in his earlier petition to this Court. State remedies have been exhausted as to the contentions now under consideration by the Court.

Petitioner demands such relief as he may be entitled to

in these proceedings. As grounds therefor, he alleges that

1. There was insufficient evidence for the preliminary hearing magistrate to bind the defendant over for trial on the crime of robbery with firearms, and the trial court erred under the 5th, 6th, and 14th Amendments by failing to quash the information.

2. Where defendant testified specifically refuting a robbery with firearm and/or a robbery first degree, failure to instruct on defendant's theory of the evidence was fundamental constitutional error.

The Court has reviewed the petition, response, transcript, and files of the state proceedings, and being fully advised in the premises, finds that an evidentiary hearing is not required and the petition before the Court is without merit and should be denied and the case dismissed.

In Capes v. State, 412 F.Supp. 1111 (W.D.Okla. 1975), the court held that since the sufficiency of the evidence to support a state conviction raised no federal constitutional question, a fortiori the sufficiency of the evidence to establish probable cause in a preliminary hearing could not be considered in a federal habeas corpus proceeding by a state prisoner. 412 F.Supp. at p.1115. The rule at that time was that the sufficiency of the evidence to sustain a state conviction generally raised no federal constitutional issue, unless the record was so entirely lacking in evidence to support the charge so as to demonstrate a denial of due process. Bond v. State, 546 F.2d 1369, 1377 (10th Cir. 1976). This is the so-called "no evidence" rule of Thompson v. Louisville, 362 U.S. 199, 80 S.C. 624, 41 L.Ed.2d 654 (1960).

In Jackson v. Virginia, No. 78-5283, Slip op. (June 28, 1979), the Supreme Court held the Thompson rule to be inadequate to protect due process rights. The Court further held

that in a challenge to a state criminal conviction brought under 28 U.S.C. §2254--if the settled procedural prerequisites for such a

claim have otherwise been satisfied--the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt. (footnote omitted) Slip op. at p.16

The purpose of a preliminary hearing or examination is to ascertain whether the crime charged has been committed, and, if so, whether there is probable cause to believe the accused committed it. Allen v. State, 527 P.2d 204 (Crim. App. 1974). Applying the standard of Jackson to the preliminary hearing by analogy, an applicant would be entitled to habeas corpus relief if it is found that upon the record evidence adduced at the preliminary hearing no rational trier of fact could have found proof that the crime charged had been committed and probable cause to believe that the accused committed that crime.

The Court has read and studied the transcript of petitioner's preliminary hearing. Under the above standard, the evidence adduced at the preliminary hearing was constitutionally sufficient to bind the petitioner over for trial on the crime charged. Petitioner was not in fact charged with robbery with firearms as alleged, but rather with the lesser crime of First Degree Robbery. See 21 O.S. §§797, 801.

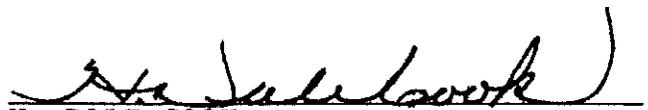
In his claim that the trial court erred in failing to quash the information, the petitioner alleges that "[t]he information should have been quashed under the facts of the case. . . ." Whether the information was supported by the facts of the case depends upon the interpretation of the state statute under which the petitioner was charged and its applicability to the facts. This is a question of state law and presents no federal constitutional question for a habeas corpus case. See Bond v. State, supra.

Finally, with regard to petitioner's claim that the failure to instruct on his theory of the evidence was

fundamental constitutional error, the question is whether the entire trial was so infected thereby that the resulting conviction resulted in a denial of due process. Henderson v. Kibbe, 431 U.S. 145, 154, 97 S.C. 1730, 52 L.Ed.2d 203 (1977). See also Gillihan v. Rodriguez, 551 F.2d 1182, 1192 (10th Cir. 1977); Ortiz v. Baker, 411 F.2d 263, 264 (10th Cir. 1969); Linebarger v. State, 404 F.2d 1092, 1095 (10th Cir. 1968). The petitioner contends that the trial court should have instructed on the lesser charge of larceny by trick, 21 O.S. §§ 1541.1, 1541.2. It is clear from a reading of Section 1541.1 that the essence of the crime of larceny by trick is the obtaining of money or property by means of false pretenses or representations. An essential element of the crime is an intent to defraud. See Kellogg v. State, 551 P.2 301, 303 (Crim.App. 1976). The evidence adduced at trial would not support such instructions, so the failure to so instruct did not have "such an effect upon the trial as to render it so fundamentally unfair that it constitutes the denial of a fair trial in the constitutional sense." (citation omitted) Gillihan v. Rodriguez, supra.

For the foregoing reasons, it is therefore ordered the petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 of James Edward Jennings, be and it is hereby denied and the case dismissed.

It is so Ordered this 24th day of March, 1980.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARRY J. JACKSON,)
)
 Plaintiff,)
)
 v.) No. 78-C-432-C
)
 PATRICIA ROBERTS HARRIS,)
 Secretary of Health,)
 Education, and Welfare,)
)
 Defendant.)

FILED
MAR 21 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate filed on March 10, 1980, in which it is recommended that the Court find Plaintiff not entitled to continued disability benefits under the Social Security Act and that Judgment be entered for the Defendant. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of all the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that judgment be and hereby is entered for the Defendant.

Dated this 21st day of March, 1980.


H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 20 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MARY G. WALLACE, a/k/a MARY)
 GAYALENE WALLACE,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-514-B

DEFAULT JUDGMENT

This matter comes on for consideration this 19th day of March, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Mary G. Wallace, a/k/a Mary Gayalene Wallace, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Mary G. Wallace, a/k/a Mary Gayalene Wallace, was personally served with Summons and Complaint on August 17, 1979, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Mary G. Wallace, a/k/a Mary Gayalene Wallace, for the principal sum of \$1,825.00, plus the accrued interest of \$197.97 as of July 15, 1979, plus interest at 7% from July 15, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$1,825.00 from the date of Judgment until paid.


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT K. BELL ENTERPRISES,
INC., an Oklahoma Corporation,

Plaintiff,

vs.

CONSUMER PRODUCT SAFETY
COMMISSION, et. al.,

Defendants.

CIVIL ACTION NO. 79-C-40-C

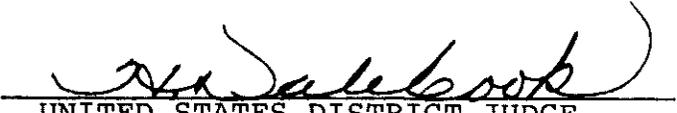
FILED

MAR 20 1980

J U D G M E N T

Jack A. Silver, Clerk
U. S. DISTRICT COURT

Judgment is hereby entered in favor of the Defendants
and against the Plaintiff in accordance with an Order previously
entered herein on February 15, 1980.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 20 1980

EARNEST COBB, father and next
friend of DAVID GLEN COBB, a
minor,

Plaintiff,

vs.

MONTGOMERY ELEVATOR COMPANY,
a foreign corporation,

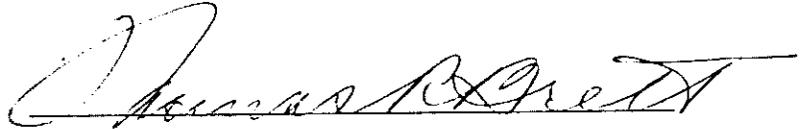
Defendant.

Jack
U. S. DISTRICT

No. 79-C-450-BT

ORDER OF DISMISSAL

Pursuant to the joint dismissal without prejudice filed
by the parties herein, this matter is dismissed by the plaintiff
without prejudice to refiling his claim.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

3 - 20 - 80

IN THE UNITED STATES DISTRICT COURT
OF THE
NORTHERN DISTRICT OF OKLAHOMA

MARION COLLINS,

Plaintiff,

vs.

N-REN CORPORATION,

Defendant.)

No. 76-C-508-BT ✓

FILED

MAR 20 1980 J.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Upon application showing this case has been settled, it is the order of this Court that this case be dismissed with prejudice.

Signed this 20 day of March, 1980.



Thomas R. Brett, Judge
U. S. District Court

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

GEORGIA RUSK,
Plaintiff,

vs.

NATIONAL OIL & SUPPLY CO., INC.,
and TRANSAMERICA INSURANCE COMPANY,
and FIREMAN'S INSURANCE COMPANY OF
NEWARK,
Defendants.

FILED

MAR 20 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 79-C-415-BT

ORDER OF DISMISSAL

Upon the application of the plaintiff and for
good cause shown, this cause of action and Complaint is
dismissed with prejudice.

Entered Mar 19, 1980.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 20 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RUDYARD S. LEWIS,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-597

DEFAULT JUDGMENT

This matter comes on for consideration this 19th
day of March, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney for the Northern District
of Oklahoma, and the Defendant, Rudyard S. Lewis, appearing
not.

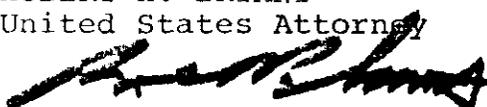
The Court being fully advised and having examined
the file herein finds that Defendant, Rudyard S. Lewis, was
personally served with Summons and Complaint on November 26, 1979,
and that Defendant has failed to answer herein and that default
has been entered by the Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to
the Complaint has expired, that the Defendant has not answered
or otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant, Rudyard S.
Lewis, for the principal sum of \$3,668.29, plus the accrued
interest of \$501.44, as of July 16, 1979, plus interest at 7% from
July 16, 1979, until the date of Judgment, plus interest at
the legal rate on the principal sum of \$3,668.29, from the
date of Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 19 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PAUL A. TIGER,)
)
Defendant.)

CIVIL ACTION NO. 79-C-667-C ✓

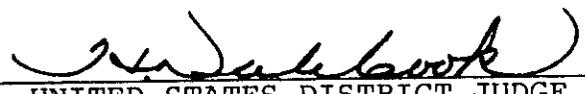
DEFAULT JUDGMENT

This matter comes on for consideration this 19th
day of March, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendant, Paul A. Tiger, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Paul A. Tiger, was personally
served with Summons and Complaint on November 7, 1979, and that
Defendant has failed to answer herein and that default has been
entered by the Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to the
Complaint has expired, that the Defendant has not answered or
otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant, Paul A.
Tiger, for the sum of \$805.30, plus interest at the legal rate on
the sum of \$805.30, from the date of Judgment until paid.


UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DIANE R. PRICE,)
)
 Defendant.)

Jack C. Sibley, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 79-C-513

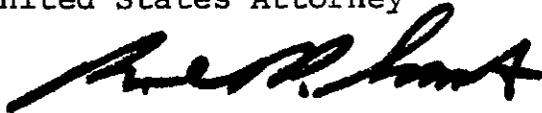
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18 day of MARCH, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FRED MARVEL, et al.,)
)
 Plaintiff)
)
 v.) CIVIL NO. 75-C-211-BT
)
 UNITED STATES OF AMERICA,)
)
 Defendant)

JUDGMENT

In accordance with the order, findings of facts and conclusions of law entered by the Court and filed on November 8, 1978, it is hereby

ORDERED, ADJUDGED and DECREED that the defendant, United States, recover from Plaintiffs Fred and Angela Marvel, d/b/a Marvel Photo, \$7,431.11 in tax, \$2,360.04 in penalty, plus \$6,373.86 in interest on the tax and penalty to March 19, 1980, plus interest of \$3.22 per day from March 20, 1980, to the date of judgment, plus statutory interest from the date of judgment until paid; and that each party bears its own costs in this action.

DONE this 18 day of March, 1980.


UNITED STATES DISTRICT JUDGE

FILED
MAR 18 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PHILLIS HOOKS,)
)
Defendant.)

MAR 18 1980
Jack C. Simon, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 79-C-618-C

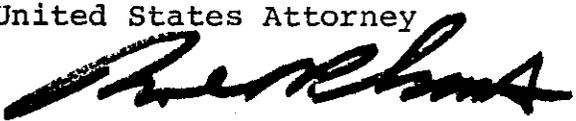
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18 day of MARCH, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 18 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
FREDDIE L. LOVE,)
)
Defendant.)

CIVIL ACTION NO. 79-C-521-E

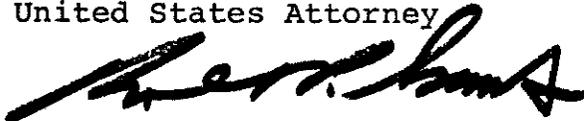
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROY M. TEEL, SR., both)
individually and d/b/a)
ROY M. TEEL COMPANY,)

Plaintiff)

vs.)

No. 79-C-627-C

MORRIS BIRNBAUM, both)
individually and d/b/a)
UTILITY SUPPLY COMPANY,)
UTILITY SUPPLY COMPANY,)
a corporation, and)
MORRIS BIRNBAUM, both)
individually and d/b/a)
HONESDALE GAS COMPANY)
and HONESDALE GAS COMPANY,)
a corporation,)

Defendants)

FILED

MAR 18 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DISMISSAL

On this 17th day of March, 1980, pursuant to the
Stipulation of Plaintiff and Defendants, filed herein, the
Complaint of Plaintiff, filed herein is dismissed with pre-
judice and the Counterclaim of Defendants filed herein is
dismissed with prejudice.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHARLES W. ADAMS,)
)
 Plaintiff,)
)
 v.)
)
 PATRICIA ROBERTS HARRIS,)
 Secretary of Health,)
 Education, and Welfare,)
)
 Defendant.)

No. 79-C-348-C

FILED

MAR 18 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate filed on March 6, 1980, in which it is recommended that the Court find Plaintiff not entitled to disability benefits or supplemental security income under the Social Security Act and that judgment be entered for the defendant. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of all the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that judgment be and hereby is entered for the Defendant.

Dated this 18th day of March, 1980.


H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1980

U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID MANER,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-434-C

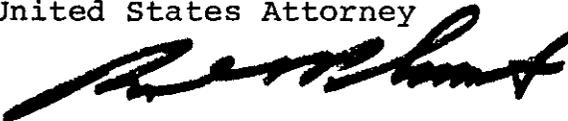
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein,
by and through its attorney, Robert P. Santee, Assistant United
States Attorney for the Northern District of Oklahoma, and hereby
gives notice of its dismissal, pursuant to Rule 41, Federal Rules
of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

1980 MAR 10

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KEITH L. CULVER,)
)
Defendant.)

U.S. DISTRICT COURT

CIVIL ACTION NO. 79-C-650-C

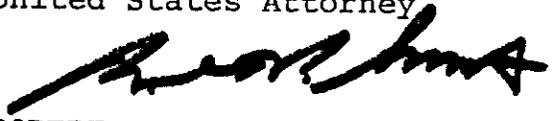
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 19 day of MARCH, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

80-1-12-C

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL E. HOLLOWAY, a/k/a) CIVIL ACTION NO. 80-C-12-C
 M. E. HOLLOWAY,)
)
 Defendant.)

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18 day of MARCH, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

F I L E D

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 KIMBERLY D. MOORE,)
)
 Defendant.)

Jack C. Smith,
U. S. District Court

CIVIL ACTION NO. 79-C-657-B

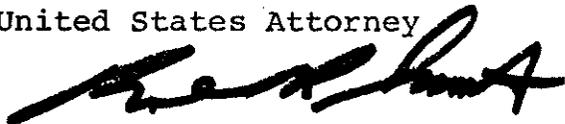
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 18th day of March, 1980.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SANDRA K. WRIGHT,)
)
 Defendant.)

Jack C. Smith
U. S. District Court

CIVIL ACTION NO. 79-C-578-C

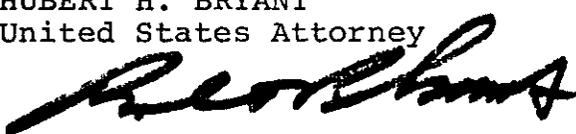
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein,
by and through its attorney, Robert P. Santee, Assistant United
States Attorney for the Northern District of Oklahoma, and hereby
gives notice of its dismissal, pursuant to Rule 41, Federal Rules
of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 18 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JUANITA JEFFERSON,)
)
 Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 79-C-596

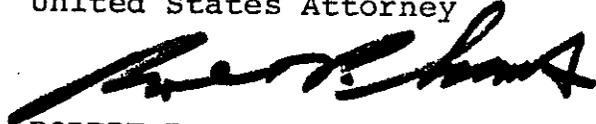
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff
herein, by and through its attorney, Robert P. Santee, Assistant
United States Attorney for the Northern District of Oklahoma,
and hereby gives notice of its dismissal, pursuant to Rule
41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 18 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ALFRED D. BANNING, a/k/a,)
 ALFRED DALE BANNING,)
)
 Defendant.)

Jack C. ...
U. S. ...

CIVIL ACTION NO. 79-C-489-B

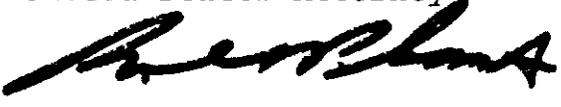
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff
herein, by and through its attorney, Robert P. Santee, Assistant
United States Attorney for the Northern District of Oklahoma,
and hereby gives notice of its dismissal, pursuant to Rule
41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

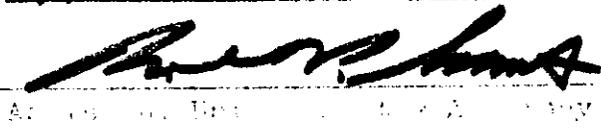
HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

VERIFICATION OF SERVICE

The undersigned certifies that a true copy
of the foregoing pleading was served on each
of the parties hereto by mailing the same to
them or to their attorneys of record on the
18th day of March, 1980.


Hubert H. Bryant
United States Attorney

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 18 1980

Jack C. Smith, Clerk
U.S. District Court

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL B. SEABERRY,)
)
 Defendant.)

CIVIL ACTION NO. 79-C-468-B

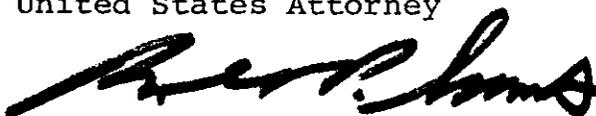
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 18th day of March, 1980.

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES D. JOHNSON and MRS. JAMES)
 D. JOHNSON; JAMES HAROLD THOMAS,)
 a/k/a JAMES H. THOMAS; CAROLYN)
 THOMAS; MILDRED ANN THOMAS,)
 a/k/a MILDRED THOMAS; JEFFREY)
 A. KING, Attorney at Law; STATE)
 OF OKLAHOMA, ex rel, OKLAHOMA)
 TAX COMMISSION; POSTAL FINANCE)
 COMPANY, INCORPORATED; and)
 COMMUNITY BANK AND TRUST COMPANY,)
 a Banking Corporation,)
)
 Defendants.)

FILED
MAR 17 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL NO. 79-C-502-D

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th
day of March 1980, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; and the Defendant,
State of Oklahoma, ex rel Oklahoma Tax Commission, appearing by
its attorney, Donna E. Cox; the Defendant, Community Bank and
Trust Company, a Banking Corporation, appearing by its attorney,
Robert E. Martin; the Defendant, Postal Finance Company, Incorpo-
rated, appearing by its attorney, Bryce A. Baggett; and, the
Defendants, Jeffrey A. King, James D. Johnson, Mrs. James D.
Johnson, James Harold Thomas, a/k/a James H. Thomas, Carolyn
Thomas; Mildred Ann Thomas, a/k/a Mildred Thomas, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Postal Finance Company,
Incorporated, State of Oklahoma, ex rel Oklahoma Tax Commission,
and Jeffrey A. King were served with Summons and Complaint on
August 10, 1979; that Defendant, Community Bank and Trust
Company, a Banking Corporation, was served with Summons and
Complaint on August 13, 1979, all as appear from the United
States Marshal's Service herein; and that Defendants, James D.

Johnson, Mrs. James D. Johnson, James Harold Thomas, a/k/a James H. Thomas, Carolyn Thomas, and Mildred Ann Thomas, a/k/a Mildred Thomas were served by Publication as appears from the Proof of Publication filed herein.

It appearing that the Defendant, Postal Finance Company, Incorporated, has duly filed its Answer and Disclaimer herein on September 4, 1979; the Defendant, State of Oklahoma, ex rel, Oklahoma Tax Commission, has duly filed its Answer and Cross-Petition herein on September 11, 1979; the Defendant, Community Bank and Trust Company, a Banking Corporation, has duly filed its Answer and Cross-Petition herein on September 21, 1979, and that the Defendants, James D. Johnson, Mrs. James D. Johnson, James Harold Thomas, a/k/a James H. Thomas, Carolyn Thomas, Mildred Ann Thomas, a/k/a Mildred Thomas, and Jeffery A. King, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block Fifty-One (51), Valley View Acres Third Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, James D. Johnson, did, on the 24th day of July, 1975, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$11,250.00, with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, James Harold Thomas, a/k/a James H. Thomas, was the grantee in a deed from Defendant, James D. Johnson, dated March 5, 1976, filed

April 1, 1976, in Book 4208, Page 2397 records of Tulsa County, wherein Defendant, James Harold Thomas assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, James D. Johnson and James Harold Thomas, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$11,158.88 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from August 1, 1978, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Community Bank and Trust Company, a Banking Corporation, is entitled to judgment against James Harold Thomas and Carolyn Thomas in the amount set out in its Answer and Cross-Petition, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that Oklahoma Tax Commission is entitled to judgment against James H. Thomas and Mildred Thomas in the amount set out in its Answer and Cross-Petition, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, James D. Johnson and James Harold Thomas, in rem, for the sum of \$11,158.88, with interest thereon at the rate of 8 1/2 percent per annum from August 1, 1978, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Community Bank and Trust Company, a Banking Corporation, have and recover judgment, in rem, against the Defendants James Harold Thomas and Carolyn Thomas, in the amount set out in its Answer and Cross-Petition, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Oklahoma Tax Commission have and recover judgment, in rem, against the Defendants, James H. Thomas and Mildred Thomas, in the amount set out in its Answer and Cross-Petition, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Carolyn Thomas, Mildred Ann Thomas, Jeffrey A. King, and Mrs. James D. Johnson.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including

any lien for personal property taxes which may have been filed during the pendency of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


BY: ROBERT P. SANTEE
Assistant United States Attorney


ROBERT E. MARTIN
Attorney for Community Bank and
Trust Company


DONNA E. COX
Attorney for State of Oklahoma, ex rel
Oklahoma Tax Commission

FILED

MAR 14 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL A. BISCHOFF,)

Plaintiff,)

vs.)

No. 77-C-343-E ✓

GRUMMAN AMERICAN AVIATION)
CORPORATION, GRUMMAN COR-)
PORATION, CORWIN MEYER, ALBERT)
GLENN, ALAN LEMLEIN, CHARLES)
COPPI, NORMAN STEINER, JOSEPH)
GAVIN, JR., RICHARD KEMPER, ROY)
GARRISON, GEORGE WESTPHAL,)
ROBERT HUMMEL, FRANK WISEKAL,)
FRED KIDDER, FRED JOHNSON,)
ROBERT FREESE, EMMY PICCARD,)
ESTATE OF CLAUDE FLANIGAN,)
DECEASED,)

Defendants,)

LYNDA ANN COLLURA, LAUREEN)
ANNE COLLURA and RICHARD R.)
COLLURA,)

Applicants for Intervention.)

ORDER OF DISMISSAL WITH PREJUDICE

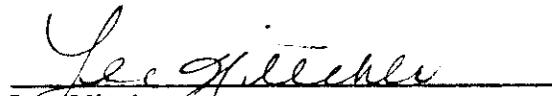
There having been filed herein the joint Stipulation for Order of Dismissal with prejudice of the above styled and numbered cause, and the Court being fully advised,

IT IS HEREBY ORDERED AND DECREED that the above styled and numbered cause is hereby dismissed with prejudice with each of the parties to pay their own respective costs.

Dated this 14th March day of ~~February~~, 1980.

James O. Collins
United States District Judge

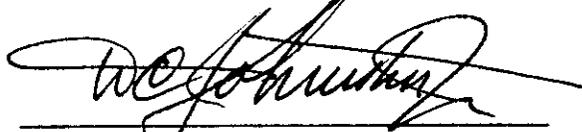
APPROVED:



Lee Witcher
4614 North MacArthur
Oklahoma City, Oklahoma 73122
405/787-0913
Attorney for Defendant and Third
Party Plaintiff, Margaret Flanigan



William R. Davis
204 Hightower Building
Oklahoma City, Oklahoma 73102
405/235-0562
Attorney for Intervenors,
Lynda Ann Collura, Laureen Ann
Collura and Richard R. Collura



D. C. Johnston, Jr.
3200 Liberty Tower
Oklahoma City, Oklahoma 73102
405/235-1611
Attorney for Defendants,
Grumman American Aviation
Corporation and Grumman
Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1980

JOSEPH J. SPANIER,)
)
 Plaintiff,)
)
 -vs-)
)
 STIFEL, NICOLAUS & COMPANY,)
 INCORPORATED, a foreign)
 corporation,)
)
 Defendant.)

Jack W. Street, Clerk
U. S. DISTRICT COURT

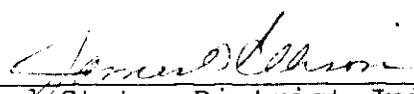
No. 78-C-209-E ✓

ORDER OF DISMISSAL

Now on this 13th day of March, 1980, the Court has before it the Stipulation for Order of Dismissal executed by counsel for Plaintiff and Defendant in this cause wherein both parties jointly request that this action be dismissed. The Court, being fully advised in the premises, and upon consideration of such Stipulation, finds that an Arbitration Award was entered herein on November 8, 1979, by a panel of arbitrators selected and furnished by the New York Stock Exchange, Inc., and that the parties view such Award as a full, final and binding resolution of the underlying dispute giving rise to this action. The Court further finds that the time prescribed for vacation or modification of such Award under the U. S. Arbitration Act (9 U.S.C.A. §§ 10 and 11) has now expired and that, in any event, neither party hereto intends to take any further action in this court with regard to such Award.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the parties' Stipulation for Dismissal filed herein in accordance with F.R.C.P. Rule 41(a)(1)(ii) be, and the same is hereby granted.

IT IS FURTHER ORDERED that this cause be, and the same is hereby dismissed.


United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA MAR 13 1980

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.	)	CIVIL ACTION NO. 79-C-581-E
)	
NICKEY D. ROBERTS,)	
)	
Defendant.)	

ORDER OF DISMISSAL

NOW, on this 13th day of March, 1980, there came on for consideration the Notice of Dismissal filed herein on March 10, 1980, by the Plaintiff, United States of America. The Court finds this action, based on such Notice of Dismissal, should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this action be and the same is hereby dismissed.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

MAR 13 1980

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack O. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 78-C-632-E
)	
vs.	)	This action applies to the
	)	Surface Interest and all
16.48 Acres of Land, More or	)	Mineral Interests of the
Less, Situate in Washington	)	Surface Owners in the estate
County, State of Oklahoma,	)	taken in:
and Fitz-Lowe, Inc., a corpor-)	
ation, and Unknown Owners,	)	Tracts Nos. 426E-1, 426E-2
	)	and 426E-3
)	
	)	(Included in D.T. Filed in
Defendants.	)	Master File #400-15)

J U D G M E N T

1.

NOW, on this 13th day of March, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel, finds:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 426E-1, 426E-2 and 426E-3, as such estates and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on December 29, 1978, the United States of America filed its Declaration of Taking of

such described property, and title to the described estates in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of certain estates in subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The defendants named in paragraph 12 as owner and mortgagees of the subject property are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property and, as such, are entitled to receive as indicated in such paragraph 12, the just compensation awarded by this judgment.

8.

The owner of the subject tracts and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estates condemned in subject tracts is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estates taken in subject tracts and the amount fixed by the Stipulation As To Just Compensation, and the amount of such deficiency should be deposited for the benefit of the owner. Such deficiency is set out in paragraph 12 below.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tracts Nos. 426E-1, 426E-2 and 426E-3, as

such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estates described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of December 29, 1978, and all defendants herein and all other persons interested in such estates are forever barred from asserting any claim to such estates.

11.

It is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owner of the estates condemned herein in subject tracts and the mortgagees thereof, were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for the estates taken herein in such tracts is vested in the parties so named, as specified in such paragraph 12.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above hereby is confirmed; and the sum thereby fixed is adopted as the award of just compensation for the estates condemned in subject tracts as follows:

TRACTS NOS. 426E-1, 426E-2 & 426E-3

OWNERS:

Fee owner of estate taken, subject to mortgages:

Fitz-Lowe, Inc., a Corporation

Mortgagees:

1. Federal Land Bank of Wichita

This defendant has filed a disclaimer to any interest in any part of the award of just compensation above \$2,000.00.

2. Union Bank and Trust

This defendant has filed a disclaimer of any interest in the award of just compensation.

Award of just compensation, pursuant to Stipulation -----	\$13,700.00
Deposited as estimated compensation -----	<u>8,700.00</u>
Deposit deficiency -----	\$ 5,000.00

Allocation of award and disbursals:

Allocated:

To Fitz-Lowe, Inc., a Corporation - \$11,700.00

To Federal Land Bank of Wichita ----- \$2,000.00

Disbursed:

To Fitz-Lowe, Inc., a Corporation - \$ 6,700.00

To Federal Land Bank of Wichita ----- \$2,000.00

Balance due:

To Fitz-Lowe, Inc., a Corporation - \$ 5,000.00

13.

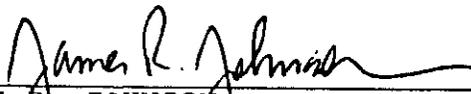
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tracts, the deposit deficiency in the sum of \$5,000.00 and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

To - Fitz-Lowe, Inc., a Corporation ----- \$5,000.00.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney


JAMES R. JOHNSON
Attorney for Defendant,
Fitz-Lowe, Inc., a Corporation

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 12 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GARY L. MATTHEWS,

Plaintiff,

vs.

TRANS WORLD AIRLINES,

Defendant.

No. 78-C-276-BT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing after regular setting and notice for non-jury trial on February 29, 1980 before the undersigned District Judge. The plaintiff, Gary L. Matthews, appeared in person and by and through his attorney of record, Louis W. Bullock. Defendant, Trans World Airlines, appeared by and through its attorney of record, David L. Russell. The defendant announced ready to proceed with the trial. Plaintiff's counsel, because of the press of other prior legal matters which he stated prevented adequate preparation, requested a continuance or the right to withdraw as counsel if the matter was to proceed to trial. The Court noted the case had been pending for eighteen months and further noted this was the third such non-jury trial setting and request by plaintiff's counsel for continuance and therefore overruled the motion for continuance and the motion to withdraw as counsel with the proviso: (1) the plaintiff could dismiss his action without prejudice to refile the same; or (2) the matter would proceed to trial before the Court on February 29, 1980 and then the case would be recessed or continued for trial for five days to March 5, 1980 for either party to introduce further evidence before resting. Counsel for the plaintiff stated the matter would proceed to trial. The Court heard testimony of witnesses under oath and received exhibits presented by both the plaintiff and the defendant. The Court then recessed the trial until March 5, 1980, to allow the parties the opportunity of presenting additional evidence in support of their respective positions. On March 5, 1980, further testimony and exhibits were offered; the parties rested and then presented their closing arguments and the Court took the matter under advisement for decision.

FINDINGS OF FACT

1. Plaintiff, a black male, accepted employment with Trans World Airlines, the defendant, as a "Skycap" on June 26, 1974, at the facility of the defendant located at the Tulsa International Airport in Tulsa, Oklahoma. A Skycap is one who assists passengers with their baggage and had traditionally been employment of black males. Plaintiff graduated from the University of Tulsa, Tulsa, Oklahoma, in early June of 1974 prior to accepting the employment with defendant. (Pl. Ex.5, pg.7; Def.Ex.12) Plaintiff was promoted to a Customer Service Agent in April or May of 1976. He was discharged by the defendant on September 28, 1976.

2. A Customer Service Agent works at the ticket counter at the air terminal and the duties consist of selling tickets, dealing with cash, assisting with reservations and checking baggage. This includes charging for baggage in excess of three pieces.

3. On the morning of September 23, 1976 at about 8:30 A.M., while plaintiff was working as a Customer Service Agent for the defendant at the Tulsa International Airport, he checked the baggage of a passenger named Lois Huckaby.

4. After checking her baggage and leaving the ticket counter, Lois Huckaby looked at her receipt and discovered a discrepancy between the number of bags she had checked; the number of bags for which she paid an excess charge; and the amount of money she had paid the ticket agent. She discovered that her excess baggage receipt indicated she had 4 excess pieces of baggage for which she was charged \$5.00 per item, or a total of \$20.00, while she in fact had checked six pieces of excess baggage for which she paid the ticket agent \$30.00. She also had baggage tags for 9 pieces of luggage; representing 3 pieces of baggage which were included in her fare and 6 excess pieces of baggage. (Pl.Ex.18, page 3^(a); Def.Ex.7)

5. After discovering the discrepancy, Mrs. Huckaby went to the Airport Manager's Office and Mr. Denton Goyer, the TWA Customer Service Agent Supervisor, was called to discuss the

(a) Plaintiff's Exhibit 18 is a copy of the EEOC file and for the convenience of ready reference the Court has numbered the pages in said exhibit. There are 257 pages in the exhibit.

matter with her. He made Royfax copies of the nine baggage checks and the receipt reflecting 4 excess bags and \$20.00. (Def.Ex.2 and 3)

6. Mrs. Huckaby identified the TWA clerk who had checked her baggage as a black male with an Afro haircut. (Def.Ex.7).

7. Mr. Goyer did not return to the ticket counter with Mrs. Huckaby and she subsequently boarded her aircraft at about 10:30 A.M., and departed. Mr. Goyer did check Mrs. Huckaby's baggage against the copies of baggage checks Mrs. Huckaby had given him and there were in fact nine pieces of baggage.

8. Due to being too busy that morning Mr. Goyer did not go to plaintiff's ticket counter until around the noon hour of the same day. He then informed plaintiff he was going to audit his cash drawer. Plaintiff at that time told Mr. Goyer he had placed \$10.00 of his own funds in the cash drawer for the purpose of making change during the morning rush and had not removed that amount from the drawer.

9. Mr. Goyer conducted the audit of the cash drawer and plaintiff had an overage of \$10.00. It was after the audit that Mr. Goyer advised plaintiff of the incident with Mrs. Huckaby and exhibited the copies of the baggage checks and the receipt to him. Plaintiff acknowledged his handwriting on the baggage checks and the receipt, but denied Mrs. Huckaby had 9 pieces of baggage and further denied she had given him \$30.00. He stated she gave him \$20.00 for the 4 pieces of excess baggage.

10. Mr. Goyer suggested plaintiff have a polygraph test. He advised the plaintiff he felt he had sufficient evidence at that time to substantiate discharging him, but since plaintiff had been a good worker he would ignore the evidence if plaintiff passed the polygraph test.

11. Plaintiff acquiesced and took the polygraph test on September 24, 1976. The results of the test were transmitted to defendant by letter dated September 24, 1976, wherein defendant was advised "...,[I] am unable to verify his truthfulness on the above mentioned relevant questions." (Pl.Ex.18, page 40). Warren Powers, who administered the test to plaintiff, testified plaintiff failed the polygraph test.

12. Plaintiff was notified by letter from R. D. Goyer dated September 25, 1976 of his discharge due to the incident. (Pl.Ex. 18, page 111).

13. The defendant's personnel policy provides for a 3-stage grievance procedure for contract workers and non-contract workers. Plaintiff was a non-contract worker.

14. Plaintiff availed himself of the grievance procedure and filed a grievance. It was stipulated at trial plaintiff was present at the Step-1 Grievance procedure before defendant's employee, Jack Lewis. Mr. Lewis' decision was to uphold defendant's discharge of the plaintiff. (Def.Ex.4)

15. The Step-2 grievance hearing was had before Edward G. Tharp, an employee of defendant. Mr. Jack Lewis represented defendant, and plaintiff, who was present, was represented by David Blubaugh, an employee of defendant. Mr. Tharp found certain aspects of the case appeared not to be challenged, i.e.:

- "1) There were nine pieces of baggage belonging to Mrs. Huckaby.
- 2) The Royfax copies of the nine baggage checks presented to the supervisor by the passenger were in the grievant's handwriting.
- 3) An excess baggage receipt was issued in the amount of \$20.00.
- 4) The passenger complained that she paid \$30.00 in excess baggage charges.
- 5) There was a cash overage in the grievant's ticket funds in the amount of \$10 based on an audit made on September 23, after the passenger departed.
- 6) It is not an uncommon occurrence for agents to need change beyond that supplied in change fund early in the day and such a situation arose on September 23, 1976.
- 7) The grievant agreed to and did take a polygraph test upon request."

Mr. Tharp found that the defendant company's discharge of plaintiff should be sustained. (Def.Ex.5).

16. Plaintiff proceeded to Step-3 of the grievance procedure before an Arbitration Board in New York City, N.Y., composed of three arbitrators. One of the arbitrators was selected by the company, who was a black employee. The plaintiff selected one of the arbitrators from a list of neutral arbitrators who was a white person and then the plaintiff selected the third arbitrator who was a white personal friend and fellow employee. Plaintiff's expenses were paid by the defendant to the hearing in New York.

17. During the grievance proceedings, plaintiff raised the issue that he was being treated different than another TWA employee, a white male by the name of Charles Russo. Mr. Russo is a ramp service employee who loads baggage and meals on airplanes. Mr. Russo went to work for the defendant company in 1957 as a contract worker. He was accused by the defendant of using an accommodation voucher pass in Las Vegas, Nevada, which is issued to passengers to receive free lodging. Mr. Russo claimed that he had been given the voucher by a third party not an employee of defendant and had signed his own name to it at a Las Vegas Hotel while there over a weekend. Although it was a violation of company regulations, the company apparently determined the evidence did not support a case of intentional fraud against the company. Mr. Russo stated he was unaware TWA policy prevented him from using the accommodation voucher given him by a non-employee third party. Mr. Russo was suspended for ten days and required to reimburse the company \$19.00 for improperly using the accommodation voucher in violation of company policy.

18. The Arbitration Board concluded with reference to the Russo and Matthews matters the incidents were dissimilar. At pages 129 and 130 of Plaintiff's Exhibit 18 it is stated:

"The Grievant charges that in any event the penalty is excessive and cites a similar case where an employee was not terminated but was merely given a penalty of ten days without pay. The Board heard considerable testimony concerning the Russo case, cited by the Grievant. It finds that the cases are not similar. In the Russo case, he was given an accommodation voucher at a Las Vegas hotel by an employee of the hotel. He used it and signed his own name. It was not an illegal act. Had a non-TWA employee used it he would not have been subject to any legal charge whatsoever. He would, in effect, have been using it as legal tender. Russo, was, however, in violation of a TWA regulation, although not in violation of the law. The Company was satisfied that Russo did not or could not have stolen the voucher and that indeed it was given to him by a hotel employee. There was also some question in that case as to whether Russo, as a ramp service employee, could have been expected to be aware of the regulation. In any event, the Company concluded that there was no evidence of attempted fraud but only violation of a TWA regulation...."

The defendant company's Management Policy and Procedure Manual (Pl.Ex.18, page 51) states, in pertinent part:

"Violation of any of these regulations may result in disciplinary action ranging from warning to discharge. The measure of discipline should correspond to the gravity of the offense as weighted by its effect on the Company as well as the seniority and work record of the employee involved."

20. At the time of plaintiff's termination the defendant employed 66 persons in its Tulsa facility, 8 of whom were black or 12% of the total. The black population in the Tulsa area work force was approximately 6%.

21. During closing argument, plaintiff's counsel conceded the evidence of the plaintiff establishes a prima facie case only if the disparity of the disciplinary treatment of the Russo and Matthews cases provides the necessary claimed racial discrimination.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. The Court has jurisdiction of this case under 42 U.S.C. §2000e et seq.

2. In regard to a discharge, in order to make a prima facie case, the plaintiff must show (i) that he is a member of a protected minority group; (ii) that he was discharged; (iii) he was subjected to the adverse action because of his race which resulted in his being treated differently from other non-black employees under like circumstances. Williams v. Yazoo Valley-Minter City Oil Mill, Inc., 469 F.Supp.37, 49 (USDC ND Miss.1978)

3. In the trial of Title VII cases such as this the law is settled that initially the employee is required to make a prima facie showing of racial discrimination on the part of the employer. The prima facie showing is not the equivalent of a factual finding of discrimination, but the burden then shifts to the employer to prove by a preponderance of the evidence that the discharge was for legitimate and nondiscriminatory reasons. The employee shall then have an opportunity to rebut that evidence.

Silberhorn v. General Iron Works Co., 584 F2d 970, 971 (10th Cir. 1978); Higgins v. Gates Rubber Co., 578 F2d 281 (10th Cir. 1978); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973); Furnco Construction Corp. v. Walters, 438 U.S. 567, 575, 98 S.Ct. 2943, 2949, 57 L.Ed.2d 957, 966 (1978); James v. Newspaper Agency Corporation, 591 F2d 579 (10th Cir. 1979); Turner v. Texas Instruments, Inc., 555 F2d 1251, 1256 (5th Cir. 1977).

4. Whether or not the employer has good cause to terminate an employee is not an issue in an employment discrimination case. Even if the employee is discharged unnecessarily or in error, the employer is not guilty of racial discrimination unless plaintiff proves that he was treated differently due to his race from other employees with like work history, committing the same type infraction. Williams v. Yazoo Valley-Minter City Oil Mill, Inc., supra; Turner v. Texas Instruments, Inc., supra.

5. The Court concludes, under all the evidence, that as a matter of law plaintiff has not proved his asserted claim of racial discrimination. A review of the record adduced makes it clear that defendant was genuine in its belief the plaintiff had attempted to defraud the company and this was the fundamental and sole reason for his discharge. The Court further concludes the company apparently believed Russo had not attempted to defraud the company. The Court further finds that the company believed there to be no relevant similarity in the cases of this plaintiff and Russo as they are factually distinguishable.

6. The Court concludes the plaintiff was discharged because the defendant concluded he was dishonest in appropriating company funds and not because of any racially motivated reason.

The Court, therefore, finds that Judgment should be entered in favor of the defendant, Trans World Airlines, Inc., and against the plaintiff, Gary L. Matthews.

ENTERED this 11th day of March, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF THE STATE OF OKLAHOMA

GO WIRELINE SERVICES,)
a division of Gearhart-Owen)
Industries, Inc., a Texas)
corporation,)
Plaintiff,)
vs.)
V. J. HUFF, individually,)
and SANTANA CORPORATION,)
Defendants.)

FILED
MAR 12 1980 *JS*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 79-C-398-*BT* ✓

O R D E R

Now on this 11TH day of March, 1980, ~~September, 1979~~, comes on for consideration the application to dismiss filed jointly by Plaintiff and Defendants herein.

This Court finds the same should be allowed forthwith.

IT IS THEREFORE, that this action be and is dismissed with prejudice at the costs of Plaintiff.

Thomas R. Brett
~~H. Dale Cook~~ Thomas R. Brett, Judge
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO.
	)	79-C-252-C
vs.)	
	)	TRACT NO. 306ME
121.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Gas Leasehold interest only
State of Oklahoma, and BOH)	
Development Company, et al., and)	
Unknown Owners,	)	Included in D.T. filed
	)	in Master File No. 405-8
Defendants.)	

FILED

MAR 10 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has before it for consideration the motion of the Defendant, BOH Development Company, to dismiss the Complaint and vacate the Declaration of Taking filed by the Plaintiff, United States of America, and application of the same Defendant for an award of litigation expenses.

The Court finds that because of a lack of express Congressional authorization to condemn treaty lands of the Osage Tribe of Indians, the Plaintiff was without authority to take by eminent domain the interest described in its Declaration of Taking filed herein on April 26, 1979.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed as to the Defendant BOH Development Company and all other defendants, without prejudice to the filing of a new action in the event that Congress expressly authorizes the condemnation sought in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Declaration of Taking filed herein by the Plaintiff on April 26, 1979, is hereby vacated and declared to be null and void ab initio.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order for Delivery of Possession which has been filed in this action is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BOH Development Company is awarded its litigation expenses, including attorney fees, in the amount of \$ 75.00.

ENTERED this 10 day of March, 1980.

H/D Dale Cook
H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

15/ Hubert A. Marlow
Hubert A. Marlow

Assistant United States Attorney
460 United States Courthouse
Tulsa, Oklahoma 74103

Attorney for plaintiff,
United States of America

Donald A. Kihle
Donald A. Kihle

OF COUNSEL:

Huffman, Arrington, Scheurich & Kihle
Fifth Floor, Oklahoma Natural Building
Tulsa, Oklahoma 74119

Attorney for defendant,
BOH Development Company

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO.
	)	79-C-271-C
vs.)	
	)	TRACT NO. 311ME
4.35 Acres of Land, More or)	
Less, Situate in Osage County,	)	Working interest in gas
State of Oklahoma, and BOH	)	leasehold interest only
Development Company, et al., and)	
Unknown Owners,	)	Included in D.T. filed
	)	in Master File No. 405-8
Defendants.)	

FILED

ORDER

MAR 10 1980

Jack C. Silver, Clerk
U.S. DISTRICT COURT

The Court has before it for consideration the Motion of the Defendant, BOH Development Company, to dismiss the Complaint and vacate the Declaration of Taking filed by the Plaintiff, United States of America, and application of the same Defendant for an award of litigation expenses.

The Court finds that because of a lack of express Congressional authorization to condemn treaty lands of the Osage Tribe of Indians, the Plaintiff was without authority to take by eminent domain the interest described in its Declaration of Taking filed herein on April 26, 1979.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed as to the Defendant BOH Development Company and all other defendants, without prejudice to the filing of a new action in the event that Congress expressly authorizes the condemnation sought in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Declaration of Taking filed herein by the Plaintiff on April 26, 1979, is hereby vacated and declared to be null and void ab initio.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order for Delivery of Possession which has been filed in this action is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BOH Development Company is awarded its litigation expenses, including attorney fees, in the amount of \$ 75.00.

ENTERED this 10 day of March, 1980.

H. Dale Cook
H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

Hubert A. Marlow
Hubert A. Marlow

Assistant United States Attorney
460 United States Courthouse
Tulsa, Oklahoma 74103

Attorney for plaintiff,
United States of America

Donald A. Kihle
Donald A. Kihle

OF COUNSEL:

Huffman, Arrington, Scheurich & Kihle
Fifth Floor, Oklahoma Natural Building
Tulsa, Oklahoma 74119

Attorney for defendant,
BOH Development Company

C. Harold Thweatt
C. Harold Thweatt

Crowe, Dunlevy, Thweatt, Swinford,
Johnson & Burdick
1700 Liberty Tower, 100 Broadway
Oklahoma City, Oklahoma 73102

Attorneys for defendant,
Petro-Lewis Corporation

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
 Plaintiff,) CIVIL ACTION NO. 79-C-322-C
)
 vs.) TRACTS NOS. 411ME-1 and
) 411ME-2
)
 26.80 Acres of Land, More or)
 Less, Situate in Osage County,) Gas Leasehold Interest Only
 State of Oklahoma, and Rickelson)
 Oil & Gas Company, et al., and)
 Unknown Owners,)
) (Included in D.T. filed in
 Defendants.) Master File #405-8)

MAR 10 1980

O R D E R

NOW, on this 10th day of March 1980, the Court

Jack C. Silver, Clerk
U. S. DISTRICT COURT

considers the Motion To Dismiss filed in this action by the
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having
been served with a copy of Plaintiff's motion, has made no objec-
tion to such motion.

For good cause shown, in the Plaintiff's brief in
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry
of this Court when this action was filed, should be refunded to
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this
action hereby is dismissed, without prejudice to the filing of a
new case to condemn the subject property in the event that Congress
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the
Declaration of Taking on which this action was based is hereby
declared void and held for naught insofar as such Declaration of
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that
Plaintiff's Motion For Order For Delivery of Possession, which has
been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$84.00


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)
)
Plaintiff,) CIVIL ACTION NO. 79-C-325-C
)
vs.) Tract No. 416ME
)
154.50 Acres of Land, More or) Oil Leasehold Interest Only
Less, Situate in Osage County,)
State of Oklahoma, and William)
D. Witcraft, et al., and)
Unknown Owners,)
)
Defendants.) (Included in D.T. filed Master File #405-8)

FILED

MAR 10 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

NOW, on this 10th day of March 1980, the Court
considers the Motion To Dismiss filed in this action by the
Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having
been served with a copy of Plaintiff's motion, has made no objec-
tion to such motion.

For good cause shown, in the Plaintiff's brief in
support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry
of this Court when this action was filed, should be refunded to
the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this
action hereby is dismissed, without prejudice to the filing of a
new case to condemn the subject property in the event that Congress
should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the
Declaration of Taking on which this action was based is hereby
declared void and held for naught insofar as such Declaration of
Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that
Plaintiff's Motion For Order For Delivery of Possession, which has
been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the
deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$15,209.00


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO.
	)	79-C-341-C
vs.)	
	)	TRACT NO. 403-ME-1
160.00 Acres of Land, More or)	
Less, Situate in Osage County,	)	Working interest in gas
State of Oklahoma, and BOH	)	leasehold interest only
Development Company, et al., and)	
Unknown Owners,	)	Included in D.T. filed
	)	in Master File No. 405-8
Defendants.)	

FILED

ORDER

MAR 10 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court has before it for consideration the Motion of the Defendant, BOH Development Company, to dismiss the Complaint and vacate the Declaration of Taking filed by the Plaintiff, United States of America, and application of the same Defendant for an award of litigation expenses.

The Court finds that because of a lack of express Congressional authorization to condemn treaty lands of the Osage Tribe of Indians, the Plaintiff was without authority to take by eminent domain the interest described in its Declaration of Taking filed herein on April 26, 1979.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed as to the Defendant BOH Development Company and all other defendants, without prejudice to the filing of a new action in the event that Congress expressly authorizes the condemnation sought in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Declaration of Taking filed herein by the Plaintiff on April 26, 1979, is hereby vacated and declared to be null and void ab initio.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order for Delivery of Possession which has been filed in this action is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BOH Development Company is awarded its litigation expenses, including attorney fees, in the amount of \$ 75.00.

ENTERED this 10 day of March, 1980.

15/14 Dale Cook
H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

Hubert A. Marlow
Hubert A. Marlow

Assistant United States Attorney
460 United States Courthouse
Tulsa, Oklahoma 74103

Attorney for plaintiff,
United States of America

Donald A. Kihle
Donald A. Kihle

OF COUNSEL:

Huffman, Arrington, Scheurich & Kihle
Fifth Floor, Oklahoma Natural Building
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Attorney for defendant,
BOH Development Company

C. Harold Thweatt
C. Harold Thweatt

Crowe, Dunlevy, Thweatt, Swinford,
Johnson & Burdick
1700 Liberty Tower, 100 Broadway
Oklahoma City, Oklahoma 73102

Attorneys for defendant,
Petro-Lewis Corporation

Gary R. Proctor
Gary R. Proctor

100 Park Avenue Building, 7th Floor
Oklahoma City, Oklahoma 73102

Attorney for defendant,
Phillips Petroleum Company

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO.
	)	79-C-344-C
vs.)	
	)	TRACT NO. 409-ME
91.58 Acres of Land, More or)	
Less, Situate in Osage County,	)	Working interest in gas
State of Oklahoma, and BOH	)	leasehold interest only
Development Company, et al., and)	
Unknown Owners,	)	Included in D.T. filed
	)	in Master File No. 405-8
Defendants.)	

FILED

ORDER

MAR 10 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

The Court has before it for consideration the motion of the Defendant, BOH Development Company, to dismiss the Complaint and vacate the Declaration of Taking filed by the Plaintiff, United States of America, and application of the same Defendant for an award of litigation expenses.

The Court finds that because of a lack of express Congressional authorization to condemn treaty lands of the Osage Tribe of Indians, the Plaintiff was without authority to take by eminent domain the interest described in its Declaration of Taking filed herein on April 26, 1979.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action be dismissed as to the Defendant BOH Development Company and all other defendants, without prejudice to the filing of a new action in the event that Congress expressly authorizes the condemnation sought in this case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Declaration of Taking filed herein by the Plaintiff on April 26, 1979, is hereby vacated and declared to be null and void ab initio.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Order for Delivery of Possession which has been filed in this action is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BOH Development Company is awarded its litigation expenses, including attorney fees, in the amount of \$ 75.00.

ENTERED this 10 day of March, 1980.

H. Dale Cook
H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM AND CONTENT:

Hubert A. Marlow

Assistant United States Attorney
460 United States Courthouse
Tulsa, Oklahoma 74103

Attorney for plaintiff,
United States of America

Donald A. Kihle
Donald A. Kihle

OF COUNSEL:

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Attorney for defendant,
BOH Development Company

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C. Harold Thweatt

Crowe, Dunlevy, Thweatt, Swinford,
Johnson & Burdick
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Attorneys for defendant,
Petro-Lewis Corporation

Gary B. Proctor
Gary B. Proctor

100 Park Avenue Building, 7th Floor
Oklahoma City, Oklahoma 73102

Attorney for defendant,
Phillips Petroleum Company

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

No MAR 7 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Edwin Youngblood, Regional Director
of the Sixteenth Region of the
National Labor Relations Board, for
and on behalf of the NATIONAL LABOR
RELATIONS BOARD,

Petitioner,

vs.

SOLAR EXCAVATING, INC., and INTER-
NATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 627, AFL-CIO,

Respondents

Civil No. 80-C-44-B ✓

O R D E R

In accordance with the Memorandum Opinion filed herewith
the Petitioner's Request for Temporary Injunction is denied.

ENTERED this 5TH day of March, 1980.



THOMAS R. BRETT
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

VERA I. BAPTIST,)
)
 Plaintiff,)
)
 vs.) No. 78-C-356-E
)
 MARMON INDUSTRIES, INC.,)
)
 Defendant.)

FILED

MAR 7 1980

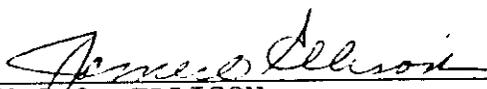
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

Upon consideration of the pleadings, the briefs of the parties, and all of the evidence presented at the trial, as is more fully set out in the Findings of Fact and Conclusions of Law filed of even date,

IT IS ORDERED, ADJUDGED AND DECREED that Judgment be and hereby is granted in favor of Defendant and against Plaintiff, Vera I. Baptist, on Plaintiff's claims in this action.

IT IS SO ORDERED this 7th day of March, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 7 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-177-B ✓
)	
vs.	)	This action applies to all
	)	interests in the estate
6.17 Acres of Land, More or	)	taken in:
Less, Situate in Osage County,)	
State of Oklahoma, and Bernice	)	Tracts Nos. 406E-24 and
Perrier, et al., and Unknown	)	406E-25
Owners,)	
)	
Defendants.	)	(This is Master File #398-17)

J U D G M E N T

1.

Now, on this 6 day of March, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 406E-24 and 406E-25, as such estate and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on March 29, 1979, the United States of America filed its Declaration of Taking of

such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The defendants named in paragraph 12 as owners of the subject property are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property and, as such, are entitled to receive the just compensation awarded by this judgment.

8.

The owners of the subject tracts and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject tracts is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estate taken in subject tracts and the amount fixed by the Stipulation As To Just Compensation, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out in paragraph 12 below.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tracts Nos. 406E-24 and 406E-25, as such tracts are particularly described in the Complaint filed

herein; and such tracts, to the extent of the estate described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of March 29, 1979, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tracts were the defendants whose names appear below in paragraph 12; and the right to receive the just compensation for the estate taken herein in such tracts is vested in the parties so named.

12.

It is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above hereby is confirmed; and the sum thereby fixed is adopted as the award of just compensation for the estate condemned in subject tracts as follows:

TRACTS NOS. 406E-24 and 406E-25

OWNERS:

Bernice Perrier
 James R. Perrier, Jr.
 Linda Lou Terry
 Melvina Claudine Prather

Award of just Compensation pursuant to Stipulation -----	\$3,141.00	\$3,141.00
Deposited as Estimated Compensation -----	3,100.00	
Disbursed to Owners -----		<u>\$3,100.00</u>
Balance Due to Owners -----		\$ 41.00
Deposit Deficiency -----	\$ 41.00	

13.

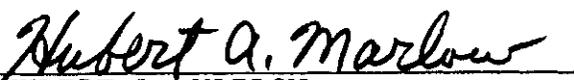
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tracts, the deposit deficiency in the sum of \$41.00 and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

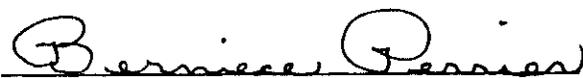
To:

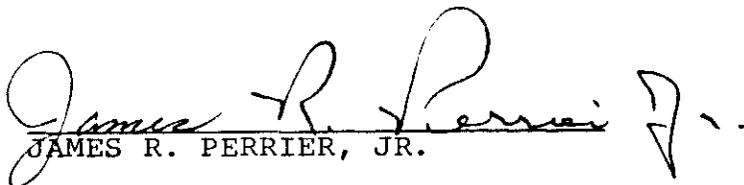
Bernice Perrier ----- \$10.25
James R. Perrier, Jr. ----- \$10.25
Linda Lou Terry ----- \$10.25
Melvina Claudine Prather ---- \$10.25


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant U. S. Attorney


BERNICE PERRIER


JAMES R. PERRIER, JR.


LINDA LOU TERRY


MELVINA CLAUDINE PRATHER

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
UNITED STATES FIDELITY AND)
GUARANTY COMPANY, a Maryland)
Corporation,)
)
Defendant.)

No. CIV-76-157-B

FILED

mm MAR 6 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDINGS AND JUDGMENT

The parties plaintiff and defendant, by letter, have submitted the issues to be determined by the court in this action without further evidence, briefs or argument. Said letters are filed with the clerk of this court. In accordance with the opinion and mandate of the United States Court of Appeals for the Tenth Circuit and based upon the agreement of the parties that all remaining issues be disposed of based on the record, the court finds as follows:

That the plaintiff should be awarded the sum of \$13,027.77 for defense costs and expenses in the Bradley case.

That the plaintiff should be awarded the sum of \$30,772.65 for defense costs and expenses in the Williams case through February 10, 1976.

That plaintiff should receive interest as provided by law on the above awards from July 13, 1979, the filing date of the circuit court opinion and mandate, until judgment is paid.

That plaintiff should be awarded any additional costs and expenses incurred in the Williams case subsequent to February 10, 1976. If the parties cannot agree on this amount, then the court will hear evidence as to such issue.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff United States of America have judgment against the defendant United States Fidelity and Guaranty Company, a Maryland corporation, in the sum of \$43,800.42, together with interest as provided by law from and after July 13, 1979, until judgment is paid.

IT IS FURTHER ORDERED that in the event the parties cannot agree upon the added cost to be paid to the plaintiff by the defendant incurred after February 10, 1976, then either party may notify the court of the failure to agree, and the court will set this issue for hearing and disposition.

Dated this 5th day of March, 1980.

Luther Bohannon
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE **FILED**
NORTHERN DISTRICT OF OKLAHOMA

MAR 6 - 1980

RA
Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
Plaintiff,)
)
vs.)
)
43.90 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Bernice)
Perrier, et al., and Unknown)
Owners,)
)
Defendants.)

CIVIL ACTION NO. 78-C-153-E

This action applies to all interests in the estate taken in:

Tracts Nos. 406E-22 and 406E-23

J U D G M E N T

1.

Now, on this 6th day of March, 1980, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 406E-22 and 406E-23, as such estate and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this case.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on April 7, 1978 the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing

the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The defendants named in paragraph 12 as owners of the subject property are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property and, as such, are entitled to receive the just compensation awarded by this judgment.

8.

The owners of the subject tracts and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject tracts is in the amount shown as compensation in paragraph 12 below, and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estate taken in subject tracts and the amount fixed by the Stipulation As To Just Compensation, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out in paragraph 12 below.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tracts Nos. 406E-22 and 406E-23, as such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estate described in such Complaint, are condemned, and title thereto is vested in the

United States of America, as of April 7, 1978, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tracts were the defendants whose names appear below in paragraph 12; and the right to receive the just compensation for the estate taken herein in such tracts is vested in the parties so named.

12.

It is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above hereby is confirmed; and the sum thereby fixed is adopted as the award of just compensation for the estate condemned in subject tracts as follows:

TRACTS NOS. 406E-22 and 406E-23

OWNERS:

Bernice Perrier
James R. Perrier, Jr.
Linda Lou Terry
Melvina Claudine Prather

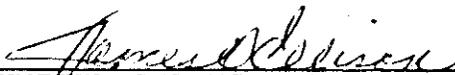
Award of just Compensation pursuant to Stipulation -----	\$16,982.00	\$16,982.00
Deposited as Estimated Compensation -----	8,892.00	
Disbursed to Owners -----		<u>8,892.00</u>
Balance Due to Owners -----		\$ 8,090.00
Deposit Deficiency -----	\$ 8,090.00	

13.

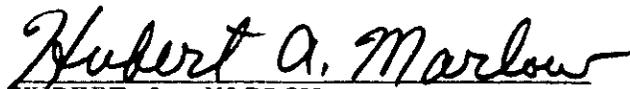
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court in this civil action, to the credit of subject tracts, the deposit deficiency in the sum of \$8,090.00 and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

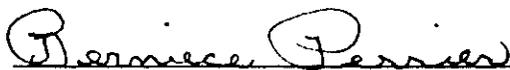
To:

Bernice Perrier ----- \$2,022.50
James R. Perrier, Jr. ----- \$2,022.50
Linda Lou Terry ----- \$2,022.50
Melvina Claudine Prather ---- \$2,022.50


UNITED STATES DISTRICT JUDGE

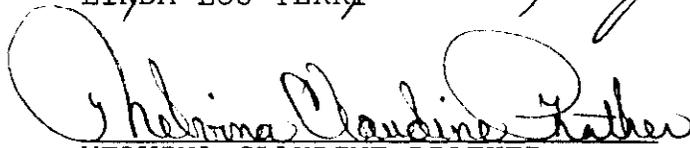
APPROVED:


HUBERT A. MARLOW
Assistant U. S. Attorney


BERNICE PERRIER


JAMES R. PERRIER, JR.


LINDA LOU TERRY


MELVINA CLAUDINE PRATHER

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 6 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JIMMIE JONES COMPANY,
Plaintiff,

vs.

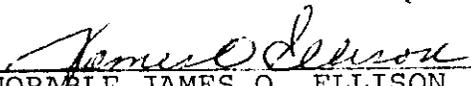
RYDER TRUCK LINES,
Defendant.

No. 79-C-18-E

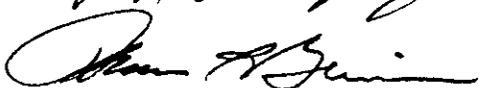
ORDER OF DISMISSAL

NOW, this 6th day of February, 1980, upon the Joint Motion of the parties hereto for an Order of Dismissal as filed with this Court, and for good cause shown

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the above entitled cause be dismissed with prejudice to refileing the same.


HONORABLE JAMES O. ELLISON
U.S. District Judge

OK



~~NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.~~

FILED

MAR 5 - 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
U. S. DISTRICT COURT

HOYT C. RICH,
PLAINTIFF,
vs.
PATRICIA ROBERTS HARRIS,
SECRETARY OF HEALTH, EDUCATION
AND WELFARE,
DEFENDANT.

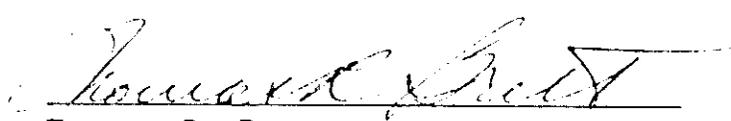
No. 78-C-436-BT

J U D G M E N T

THIS CAUSE HAVING BEEN CONSIDERED BY THE COURT ON THE PLEADINGS, THE ENTIRE RECORD CERTIFIED TO THIS COURT BY THE DEFENDANT SECRETARY OF HEALTH, EDUCATION AND WELFARE (SECRETARY), AND AFTER DUE PROCEEDINGS HAD, AND UPON EXAMINATION OF THE PLEADINGS AND RECORD FILED HEREIN, INCLUDING THE BRIEFS SUBMITTED BY THE PARTIES, THE COURT IS OF THE OPINION AS SHOWN BY ITS MEMORANDUM OPINION FILED HEREIN OF THIS DATE THAT THE FINAL DECISION OF THE SECRETARY IS SUPPORTED BY SUBSTANTIAL EVIDENCE AS REQUIRED BY THE SOCIAL SECURITY ACT, AND SHOULD BE AFFIRMED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT THE FINAL DECISION OF THE SECRETARY SHOULD BE AND HEREBY IS AFFIRMED.

DATED THIS 5 DAY OF MARCH, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

LAW JUDGE; ADDITIONAL EVIDENCE WAS RECEIVED; ADDITIONAL WITNESSES TESTIFIED. THE ADMINISTRATIVE LAW JUDGE RENDERED HIS DECISION, ONCE AGAIN FINDING PLAINTIFF WAS NOT DISABLED WITHIN THE MEANING OF THE ACT. THIS DECISION WAS AFFIRMED BY THE APPEALS COUNCIL. (TR 162)

THEREAFTER, PLAINTIFF FILED A MOTION TO RECONSIDER IN THE INSTANT LITIGATION. THE PARTIES HAVE SUBMITTED THEIR RESPECTIVE BRIEFS, AND THE COURT WILL TREAT THE MOTION TO RECONSIDER AS A MOTION FOR SUMMARY JUDGMENT.

AN APPLICANT FOR SOCIAL SECURITY DISABILITY INSURANCE BENEFITS HAS THE BURDEN OF ESTABLISHING THAT HE WAS DISABLED ON OR BEFORE THE DATE ON WHICH HE LAST MET THE STATUTORY EARNINGS REQUIREMENTS. McMILLIN V. GARDNER, 384 F2D 596 (10TH CIR. 1967); STEVENS V. MATHEWS, 418 F.SUPP. 881 (USDC WD OKL. 1976); DICKS V. WEINBERGER, 390 F.SUPP. 600 (USDC WD OKL.1974); SEE JOHNSON V. FINCH, 437 F2D 1321 (10TH CIR.1971).

SECTION 223(D)(1) OF THE SOCIAL SECURITY ACT DEFINES DISABILITY AS THE "INABILITY TO ENGAGE IN ANY SUBSTANTIAL GAINFUL ACTIVITY BY REASON OF ANY MEDICALLY DETERMINABLE PHYSICAL OR MENTAL IMPAIRMENT WHICH CAN BE EXPECTED TO RESULT IN DEATH OR WHICH HAS LASTED OR CAN BE EXPECTED TO LAST FOR A CONTINUOUS PERIOD OF NOT LESS THAN 12 MONTHS."

THE SCOPE OF THE COURT'S REVIEW AUTHORITY IS NARROWLY LIMITED BY 42 U.S.C. §405(G). THE SECRETARY'S DECISION MUST BE AFFIRMED IF SUPPORTED BY SUBSTANTIAL EVIDENCE. GARDNER V. BISHOP, 362 F2D 917 (10TH CIR. 1966); STEVENS V. MATHEWS, SUPRA. SUBSTANTIAL EVIDENCE IS MORE THAN A SCINTILLA. IT IS SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION. RICHARDSON V. PERALES, 402 U.S. 389, 91 S.CT. 1420, 28 L.ED.2D 842 (1971); BEASLEY V. CALIFANO, 608 F.2D 1162 (8TH CIR. 1979); STEVENS V. MATHEWS, SUPRA. HOWEVER, THE POSSIBILITY OF DRAWING TWO INCONSISTENT CONCLUSIONS FROM THE EVIDENCE DOES NOT PREVENT AN ADMINISTRATIVE AGENCY'S FINDING FROM BEING SUPPORTED BY SUBSTANTIAL EVIDENCE. CONSOLO V. FEDERAL MARITIME COMMISSION, 383 U.S. 607, 86 S.CT. 1018, 16 L.ED.2D 131 (1966); STEVENS V. MATHEWS, SUPRA.

IN CONDUCTING THIS JUDICIAL REVIEW, IT IS THE DUTY OF THIS COURT TO EXAMINE THE FACTS CONTAINED IN THE RECORD, EVALUATE THE CONFLICTS AND MAKE A DETERMINATION THEREFROM WHETHER THE FACTS SUPPORT THE SEVERAL ELEMENTS WHICH MAKE UP THE ULTIMATE ADMINISTRATIVE DECISION. HEBER VALLEY MILK Co. v. BUTZ, 503 F2D 96 (10TH CIR. 1974); NICKOL v. UNITED STATES, 501 F2D 1389 (10TH CIR. 1974); STEVENS v. MATHEWS, SUPRA. IN THIS CASE, THE ULTIMATE ADMINISTRATIVE DECISION IS EVIDENCED BY THE FINDINGS OF THE ADMINISTRATIVE LAW JUDGE BEFORE WHOM PLAINTIFF ORIGINALLY APPEARED (IT IS NOTED AT THE ORIGINAL HEARING PLAINTIFF WAS NOT REPRESENTED BY COUNSEL) AND AT THE HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE AFTER REMAND (IT IS NOTED THAT PLAINTIFF WAS REPRESENTED BY COUNSEL AT THIS HEARING). THE FINDINGS OF THE ADMINISTRATIVE LAW JUDGE AFTER THE SECOND HEARING, WHERE ADDITIONAL EVIDENCE AND TESTIMONY WAS ADDUCED, WERE AS FOLLOWS: (TR 182)

- "1. CLAIMANT MAKES APPLICATION FOR A PERIOD OF DISABILITY ON JANUARY 26, 1977, ALLEGING AN ONSET OF DISABILITY ON AUGUST 23, 1976.
2. CLAIMANT RETURNED TO HIS USUAL AND CUSTOMARY WORK ACTIVITY FROM OCTOBER 17, 1976 THROUGH NOVEMBER 2, 1976, DURING WHICH PERIOD HE HAD EARNINGS OF IN EXCESS OF \$1200.
3. CLAIMANT RETURNED TO HIS USUAL AND CUSTOMARY WORK ACTIVITY ON NOVEMBER 1, 1977 AND CONTINUED IN SUCH WORK ACTIVITY THROUGH THE DATE OF THE SUPPLEMENTAL HEARING.
4. CLAIMANT MET THE SPECIAL EARNINGS REQUIREMENTS OF THE ACT FOR DISABILITY PURPOSES ON AUGUST 23, 1976, THE ALLEGED DATE OF ONSET OF DISABILITY, AND CONTINUES TO MEET SAID REQUIREMENTS THROUGH THE DATE OF THIS DECISION.
5. THE CLAIMANT STATED HE WAS BORN ON NOVEMBER 18, 1921, COMPLETED ONE YEAR OF COLLEGE AND WORKED FOR APPROXIMATELY 31 YEARS AS AN INSURANCE ADJUSTOR.
6. THE CLAIMANT HAS NOT ESTABLISHED BY THE MEDICAL EVIDENCE OF RECORD THAT HE HAS A HEART DISEASE, HYPOTENSION, DIABETES MELLITUS OR A MENTAL HEALTH CONDITION OF SUCH DEGREE OF SEVERITY EITHER SINGULARLY OR IN COMBINATION, AS TO PRECLUDE HIM FROM ENGAGING IN HIS FORMER WORK ACTIVITY FOR ANY CONTINUOUS TWELVE MONTH PERIOD SINCE JANUARY OF 1976.
7. CLAIMANT DOES NOT HAVE AN IMPAIRMENT OR A COMBINATION OF IMPAIRMENT WHICH WOULD EITHER MEET OR BE EQUIVALENT TO THE LEVEL OF SEVERITY SPECIFIED IN THE APPENDIX TO 20 CFR 404.1500.
8. AT NO TIME SINCE JANUARY, 1976 HAS THE CLAIMANT BEEN UNABLE TO ENGAGE IN HIS USUAL AND CUSTOMARY WORK ACTIVITY WHICH IS DEFINED AS LIGHT WORK FOR ANY CONTINUOUS PERIOD OF TWELVE MONTHS.

THE ELEMENTS OF PROOF WHICH SHOULD BE CONSIDERED IN DETERMINING WHETHER PLAINTIFF HAS ESTABLISHED A DISABILITY WITHIN THE MEANING OF THE ACT ARE: (1) OBJECTIVE MEDICAL FACTS; (2) MEDICAL OPINIONS; (3) SUBJECTIVE EVIDENCE OF PAIN AND DISABILITY; AND (4) THE CLAIMANT'S AGE, EDUCATION AND WORK EXPERIENCE. HICKS V. GARDNER, 393 F2D 299 (4TH CIR. 1968); STEVENS V. MATHEWS, SUPRA; MORGAN V. GARDNER, 254 F.SUPP. 977 (USDC ND OKL. 1966). THE EVIDENCE IN THE RECORD WILL BE SUMMARIZED BELOW.

HISTORY OF THE CLAIM

IN MARCH OF 1974, PLAINTIFF UNDERWENT A TRIPLE CORONARY ARTERY SAPHENOUS VEIN BYPASS OPERATION. (TR 144) CLAIMANT FIRST FILED AN APPLICATION FOR A PERIOD OF DISABILITY BENEFITS ON SEPTEMBER 12, 1974, ALLEGING HE BECAME DISABLED ON JULY 15, 1974 BY REASON OF POSITIONAL HYPOTENSION AND RESIDUALS OF THE BYPASS OPERATION. (TR 46-49) PLAINTIFF RETURNED TO WORK ON APRIL 1, 1975 (TR 53) AND WORKED THROUGH DECEMBER, 1975. (TR 52-55) IT WAS THEN DETERMINED BY THE SECRETARY OF HEALTH, EDUCATION AND WELFARE THAT PLAINTIFF HAD REGAINED THE ABILITY TO ENGAGE IN SUBSTANTIAL GAINFUL WORK ACTIVITY IN JANUARY OF 1976 AND HIS PERIOD OF DISABILITY AND ENTITLEMENT TO BENEFITS WAS STOPPED IN MARCH OF 1976. (TR 56) PLAINTIFF FILED A SECOND APPLICATION FOR DISABILITY BENEFITS ON JANUARY 26, 1977 (TR 57-60) STATING THAT HE WAS TOTALLY DISABLED DUE TO "HEART SURGERY-LOW BLOOD PRESSURE." ON MAY 17, 1977, AFTER DENIAL OF HIS CLAIM, PLAINTIFF FILED A "REQUEST FOR RECONSIDERATION" BEFORE THE AGENCY (TR 63), WHEREIN HE STATED:

"I FEEL THAT THE EVALUATION OF MY CONDITION IS NOT PROPER. I HAVE DIZZY SPELLS, MY BLOOD PRESSURE DROPS 30 POINTS AND I AM NOW DEPRESSED. I AM UNABLE TO WORK BECAUSE OF THIS CONDITION."

ON OCTOBER 20, 1977, PLAINTIFF FILED A REQUEST FOR HEARING (TR 17) WHEREIN HE STATED HE HAD BEEN DISABLED SINCE AUGUST 23, 1976. PLAINTIFF DID WORK FROM OCTOBER 17, 1976 TO NOVEMBER 2, 1976 (TR 73) AT A RATE OF \$1265.00 PER MONTH. THIS WAS CONSIDERED AN UNSUCCESSFUL WORK ATTEMPT BY THE SOCIAL SECURITY ADMINISTRATION. (TR 76)

A HEARING WAS HAD DE NOVO BEFORE AN ADMINISTRATIVE LAW JUDGE WHICH RESULTED IN AN ADVERSE DETERMINATION TO PLAINTIFF. THIS DECISION WAS AFFIRMED BY THE APPEALS COUNCIL, AND PLAINTIFF COMMENCED THIS LITIGATION. AS HERETOFORE NOTED, THIS MATTER WAS REMANDED FOR FURTHER PROCEEDINGS; AN ADDITIONAL HEARING WAS HAD; THE DECISION OF THE ADMINISTRATIVE LAW JUDGE WAS ADVERSE TO PLAINTIFF; THE APPEALS COUNCIL AFFIRMED THE DECISION OF THE ADMINISTRATIVE LAW JUDGE; AND THE CASE IS NOW IN A POSTURE FOR DISPOSITIVE DETERMINATION BY THIS COURT.

MEDICAL EVIDENCE

ON MARCH 22, 1977, DR. BRUDAGE FOR THE AGENCY CONTACTED DR. BROCKSMITH (PLAINTIFF'S PHYSICIAN) BY TELEPHONE AND A TRANSCRIPT OF THAT CONVERSATION APPEARS AT PAGE 153 OF THE TRANSCRIPT. DR. BROCKSMITH STATED:

"HE HAS WEAKNESS. THAT'S ONE OF HIS BIG PROBLEMS, AND APPARENTLY THE BIG THING IS ORTHOSTATIC HYPOTENSION. THIS WAS CONTROLLED WITH FLORINEF ACETATE. WE GAVE HIM SOME OF THAT RECENTLY AND HE GOT A LITTLE EDEMATOUS FROM IT AND WE'VE HAD TO BACK UP ON THE DOSE, BUT NOT ANYTHING ALARMING. I DON'T KNOW HOW HE'S FARED SINCE THAT TIME. I GOT HIM AT 120/70 AND THEN IT DROPPED TO 90/60 STANDING. THAT WAS THE 18TH OF FEB. AND THEN I CHECKED HIM AGAIN ON THE 28TH OF FEB., AND THE BP WAS TOO DIFFICULT TO GET AND I CALLED IT INDETERMINATE AND DIDN'T EVEN PUT DOWN NUMBERS."

DR. BROCKSMITH FURTHER STATED THAT PLAINTIFF WAS NOT HAVING ANY ANGINA OR DYSPNEA OR EXERTION; HAD NOT BEEN DECOMPENSATED; AND THAT HIS MAIN TROUBLE SEEMS TO BE HYPOTENSION. THE FOLLOWING QUESTION WAS THEN ASKED AND ANSWERED:

"DR. BRU: DO YOU THINK THIS MAN - I SEE HE'S ONLY 55 YEARS OLD - COULD HE DO LIGHT WORK?"

DR. BRO: WELL, I SHOULD THINK SO."

ON AUGUST 9, 1977, DR. MATTHEWS OF THE AGENCY MADE CONTACT ONCE AGAIN WITH DR. BROCKSMITH AND A TRANSCRIPTION OF THAT TELEPHONE CONVERSATION APPEARS AT PAGES 154-155 OF THE TRANSCRIPT. DR. BROCKSMITH STATED THAT PLAINTIFF'S CONDITION WAS UNCHANGED FROM THAT DISCUSSED ON MARCH 22, 1977; THAT HE HAD NO ANGINA, DECOMPENSATION; HIS DIABETES WAS VERY MILD AND PLAINTIFF WAS NOT ON INSULIN; THERE WAS NO END-ORGAN CHANGE AS THE RESULT OF

HIS DIABETES; NO COMPLAINTS WERE MADE AS TO HIS STOMACH ULCER; PLAINTIFF DID NOT APPEAR TO BE ANEMIC OR MALNOURISHED; HIS BLOOD PRESSURE WAS RESPONDING TO TREATMENT; HIS DEPRESSION WAS MODERATE AND HE HAD NOT REQUIRED PSYCHIATRIC TREATMENT BUT HAD RESPONDED TO TRANQUILIZERS.

ON OCTOBER 15, 1977, DR. BROCKSMITH REPORTED IN A LETTER, CONCERNING THE PATIENT, HOYT RICH, AND STATED IN PERTINENT PART:

"ON 10 OCTOBER 1977, THE PATIENT CONSULTED ME BECAUSE HE HAD BEEN REJECTED FOR SOCIAL SECURITY AID ON THE BASIS OF PHYSICAL INCAPACITATION. HE FEELS THAT MY STATEMENT THAT HE WAS ABLE TO WORK SHOULD NOT APPLY TO THE FULL YEAR 1976 TO 1977 AND HIS CASE SHOULD BE RE-ADJUDICATED(SIC) ON THIS BASIS.

I INDICATED IN AUGUST THAT I FELT HE MIGHT BE ABLE TO DO SOME LIGHT WORK. I CONTINUE TO BE OF THE OPINION AS OF AUGUST THE PATIENT WAS ABLE TO CARRY OUT SOME GAINFUL WORK, BUT I SERIOUSLY DOUBT THAT HE WAS PHYSICALLY OR EMOTIONALLY ABLE TO DO SO BEFORE THAT."

AFTER REMAND TWO MORE EXHIBITS WERE INTRODUCED. EXHIBIT 32, TRANSCRIPT 243, IS A COPY OF ATTENDING PHYSICIAN'S STATEMENT OF DISABILITY COMPLETED BY DR. BROCKSMITH ON MARCH 4, 1977, CONCERNING AN EXAMINATION MADE ON FEBRUARY 28, 1977, WHEREIN THE DOCTOR CONCLUDED THAT PLAINTIFF WAS DISABLED FOR ALL TYPES OF OCCUPATION, INCLUDING HIS REGULAR OCCUPATION. THE DIAGNOSIS WAS: "ARTERIOSCLEROTIC HEART DISEASE WITH STENOSIS OF LEFT ANTERIOR DESCENDING CORONARY ARTERY AND RIGHT CORONARY ARTERY." A LETTER DATED JANUARY 12, 1979, FROM DR. BROCKSMITH TO PLAINTIFF'S COUNSEL (TR 243, Ex.33) REFLECTED THAT THE DOCTOR STATED, IN PERTINENT PART:

"....THE DISABILITY WHICH IN MY OPINION HE INCURRED FROM THE DISEASE SEEMS TO ME TO BE WELL ESTABLISHED AND I CAN DO NO MORE THAN TO REITERATE AND REAFFIRM MY OPINION REGARDING HIS TOTAL DISABILITY. I AM FIRMLY OF THE OPINION THAT THIS MAN WAS TOTALLY INCAPACITATED DURING THE PERIOD OF TIME AS INDICATED ON THE REPORT (REPORT OF OCTOBER 15, 1977) AND THAT GAINFUL OCCUPATION WOULD HAVE BEEN IMPOSSIBLE DURING THIS PERIOD."

A REPORT WAS RENDERED BY DR. NOEL HOLTZ, DATED JANUARY 14, 1977, ON A NEUROLOGY CONSULTATION. (TR 139, Ex.24) HIS IMPRESSION WAS ORTHOSTATIC HYPOTENSION, POSSIBLY DUE TO A DIABETIC AUTONOMIC NEUROPATHY; DIABETES MELLITUS, MILD, CLINICALLY; CORONARY ATHEROSCLEROTIC HEART DISEASE, STATUS POST CORONARY. DR. HOLTZ

FURTHER STATED:

"THERE IS NO EVIDENCE TO SUGGEST THAT THE PATIENT IS SUFFERING FROM ANY OF THE DEGENERATIVE DISEASES KNOWN TO CAUSE ORTHOSTATIC HYPOTENSION SUCH AS SHY-DRAGER OR AUTONOMIC DYSFUNCTION OF PARKINSON'S DISEASE. I DO NOT THINK THAT THE QUINIDINE IS PLAYING A SIGNIFICANT ROLE AND THE PATIENT IS TAKING NO OTHER MEDICATIONS KNOWN TO CAUSE ORTHOSTATIC HYPOTENSION."

HE RECOMMENDED PLAINTIFF BE TRIED ON FLORINET ACETATE.

A REPORT FRM DR. DAVID L. BREWER TO DR. BROCKSMITH (TR 146) DATED SEPTEMBER 13, 1976, STATES THAT SINCE STOPPING THE MELLARIL THE PLAINTIFF HAD MUCH LESS "POSTURAL DROP" AND HIS SYMPTOMS WERE MUCH LESS; THE DIABETES WAS NOT MUCH OF A PROBLEM; THAT HE SHOULD WEAR ELASTIC STOCKINGS TO HELP WITH HIS PROBLEM.

SUBJECTIVE EVIDENCE

PLAINTIFF TESTIFIED AT BOTH HEARINGS AS DID HIS WIFE. HE STATED THAT ALTHOUGH NO DOCTOR TOLD HIM NOT TO WORK DURING THIS PERIOD HE JUST DIDN'T FEEL LIKE WORKING AND BECAME DEPRESSED; HE QUIT WORK ON AUGUST 23, 1976 BECAUSE OF DIZZY SPELLS; HE WAS LISTLESS, LIFELESS AND HAD NO ENERGY; DURING THE LATTER PART OF HIS CLAIMED DISABILITY HE WAS ABLE TO MOW AT LEAST A PART OF HIS LAWN; HE WAS UNABLE TO DRIVE A CAR; IT WAS DISCOVERED HE HAD HYPOGLYCEMIA WHICH IS CONTROLLED BY DIET; HE FELT FAINT AND WOOZY; HE COULD WALK BETTER THAN STANDING BECAUSE WALKING "STIRRED" HIS BLOOD PRESSURE UP. HE SPECIFICALLY TESTIFIED AS TO AN OCCASION WHEN A FELLOW EMPLOYEE (MR. ROBERT GOFF) NOTICED HIS PALENESS AND COMMENTED AS TO HIS BLOOD PRESSURE DROPPING. (THIS OCCASION WAS SUBSTANTIALLY CONFIRMED BY MR. GOFF'S TESTIMONY.)

MRS. RICH, PLAINTIFF'S WIFE, TESTIFIED AS TO HIS FAINTNESS WHEN GETTING UP FROM A SITTING POSITION; COULDN'T DRIVE AN AUTOMOBILE WITHOUT BEING FAINT.

TWO FELLOW EMPLOYEES OF PLAINTIFF, ONE OF WHOM WAS RETIRED, TESTIFIED AS TO THEIR OBSERVATIONS OF PLAINTIFF DURING THE PERIOD IN QUESTION; HIS GENERAL APPEARANCE AND HIS WEARING APPAREL.

AFFIDAVIT OF PLAINTIFF

PLAINTIFF ATTACHED TO HIS MOTION TO RECONSIDER PRESENTLY PENDING HIS AFFIDAVIT, WHICH HIS COUNSEL STATES EVIDENTLY WAS NOT CONSIDERED BY THE APPEALS COUNCIL AND ASKS THE COURT TO CONSIDER IT IN DETERMINING THIS LITIGATION. PLAINTIFF'S COUNSEL STATES THAT THE AFFIDAVIT WAS RETURNED FOR THE INSERTION OF PLAINTIFF'S SOCIAL SECURITY NUMBER AND THAT THE DECISION OF THE APPEALS COUNCIL WAS RENDERED BEFORE IT COULD BE RETURNED.

THE TENTH CIRCUIT COURT OF APPEALS, IN OHLER V. SECRETARY OF H.E.W. OF U.S., 583 F2D 501, 505 (10TH CIR. 1978) HAS HELD THAT "THE COURT MAY NOT CONSIDER EVIDENCE OUTSIDE THE RECORD WHICH WAS PRESENTED TO THE ADMINISTRATIVE LAW JUDGE IN JUDGING WHETHER THE DECISION WAS BASED UPON SUBSTANTIAL EVIDENCE." PLAINTIFF HAS NOT MOVED TO REMAND. THE COURT WILL, THEREFORE, NOT CONSIDER THE AFFIDAVIT SUBMITTED BY PLAINTIFF.

CONCLUSION

IN SOCIAL SECURITY DISABILITY CASES, THE CLAIMANT BEARS THE BURDEN OF SHOWING THE EXISTENCE OF DISABILITY AS DEFINED BY THE ACT. DEMANDRE V. CALIFANO, 591 F2D 1088,1090 (5TH CIR. 1979); LEWIS V. CALIFANO, 574 F2D 452 (8TH CIR. 1978); MCDANIEL V. CALIFANO, 568 F2D 1172 (5TH CIR. 1978); TURNER V. CALIFANO, 563 F2D 669 (5TH CIR.1977); VALENTINE V. RICHARDSON, 468 F2D 588 (10TH CIR. 1972).

THE PLAINTIFF HAS THE BURDEN OF PROVING SOME MEDICALLY DETERMINABLE IMPAIRMENT WHICH PREVENTS HIM FROM ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY. 42 U.S.C. SECTION 423(D)(1) AND (3). ALBERTSON V. CALIFANO, 453 F.SUPP.610 (USDC KAN. 1978); GARRETT V. CALIFANO, 460 F.SUPP. 888 (USDC KAN. 1978).

IT IS NOT THE FUNCTION OF THE COURT TO RE-WEIGH THE EVIDENCE. SEE, E.G., TRUJILLO V. RICHARDSON, 429 F2D 1149 (10TH CIR.1970).

THE FUNCTION OF THE ADMINISTRATIVE LAW JUDGE IS TO WEIGH THE EVIDENCE, INCLUDING THE TESTIMONY OF A CLAIMANT AND MEDICAL AND LAY OPINION EVIDENCE.

IN THE INSTANT CASE, IT SEEMS CLEAR THAT PLAINTIFF IS AFFLICTED WITH VARIOUS AILMENTS, ALL OF WHICH HAVE BEEN AND ARE TREATABLE. THE ISSUE PRESENT, HOWEVER, IS WHETHER THE RECORD SUPPORTS PLAINTIFF'S CONTENTION THAT HIS IMPAIRMENT IS "OF SUCH SEVERITY" THAT HE COULD NOT ENGAGE IN GAINFUL EMPLOYMENT DURING THE PERIOD IN QUESTION.

PLAINTIFF'S SUBJECTIVE COMPLAINT AND DESCRIPTIONS OF SYMPTOMOLOGY EVEN THOUGH UNSUPPORTED BY CLINICAL FINDINGS MUST ALSO BE CONSIDERED BY THE ADMINISTRATIVE LAW JUDGE AND THE SECRETARY. SUCH "SUBJECTIVE EVIDENCE", HOWEVER, IS NOT BINDING UPON THE ADMINISTRATIVE LAW JUDGE, WHO MUST SUBJECT IT TO CRITICAL SCRUTINY.

ADDITIONALLY, THE CREDIBILITY OF WITNESSES IS A MATTER FOR THE SOUND JUDGMENT OF THE ADMINISTRATIVE LAW JUDGE.

WHERE THERE IS EVIDENCE TO SUPPORT THE EXAMINER'S DETERMINATION, IT WOULD BE IMPROPER FOR A REVIEWING COURT TO "PARSE" THE COLD RECORD IN SEARCH OF A DIFFERENT REASON. DEYO V. WEINBERGER, 406 F.Supp. 968 (USDC SD NY 1975); KAMINSKI V. CALIFANO, 465 F.Supp. 367 (USDC SD NY 1979).

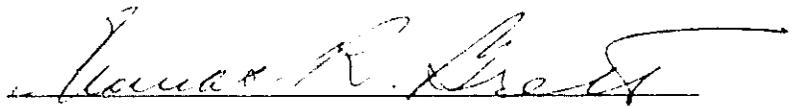
THE STATEMENT BY A PHYSICIAN THAT AN INDIVIDUAL IS OR IS NOT DISABLED AND UNABLE TO WORK IS A CONCLUSION UPON THE ULTIMATE ISSUE TO BE DECIDED BY THE SECRETARY, AND IS NOT DETERMINATIVE OF THE QUESTION OF WHETHER THE CLAIMANT IS DISABLED. THE WEIGHT TO BE GIVEN SUCH A STATEMENT DEPENDS ON THE EXTENT TO WHICH IT IS SUPPORTED BY SCIENTIFIC AND COMPLETE MEDICAL FINDINGS AND IS CONSISTENT WITH OTHER EVIDENCE AS TO THE SEVERITY AND PROBABLE DURATION OF THE INDIVIDUAL'S IMPAIRMENT. ALBERTSON V. CALIFANO, SUPRA.

AFTER THOROUGHLY EXAMINING THE ADMINISTRATIVE RECORD BEFORE IT, THE COURT IS OF THE OPINION THAT SUBSTANTIAL EVIDENCE IS CONTAINED THEREIN TO SUPPORT THE SECRETARY'S DECISION THAT PLAINTIFF WAS NOT DISABLED WITHIN THE MEANING OF THE PERTINENT PROVISIONS OF THE SOCIAL SECURITY ACT AND REGULATIONS APPLICABLE THERETO.

ACCORDINGLY, THE SECRETARY'S DECISION SHOULD BE AFFIRMED
AND A JUDGMENT OF AFFIRMANCE WILL BE ENTERED THIS DATE,

IT IS ORDERED THAT THE PLAINTIFF'S MOTION BE AND THE
SAME IS HEREBY OVERRULED.

ENTERED THIS 5th DAY OF MARCH, 1980.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

E.C. LEAMON,)
)
Plaintiff,)
)
vs.)
)
W.Y. HALE,)
Defendant.)

No. 79-C-458-C

FILED

MAR 5 - 1980

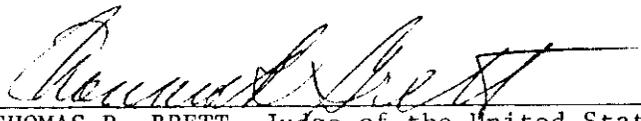
**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

ORDER DISMISSING ACTION WITH
PREJUDICE

It appearing to the satisfaction of the Court that the above entitled Cause of Action has been fully settled and all matters and controversies have been compromised by and between the Parties as evidenced by the Stipulation filed herein, on Motion of the Plaintiff,

IT IS HEREBY ORDERED that the above entitled Cause be and the same is hereby Dismissed with Prejudice and costs to be charged to the Plaintiff.

DATED at Tulsa, Oklahoma, this 5 day of Mar., 1980.


THOMAS R. BRETT, Judge of the United States
District Court for the Northern District of
Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

E.C. LEAMON,)
Plaintiff,)
vs.)
W.Y. HALE,)
Defendant.)

No. 79-C-458-C

FILED
MAR 5 - 1980
Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION FOR DISMISSAL WITH PREJUDICE

COME NOW the Parties, E.C. Leamon, Plaintiff, by his Attorneys, Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, by Fred C. Cornish, and W.Y. Hale, Defendant, by his Attorneys, Whitebook, Holtz, Harlin & Gaddis, by Charles A. Whitebook, and hereby stipulate and agree, subject to the approval and Order of this Court that the above entitled action be Dismissed, with Prejudice, and with Costs to the Plaintiff. The Parties hereby Stipulate:

1. That a genuine controversy exists between the Plaintiff and the Defendant as to both the First Cause of Action and the Second Cause of Action of Plaintiff's Complaint.

2. That in order to effect an amicable settlement of the controversy and to avoid the time and expense of a Jury Trial, Plaintiff and Defendant have, subject to the Court's approval, entered into a Settlement of the controversy and have exchanged the considerations in said Settlement provided.

3. That by reason thereof, Plaintiff desires that this cause of action be Dismissed with Prejudice and with costs to the Plaintiff.

WHEREFORE, the Parties move the Court to enter its Order Dismissing this cause of action, with Prejudice as to the filing of any further action and with the costs to the Plaintiff.

WHITEBOOK, HOLTZ, HARLIN & GADDIS

By *Charles A. Whitebook*
Charles A. Whitebook
Attorneys for Defendant W.Y. Hale

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH
AND NELSON

By *Fred C. Cornish*
Fred C. Cornish
Attorneys for Plaintiff, E.C. Leamon

STIPULATION APPROVED:

Thomas R. Brett
THOMAS R. BRETT
U.S. District Judge

1980

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 - 1980

Jack G. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RALPH L. HOOKS,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-53-E

DEFAULT JUDGMENT

This matter comes on for consideration this 5th
day of March, 1980, the Plaintiff appearing by Robert P. Santee,
Assistant United States Attorney for the Northern District
of Oklahoma, and the Defendant, Ralph L. Hooks, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Ralph L. Hooks, was personally
served with Summons and Complaint on January 30, 1980, and
that Defendant has failed to answer herein and that default
has been entered by the Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to
the Complaint has expired, that the Defendant has not answered
or otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

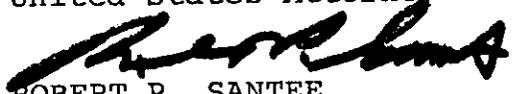
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant,
Ralph L. Hooks, for the sum of \$939.99, plus interest at the
legal rate from the date of this Judgment until paid.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 5 - 1980

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID E. ASH, a/k/a)
 DAVID EARL ASH,)
)
 Defendant.)

Jack J. Silver, Jr.
U. S. DISTRICT COURT

CIVIL ACTION NO. 79-C-448-D

DEFAULT JUDGMENT

This matter comes on for consideration this 5th day of March, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, David E. Ash, a/k/a David Earl Ash, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, David E. Ash, a/k/a David Earl Ash, was personally served with Summons and Complaint on January 29, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, David E. Ash, a/k/a David Earl Ash, for the principal sum of \$612.00, plus the accrued interest of \$197.17, as of May 17, 1979, plus interest at 7% from May 17, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$612.00 from the date of Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney

ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 5 - 1980

Jack S. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
THOMASA C. BARCUS,)
)
Defendant.)

CIVIL ACTION NO. 80-C-54-E

DEFAULT JUDGMENT

This matter comes on for consideration this _____ day of March, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Thomasa C. Barcus, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Thomasa C. Barcus, was personally served with Summons and Complaint on January 29, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

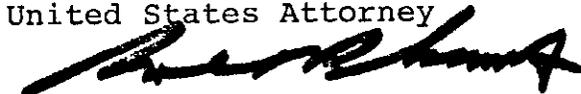
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Thomasa C. Barcus, for the principal sum of \$638.62, plus the accrued interest of \$90.74 as of October 15, 1979, plus interest at 7% from October 15, 1979, until the date of Judgment, plus interest at the legal rate on the principal sum of \$638.62 from the date of Judgment until paid.

15/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 5 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONALD L. TERRIAN,)
)
 Defendant.)

CIVIL ACTION NO. 80-C-55-E

DEFAULT JUDGMENT

This matter comes on for consideration this 5th day of March, 1980, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Ronald L. Terrian, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Ronald L. Terrian, was personally served with Summons and Complaint on January 29, 1980, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

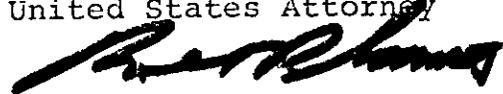
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Ronald L. Terrian, for the sum of \$1,019.10, plus interest at the legal rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney



ROBERT P. SANTEE
Assistant U. S. Attorney

Scott v. Hoffmon, 425 F.Supp. 71 (S.D.Ill. 1977) and United States v. Phelps Dodge Corp., 391 F.Supp. 1181 (D.Ariz. 1975), the use of the word "shall" in Section 309 of the Act, 33 U.S.C. §1319(a)(3), and the legislative history indicate that those decisions holding the duty to be mandatory are probably correct. The district courts are empowered to order the Administrator to perform non-discretionary acts or duties by virtue of Section 505 of the Act, 33 U.S.C. §1365(a). The point is, however, moot in the instant case since the permit has been, in fact, issued. Mandamus will not lie to order the doing of an act which has already been done, e.g., Chicago Consortium, Inc. v. Brennan, 599 F.2d 138 (Seventh Cir. 1979); Van Geldern v. Chavez, 392 F.2d 578 (Ninth Cir. 1968); Paige v. Pennsylvania Board of Parole, 311 F.Supp. 940 (E.D.Pa. 1970).

Plaintiff, by way of reply to Defendants' motions, states that while he acknowledges the existence of facially valid NPDES permits, he denies that they are valid because they are accompanied by certain Administrative Orders which allegedly remove the requirement for Advanced Waste Treatment and which fail to impose the 1983 deadline for compliance. Plaintiff argues that the legal result is that the City of Tulsa is still discharging without a permit.

It is clear from Plaintiff's arguments that Plaintiff is aggrieved by the manner in which the EPA has acted in issuing the NPDES permits. In Sun Enterprises, Ltd. v. Train, 532 F.2d 280 (Second Cir. 1976), the court stated:

Nor do § 505(a)(2) or 28 U.S.C. § 1361 justify the district court suit. It is not the failure of the Administrator to perform a non-discretionary duty which is at issue; rather it is the manner in which those duties were performed which appellants are challenging. Review of the actions of the Administrator in issuing or denying a permit must be sought, as we have held, under § 509, in the court of appeals.

If, as we have found, § 505 provides no jurisdictional basis for appellants' suit in the district court, then the savings clause of § 505 (33 U.S.C. § 1365(e)) cannot afford them any relief. Section 509 contains no such savings clause. Thus the alternate bases for jurisdiction urged by appellants are of no avail. In

any case, the APA, 5 U.S.C. § 704, applies, by its own terms, only where "there is no other adequate remedy in a court" The availability of § 509 review precludes the application of 5 U.S.C. § 704.

532 F.2d at 288 (citations omitted); see also the District Court's opinion, Sun Enterprises, Ltd. v. Train, 394 F.Supp. 211 (S.D.N.Y. 1975); and Central Hudson Gas & Elec. Corp. v. United States E.P.A., 587 F.2d 549 (Second Cir. 1978). Section 509 of the Act, 33 U.S.C. §1369 (b)(1)(F) provides:

Review of the Administrator's action . . . in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person.

The NPDES permits having been issued, Plaintiff's remedy, if any, lies within the authority of the Court of Appeals, and not this Court. Plaintiff's claims, as far as they are cognizable in this Court are moot, and this action should be dismissed.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss be granted, and this cause is hereby dismissed.

It is so Ordered this 4th day of March, 1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 1980

CHARLES VICTOR FETTER,)
)
 Petitioner Pro Se,)
)
 vs.) No. 79-C-637-E
)
 THE STATE OF OKLAHOMA,)
)
 Respondents.)

W. C. Silver, Clerk
DISTRICT COURT

O R D E R

The Court has before it for consideration Petitioner's
Petition for Writ of Habeas Corpus. Petitioner is presently
incarcerated in the Oklahoma State Penitentiary by virtue of
the judgment and sentence rendered in Case No. CRF-76-2908
in the District Court of Tulsa County, Oklahoma. In that case,
Petitioner was found guilty of the offense of Conspiracy to
Commit Murder. An appeal was taken to the Oklahoma Court of
Criminal Appeals, Case No. F-78-298, and the judgment was
affirmed, Fetter v. State, 598 P.2d 262 (Okla. Crim. 1979)

It appears, from a careful consideration of the file,
that Petitioner has not exhausted his state court remedies.
In Hoggatt v. Page, 432 F.2d 41 (Tenth Cir. 1970), the court
said:

No principle in the realm of Federal habeas
corpus is better settled than that state
remedies must be exhausted. 28 U.S.C.A. §
2254(b) (c). The principle has been recognized
and applied in this Circuit that habeas corpus
relief cannot be granted in the courts of the
United States for denial of a constitutional right
in a state court where the relief is sought in
the Federal court upon a ground which was not
asserted in the state courts and state remedies
have not been fully exhausted.

432 F.2d at 43; Omo v. Crouse, 395 F.2d 757 (Tenth Cir. 1968);
Brown v. Crouse, 395 F.2d 755 (Tenth Cir. 1968); Karlin v.
State of Oklahoma, 412 F.Supp. 635 (W.D.Okla. 1976).

In accordance with the foregoing authorities, the Peti-
tion for Writ of Habeas Corpus should be dismissed.

IT IS THEREFORE ORDERED that the Petition for Writ of

Habeas Corpus be, and the same hereby is, dismissed.

It is so Ordered this 4TH day of March,
1980.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 1980

Jack C. [unclear], Clerk
U. S. DISTRICT COURT

JOE MAC KOOL, Individually)
and in Behalf of All Others)
Similarly Situated,)
)
Plaintiff,)
vs.)
)
SPARTAN SCHOOL OF GUNSMITHING,)
a Division of Spartan School of)
Aeronautics,)
)
Defendant.)

No. 79-C-668-BT

O R D E R

This action, originally brought in the United State District Court for the Eastern District of Arkansas, was transferred to this Court pursuant to 28 U.S.C. §1404(a).

Plaintiff alleges that this is a class action brought on behalf of students and former students of Spartan School of Gunsmithing, a Division of Spartan School of Aeronautics, Inc., who presently attend or attended said school. Plaintiff seeks return of the \$3,300.00 tuition paid and punitive damage in the sum of \$10,000 individually and a like amount for each member of the proposed class. In the complaint, plaintiff contends the agents or representatives of defendant distributed to plaintiff and made various representations to plaintiff concerning various benefits that would be obtainable by the student at defendant's school which were never provided.

Defendant has filed a Motion to Dismiss pursuant to Rule 12(b)(2) and (6), F.R. Civ.P.

Defendant first contends that this Court lacks jurisdiction pursuant to 28 U.S.C. §1332(a) because plaintiff has failed to adequately allege diversity jurisdiction. In the complaint filed, plaintiff alleges he is a "resident" of Pulaski County, Arkansas, and the defendant maintains its principal place of business in Tulsa, Oklahoma.

Residence is not synonymous with domicile or citizenship. Numerous cases have held allegations that the parties were residents of different states or that one party or the other resided

18

in a particular state to be inadequate to support a finding of diversity jurisdiction. 1 Moore's Federal Practice, §0.74[3.-2]; Whitelock v. Leatherman, 460 F2d 507 (10th Cir. 1972).

A corporation has dual citizenship. In brief, a corporation is a citizen of both the state of its incorporation and that of its principal place of business. 28 U.S.C. §1332(c); 1 Moore's Federal Practice, §0.77[2.1]; Wright and Miller, Federal Practice and Procedure, §3624, p.781; Bank of California Nat. Ass'n v. Twin Harbors Lumber Co., 465 F2d 489 (9th Cir. 1972); de Walker v. Pueblo Int'l, Inc., 569 F2d 1169 (1st Cir. 1978). Plaintiff has alleged only the principal place of business of the defendant and not its State of incorporation.

The Court notes in plaintiff's brief, at page 1, he asserts that many of the "students located at defendant's school in Tulsa, Oklahoma are permanent residents of other States other than Oklahoma which clearly gives rise to plaintiffs(sic) allegations of diversity of citizenship with respect to the plaintiff." It has long been established that diversity of citizenship in a class action is determined by the citizenship of the named representative of the class rather than the citizenship of class members. Rocket Oil & Gas Co. v. Arkla Exploration Co., 435 F.Supp. 1303 (USDC WD OKL. 1977); Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356, 41 S.Ct. 338, 65 L.Ed. 673 (1921); United States ex rel Sero v. Preiser, 506 F2d 1115 (2nd Cir. 1974), cert. denied, 421 U.S. 921, 95 S.Ct. 1587, 43 L.Ed.2d 789 (1975); Friedman v. Meyers, 482 F2d 435 (2nd Cir. 1975); Galagaz v. Calhoon, 309 F2d 248 (5th Cir. 1962); Neville v. Delta Insurance Co., 45 F.R.D. 345 (USDC Minn. 1968); Wright and Miller, Federal Practice and Procedure, Vol. 7, §1755. Plaintiff's position as stated in his brief as to residence [citizenship] of other proposed members of the class is without merit.

With the pleadings in their present posture, plaintiff has not alleged diversity of citizenship so as to confer jurisdiction on this Court.

Defendant next contends that this is a contract action and punitive damages are not recoverable under the statutes of the State of Oklahoma, citing to 23 O.S. §9 which provides:

"In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant."

The allegations of the complaint sound in contract. Plaintiff has designated the action as one in contract on the civil cover sheet. In his brief, plaintiff asserts that the representations allegedly made were contained in brochures furnished plaintiff and other students. There is no allegation of oppression, fraud or malice made in the complaint. The Court, therefore, concludes that the cause of action asserted by the plaintiff sounds in contract. This being so, does Oklahoma law apply. The Enrollment Agreement between plaintiff and defendant [copy of which is attached to defendant's brief in support of the Motion to Dismiss] provides that it does not constitute a contract until it had "been approved by an official of Spartan School at its administrative offices in Tulsa, Oklahoma." Thus, the last act giving rise to the contract was not accomplished until the approval was given in Oklahoma. The performance of the contract was in Oklahoma where the school is located. Oklahoma law applies. Under Oklahoma law, as above noted, punitive damages are not recoverable in an action arising out of contract. Plaintiff's claim, standing alone, without the claim for punitive damages, is for \$3,300.00, well under the jurisdictional amount to maintain a case in Federal Court.

Plaintiff, however, contends that even if the position of the defendant is correct as to the punitive damage question, the claims of plaintiff and the proposed members of his class may be aggregated to meet the federal jurisdictional amount.

In Pinel v. Pinel, 240 U.S. 594, 36 S.Ct. 416, 60 L.Ed. 817 (1916), the Supreme Court held:

"The settled rule is that when two or more plaintiffs having separate and distinct demands unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount."

In Zahn v. International Paper Co., 414 U.S. 291, 94 S.Ct. 505, 38 L.Ed. 2d 511 (1973)¹, the Supreme Court affirmed the Second Circuit Court of Appeals, 469 F2d 1033, holding that each member of a class in an action based on diversity of citizenship must possess a claim for more than \$10,000, unless some joint interest among the members of the class can be shown. The Supreme Court quoted the Second Circuit's comment that "one plaintiff may not ride in on another's coattails." See also, Wright and Miller, Federal Practice and Procedure, Vol. 7, 1978 Supplement, §1756; 1 Moore's Federal Practice §0.97[5]; Snyder v. Harris, 394 U.S. 332, 335, 338, 89 S.Ct. 1053, 22 L.Ed.2d 319 (1969). Plaintiff has made no showing of the necessary joint interest of the members of the proposed class. The suit is one on contract; each contract is separate and distinct; there is no showing of a common and undivided interest among the proposed members of the class. The Court finds that the claims of the proposed members of the class cannot be aggregated to obtain the jurisdictional amount prerequisite for maintaining this action in Federal Court.

The Court finds that defendant's Motion to Dismiss based on lack of jurisdiction should be sustained. Having found lack of jurisdiction, the Court need not determine the balance of the Motion to Dismiss.

IT IS SO ORDERED.

ENTERED this 4TH day of March, 1980.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

^{1/} Some treatise authors with rather sound reasoning disagree with the view of Zahn, but it is the law that this Court must follow until overturned by the United States Supreme Court or the Congress.

FILED

MAR 4 - 1980

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-283-C ✓
)	
vs.	)	Tract No. 317ME
)	
65.55 Acres of Land, More or	)	The Working Interest in the
Less, Situate in Osage County,	)	Oil and Gas Leasehold
State of Oklahoma, and Wichita	)	Interests
River Oil Corporation, et al.,)	
and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$391.55


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-284-C ✓
)	
vs.	)	Tract No. 317ME
)	
65.55 Acres of Land, More or	)	The Overriding Royalty Inter-
Less, Situate in Osage County,	)	est in the Oil and Gas
State of Oklahoma and Virginia	)	Leasehold Interests
Kay, et al., and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$18.45


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 4 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-286-C ✓
)	
vs.	)	Tract No. 401ME
)	
160.00 Acres of Land, More or	)	The Working Interest in the
Less, Situate in Osage County,	)	Oil and Gas Leasehold
State of Oklahoma, and Wichita	)	Interests
River Oil Corporation, et al.,)	
and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$3,056.00


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-287-C ✓
)	
vs.	)	Tract No. 401ME
)	
160.00 Acres of Land, More or	)	The Overriding Royalty
Less, Situate in Osage County,	)	Interest in the Oil and Gas
State of Oklahoma, and Virginia	)	Leasehold Interests
Kay, et al., and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master file #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

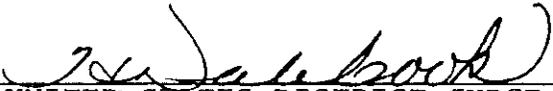
It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$144.00


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-289-C ✓
)	
vs.	)	Tract No. 423ME
)	
101.90 Acres of Land, More or	)	The Working Interest in the
Less, Situate in Osage County,	)	Oil and Gas Leasehold
State of Oklahoma, and Wichita	)	Interests
River Oil Corporation, et al.,)	
and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$5,169.41


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 - 1980 (c)

Jack G. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-290-C ✓
)	
vs.	)	Tract No. 423ME
)	
101.90 Acres of Land, More or	)	The Overriding Royalty
Less, Situate in Osage County,	)	Interest in the Oil and
State of Oklahoma, and Virginia	)	Gas Leasehold Interests
Kay, et al., and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

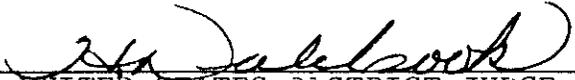
The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the
deposit of estimated compensation in this case as follows, to:
Treasurer, United States of America --- \$243.59


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 4 - 1980

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-281-C ✓
)	
vs.	)	Tract No. 316ME
)	
9.75 Acres of Land, More or	)	The Overriding Royalty
Less, Situate in Osage County,	)	Interest in the Oil and Gas
State of Oklahoma, and Virginia	)	Leasehold Interests
Kay, et al., and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$1.00


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAR 4 - 1980 (✓)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-C-280-C ✓
)	
vs.	)	Tract No. 316ME
)	
9.75 Acres of Land, More or	)	The Working Interests in the
Less, Situate in Osage County,	)	Oil and Gas Leasehold Interests
State of Oklahoma, and Wichita)	
River Oil Corporation, et al.,)	
and Unknown Owners,)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #405-8)

O R D E R

NOW, on this 4th day of March, 1980, the Court considers the Motion To Dismiss filed in this action by the Plaintiff, United States of America, on February 14, 1980.

The Court finds that:

The defendant owner of the subject property, having been served with a copy of Plaintiff's motion, has made no objection to such motion.

For good cause shown, in the Plaintiff's brief in support of its motion, this action should be dismissed.

The estimated compensation, deposited in the Registry of this Court when this action was filed, should be refunded to the Plaintiff.

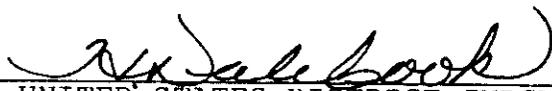
It Is Therefore ORDERED, ADJUDGED and DECREED that this action hereby is dismissed, without prejudice to the filing of a new case to condemn the subject property in the event that Congress should see fit to pass an Act authorizing such action.

It Is Further ORDERED, ADJUDGED and DECREED that the Declaration of Taking on which this action was based is hereby declared void and held for naught insofar as such Declaration of Taking includes any property rights covered by this civil action.

It Is Further ORDERED, ADJUDGED and DECREED that Plaintiff's Motion For Order For Delivery of Possession, which has been filed in this action, be and hereby is overruled.

The Clerk of this Court is directed to disburse the deposit of estimated compensation in this case as follows, to:

Treasurer, United States of America --- \$24.00


UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

1979-1009

U.S. District Court
Northern District of Oklahoma

THE PRUDENTIAL INSURANCE COMPANY)
 OF AMERICA, a corporation,)
)
 Plaintiff,)
)
 -vs-)
)
 CONNIE L. DEGRAFFENREID;)
 VIRGINIA LEE ANN DEGRAFFENREID,)
 a minor; VIRGINIA L. GRAHAM;)
 and ROBERT DEGRAFFENREID,)
)
 Defendants.)

No. 79-C-527-E

ORDER

Upon the application of the Plaintiff, The Prudential Life Insurance Company of America, and for good cause shown:

IT IS ORDERED:

1. The Prudential Life Insurance Company of America is hereby discharged and relieved of further responsibility in this cause as a result of the tender which it has made into the registry of this Court, and the Defendants are permanently enjoined from further assertion of claims relating to any and all proceeds due under the certificate issued to Rickey DeGraffenreid, Service No. 444-58-2295, pursuant to Group Policy D-320000 by Plaintiff to the Administrator of Veteran Offices to implement the Servicemen's Group Life Insurance Program (Title 38, U.S. Code, §665, et seq.), except by interpleading and assertion of claims in this action.

2. That this Court retain jurisdiction of this cause for the determination of the rights of the respective defendants in and to the fund or deposit in the registry of the Court, as well as the final taxation of court costs.



 JAMES O. ELLISON
 U.S. District Judge

IF THIS ORDER IS TO BE MAILED
 IT MUST BE BY REGISTERED MAIL AND
 RETURN RECEIPT REQUESTED

United States District Court

FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 79-C-368-BT

LAWRENCE ELLSWORTH KUPP, Father, and
ELIZABETH A. KUPP, Mother and Next of
Kin of Laura Kupp, Deceased,
vs. Plaintiffs,

SAMUEL E. COOPER, Administrator of the
Estate of Larry James Cooper, Deceased,
Defendant.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable THOMAS R. BRETT
, United States District Judge, presiding, and the issues having been duly tried and
the jury having duly rendered its verdict, for the Defendant.

It is Ordered and Adjudged that the Plaintiffs take nothing and that the
Defendant recover of the Plaintiff its costs of action.

FILED
MAR 3 1980 2
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Dated at Tulsa, Oklahoma, this 28th day
of February, 1980.

Thomas R. Brett
HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Jack C. Silver
Clerk of Court
JACK C. SILVER