

ENTERED ON DOCKET  
DATE JUL 09 1993

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

**FILED**  
JUL 8 1993  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DREX HONEYCUTT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STEPHEN MAXSON, )  
 )  
 Defendant. )

92-C-0872-B

ORDER

On September 28, 1992 Plaintiff Drew Honeycutt filed a Motion to Withdraw Reference. No action has been taken by the parties since then. As a result, the case is dismissed and is administratively closed.

SO ORDERED THIS 9 day of July, 1993.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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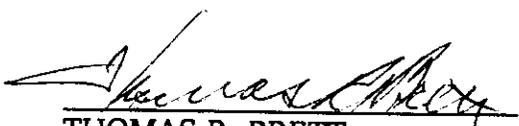
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IN THE UNITED STATES DISTRICT COURT FOR THE  
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Richard M. Lawrence, Clerk  
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NORTHERN DISTRICT OF OKLAHOMA

JAMES JACKSON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RANDY READAN HOUR, et al, )  
 )  
 Defendants. )

91-C-0411-B

ORDER

Plaintiff James Jackson has filed a Title VII Civil Rights Complaint against Defendants International Union, United Automobile, Aerospace & Agricultural Implement Workers of America and Local 1999. Now before the Court is Defendants' Motion For Summary Judgment (docket #55).<sup>1</sup>

The gist of the lawsuit is that Jackson, a Black man, accuses the Defendants of acquiescing in racial discrimination and otherwise unfairly representing him. During the time frame pertinent to this lawsuit, Jackson was an employee of General Motors. He also was a member of Defendant unions.

I. Summary of Facts

Jackson worked as a forklift driver at a General Motors Corporation ("GM") manufacturing plant in Oklahoma City, Oklahoma. Defendants were the collective bargaining representative for hourly workers at the plant. Jackson was covered by the

<sup>1</sup> The procedural history of this case is complex as illustrated by the 96 docket entries. Part of the reason is Jackson, as a pro se Plaintiff, has been given great latitude by the Court. Another complicating factor is that the lawsuit is one of two filed with the Court in what appear to be the same allegations. The case also has been further complicated by Jackson's failure to show up at a status conference and at a December 9, 1992 discovery hearing.

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bargaining agreement between UAW and GM.<sup>2</sup>

Prior to April 19, 1990, Jackson signed up for and gave GM notice that he intended to take the company's offer of a "buy-out." The "buy-out", in effect, meant Jackson would give up his job in exchange for approximately \$23,000 and a partial retirement pension. Jackson said he initially decided against the "buy-out", but later decided to take it, as set forth below.

On April 19, 1990, when Jackson attempted to collect his regular weekly check, he was told that the check was a part of his "buy-out" package.<sup>3</sup> He then went to the bathroom. When he came out, two GM supervisors -- Douglas Hill and Jack Weber -- told him he had taken "two afternoon breaks" and, as a result, they needed to talk to him. Jackson then demanded to meet with Readanhour, who was his union representative. At the meeting Jackson said Readanhour told him that management wanted to fire him. The next day Jackson decided to accept the "buy-out" because he believed he was about to be fired.<sup>4</sup>

On October 29, 1990 -- some six months after taking the buyout -- Jackson filed a Title VII charge against "UAW International" with the Equal Employment Opportunity Commission ("EEOC"). The charge asserted three allegations: (1) Jackson was unjustly charged with taking two afternoon breaks; (2) Jackson constructively discharged himself

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<sup>2</sup> *During his employment, Jackson filed some 50 grievances against GM which were generally based on race discrimination, race harassment, health and safety and claims of being overworked.*

<sup>3</sup> *According to Jackson, GM officials believed he had already signed up for the buy-out and had consequently withheld his weekly check.*

<sup>4</sup> *At the April 30, 1992 hearing before the Magistrate Judge, Jackson asserted that the decision to fire him was based on race. He also said it was common for management and union members to make racial comments to him.*

on April 19, 1990 after being informed by Randy Readanhour that management wanted to fire him; and (3) Jackson believed he had been discriminated against, in violation of Title VII, because he was black and in retaliation for filing previous EEOC charges.<sup>5</sup>

On February 27, 1991, the EEOC informed Jackson that its investigation showed no violation of Title VII. The "right to sue" letter also informed Jackson that he had until June 12, 1991 to file a suit in federal court. Jackson subsequently filed the instant suit in this Court on June 18, 1991.

After filing this lawsuit, Jackson filed a second Civil Rights Complaint against General Motors ("GM") on April 23, 1992. *Case No. 92-C-323-E*. That lawsuit alleged that GM constructively discharged him and engaged in racial discrimination. On November 12, 1992, the Court granted summary judgment against Jackson on grounds that he was not constructively discharged and also because his Title VII claims were time-barred.

### III. Legal Analysis

Jackson alleges two Title VII claims. First, he contends that Defendants unfairly represented him. Second, Jackson accuses Defendants of acquiescing in what he believes were discriminatory practices by GM.

Defendants reject both allegations. They contend Jackson's unfair representation claim is time-barred. Defendants further argue that Jackson's second claim has no merit. Each of Jackson's claims are discussed separately, below.

#### A. Unfair Representation Claim

A union breaches its duty of fair representation when its "conduct toward a member

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<sup>5</sup> On October 30, 1990, Jackson amended the EEOC Complaint. He stated that he was not represented fairly by Defendants on April 19, 1990. He also said he believed the union did not represent him the same way they did white members.

of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). While "a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion," an individual employee does not have an absolute right to have his grievance taken to arbitration. *Id. at 191*. A union's breach of that duty also triggers Title VII liability if the breach can be shown because of the plaintiff's race, color, sex, religion or national origin. *Martin v. Local*, 1513, 859 F.2d 581, 584 (8th Cir. 1988).

The pertinent issue is whether Jackson's representation claim is time-barred. The statute of limitations for raising an unfair representation claim under the section 301 Labor Management Act of 1947, 29 U.S.C. § 160B, is six months. *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983). The six month limit begins when the employee "knew or reasonably should have known" that a breach of the union's duty of unfair representation occurred. *See, Bell v. National Railroad Passenger Corp.*, 651 F.Supp. 125, 127 (S.D.N.Y. 1986).

In the instant case, no genuine issue of material facts exists as to when Jackson "knew" or "should have known" about his unfair representation claim.<sup>6</sup> All the evidence presented indicates that Jackson "knew" or "should have known" about the claim on April 19, 1990, which is the day he accepted the "buy-out". The evidence also is undisputed that he knew about the claim no later than October 30, 1990 when he filed the EEOC complaint. Jackson did not file his lawsuit until June 18, 1991 -- well beyond the six-

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<sup>6</sup> Fed.R.Civ.P. 56 states that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

month time period.<sup>7</sup> Consequently, the claim is time-barred.

B. Jackson's Title VII Claims

Jackson is not specific in the type of Title VII claim(s) he asserts against Defendants.<sup>8</sup> However, in addition to unfair representation, he contends that Defendants violated 42 U.S.C. §2000e-2(c)(3).<sup>9</sup> Such a violation takes place in at least two situations: 1) If a union does not take action against an employer's discriminatory practices, and 2) If a union acquiesces in a company's prohibited employment discrimination. *Romero v. Union Pacific Railroad*, 615 F.2d 1303, 1310 (10th Cir. 1986).

In his February 24, 1993 Amended Complaint, Jackson alleges that Defendants failed to act affirmatively to cause the employer to refrain from discrimination. He also alleges that Defendants agreed to stiffer discipline handed out to Blacks than Whites in similar situations. Furthermore, Jackson asserts that Defendants have failed "to live up to their commitment" and have "failed to recognize the moral principles involved in the area of Civil Rights." *Amended Complaint*, page 2-3 (docket #78).

Jackson's allegations fall short of stating a claim, as set forth by the court in *Martin v. Local 1513*, 859 F.2d 581 (8th Cir. 1988). In that case, the plaintiff filed suit against her union, alleging gender discrimination, unfair representation and retaliation. Similar

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<sup>7</sup> Jackson argues that he filed a Title VII claim, not a claim under 29 U.S.C. §160. However, the pursuit of EEOC discrimination claims do not affect the running of 29 U.S.C. §160(b). See *Ninham v. Nicolet*, 583 F.Supp. 1057 (E.D.Wis. 1984). *James v. Local*, 32B-32J, 47 FED 1356 (S.D.N.Y. 1987).

<sup>8</sup> To plead facts sufficient to state a claim under Title VII, Jackson must allege with particularity that (1) he belongs to a racial minority, (2) that he applied and was qualified for a job for which the employer was seeking applicants, (3) that he was qualified for the job he was seeking and (4) that similarly situated non-minority individuals were treated differently. *McDonnell Douglas Corporation*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 688 (1973).

<sup>9</sup> Section 2000e-2(c)(3) states that "it is an unlawful employment practice for a labor organization to cause or attempt to cause an employer to discriminate against an individual in violation of this section."

to Jackson, she failed to name her employer as a defendant. In examining the case, the Eighth Circuit wrote:

We have difficulty with [plaintiff] Martin's acquiescence argument...the theory of *Romero* [supra] turns on the fact that the company has committed prohibited employment discrimination. For whatever reason, the employer...was not a party to this lawsuit. Therefore, the company's employment practices were not before the district court. *Id. at 854.*

In *Martin*, the plaintiff failed to name the employer as a defendant, and, as a result, the court did not know whether the employer discriminated. In the instant case, Jackson sued his employer under Title VII in a separate proceeding. After examining the issue of Jackson's Title VII claims against GM, the Court granted summary judgment for General Motors. Of particular importance is the following finding:

Jackson's only remaining viable claim is that of constructive discharge...Jackson has failed to put forth any evidence of constructive discharge. Plaintiff applied for the Voluntary Termination of Employment Program, plaintiff was granted his lump sum payment which terminated his employment. The only factual dispute on the issue of constructive discharge concerns whether Jackson was reprimanded for taking two breaks prior to the grant of his lump sum payment. Even if such disciplinary issue was raised, it is not evidence of constructive discharge. *Order and Judgment, Defendant's Exhibit B (docket #79).*

That Order held, in effect, that General Motors was not liable for any Title VII violation. Part of the ruling hinged on the fact that Jackson's Title VII claims against General Motors were time-barred. The ruling clearly stated that Jackson was not constructively discharged: He agreed to leave in exchange for a \$23,000 buyout.

The impact of this earlier Order in the second case is that no genuine issue of material fact exists concerning whether GM discriminated against Jackson. That "fact" already has been resolved: GM did not racially discriminate against Jackson. *See, Nilsen*

*v. City of Moss Point, Miss.*, 701 F.2d 556, 562 (Time-barred Title VII claims operate as *res judicata* to a subsequent 42 U.S.C. §1983 claim). Applying the reasoning of *Martin* means that, since no Title VII discrimination took place by GM, Jackson does not have a Title VII claim against Defendants in this case. Thus, Jackson's claim is without merit.<sup>10</sup>

### III. Conclusion

In his Amended Complaint and brief opposing summary judgment, Jackson alleges that Defendants violated Title VII by unfairly representing him and by acquiescing to his employer's racial discrimination.

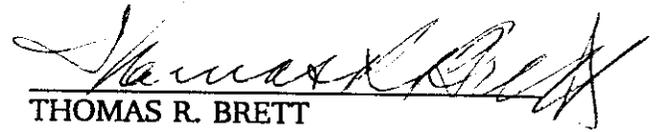
After careful review of the record, the Court finds that Jackson's claim of unfair representation is barred because he failed to file the instant lawsuit within six months of when he knew or should have known about the claim.

In regard to Jackson's other Title VII claims, the Court finds Jackson is unable to prove his employer racially discriminated against him. The basis for that finding is the Order entered in Case No. 92-C-323-E, a lawsuit against General Motors addressing virtually the same facts present here. Such a finding, for purposes of the instant lawsuit, means that General Motors did not racially discriminate against Mr. Jackson. As a result, Defendants' did not acquiesce in the employer's alleged discrimination. Consequently, Defendants' Motion For Summary Judgment (docket #55) is **GRANTED**.

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<sup>10</sup> Even assuming *arguendo* that GM discriminated, Jackson would still have to show something beyond mere passivity by the unions/Defendants. *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 107 S.Ct. 2617, 96 L.Ed.2d 572 (1987). Also, see generally, "Union Liability For Employer Discrimination," Vol.93 *Harvard L.Rev* 702,722 (February 1980) ("Nothing in Title VII suggests that a union is obliged to remedy the employer's discrimination. If such a duty exists, its source must be the duty of fair representation.")

SO ORDERED THIS 8<sup>th</sup> day of July, 1993.



THOMAS R. BRET  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
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**FILED**

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Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

IDELL M. COOK, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INTERNATIONAL ASSETS ADVISORY )  
 CORPORATION and DAVE W. )  
 CONNOCHIE, )  
 Defendants. )

Case No. 92-C-554-B ✓

O R D E R

Now before the Court is the Motion for Partial Summary Judgment (Docket #37) filed on behalf of Defendant International Assets Advisory Corporation ("IAAC") and the Motion for Partial Summary Judgment (Docket #45) filed on behalf of Defendant Dave W. Connochie ("Connochie"). Plaintiff, Idell M. Cook ("Cook"), filed this action May 22, 1992, seeking compensatory and punitive damages for losses she allegedly suffered as a result of purchasing securities recommended by Connochie, a stockbroker employed by IAAC from January to April, 1990.

In November, 1989, Plaintiff received a lump-sum distribution of her retirement plan upon separation from Amoco Production Company. The distribution consisted of \$91,000.00 in cash and 1,275 shares of Amoco stock valued at over \$62,000.00, all of which Plaintiff deposited in an IRA account at Charles Schwab & Company. In late 1989, Plaintiff responded to an advertisement for Health Care Products, Inc., by calling one of the brokers listed in the advertisement. Defendant Connochie took Plaintiff's call and spoke with her regarding investment opportunities in Health Care

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Products, Inc.

During the remainder of December, 1989, Plaintiff and Connochie spoke several times concerning various stocks. During that month, Plaintiff purchased stock through her Charles Schwab IRA account in Health Care Products (10,000 shares), Seven Mile High Corporation (30,000 shares) and Strategic Communications Corporation (30,000 shares).<sup>1</sup> Although Plaintiff alleges each of these purchases were made on the advice of Connochie, Plaintiff did not execute these purchases through Connochie or the brokerage firm for which he was working and she was not charged by Connochie for his advice or recommendations.

On January 8, 1990, Connochie became a stockbroker at IAAC and later that month Plaintiff opened two accounts at IAAC, with Connochie named as her account executive. Plaintiff subsequently purchased stock in American Aircraft Company (42,000 shares) and Lynx Securities, Inc. (10,000 shares) through Connochie and her IAAC accounts.<sup>2</sup> On April 2, 1990, Connochie left the employ of IAAC.

Plaintiff now contends that Connochie made material misrepresentations and omitted material facts concerning the

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<sup>1</sup> Plaintiff contends she ultimately lost more than \$58,000.00 from these three investments. Plaintiff also purchased stock in C.R. Provinie during this period of time but did not suffer a loss as a result thereof.

<sup>2</sup> This lawsuit is based on the losses suffered as a result of Plaintiff's investment in Seven Mile High Corporation, Health Care Products, Inc., American Aircraft Company, Lynx Securities, Inc. and Strategic Communications (collectively, the "subject companies").

subject companies and that she relied upon such misrepresentations to her detriment. Specifically, Plaintiff alleges Connochie represented to her that his research indicated that the subject companies were strong and represented a sound long term investment when in fact he knew the companies were very risky and not appropriate for her investment needs. As a result, Plaintiff contends both Defendants are liable to her for fraud, deceit, negligence and also for violations of the Oklahoma Securities Act.

Defendants now seek partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. First, they seek summary judgment on all of Plaintiff's claims relating to the transactions she executed through her Charles Schwab account in December, 1989 (the "December transactions"). Defendants also contend Plaintiff's claims are barred by the statute of limitations and that Plaintiff has failed to provide sufficient evidence to support her claim for punitive damages.

**The Standard for Fed.R.Civ.P. 56  
Motion for Summary Judgment**

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered

immaterial. Id. at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The Court stated that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Id. at 252. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts". Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The record must be construed liberally in favor of the party opposing the summary judgment, but "conclusory allegations by the party opposing ... are not sufficient to establish an issue of fact and defeat the motion." McKibben v. Chubb, 840 F.2d 1525, 1528 (10th Cir. 1988). The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384 (10th Cir. 1988).

#### Analysis and Authorities

##### 1. *IAAC's Liability for the December Transactions*

IAAC contends it can not be held responsible for the advice given or actions taken by Connochie prior to the time he joined IAAC. Therefore, IAAC argues it is entitled to summary judgment on all of Plaintiff's claims relating to the transactions she

performed in December, 1989.

Plaintiff admits that Connochie was employed with a different brokerage firm in December, 1989, but suggests that IAAC may still be liable for Connochie's actions because "of the probability that Connochie already had a relationship with IAAC at the time of his first contacts with [the Plaintiff]." Plaintiff points out that Connochie visited IAAC six or seven months before starting to work there, that a friend had asked Connochie to move to IAAC and that Connochie had been offered a job by IAAC sometime in December. Plaintiff contends that Connochie was giving her free advise in December of 1989, with the hope of getting her to open an account at IAAC when he began work there in January. Plaintiff asserts that Connochie, while not officially an employee of IAAC, was actually working on behalf of IAAC while he was advising Plaintiff in December of 1989.

The Court concludes there is no merit to Plaintiff's pre-employment vicarious liability theory. Although Connochie may have believed Plaintiff was a potential client for IAAC, Plaintiff has failed to provide any evidence that Connochie was the agent or employee of IAAC in December, 1989. Plaintiff has cited no authority for the proposition that an employer can be held responsible for the actions of an individual simply because the employer has interviewed the individual or has made a job offer. Plaintiff has thus failed to establish that IAAC had any contact whatsoever with the Plaintiff prior to the time Connochie joined IAAC. For these reasons, IAAC's motion for summary judgment on all

of Plaintiff's claims relating to Plaintiff's stock purchases in December, 1989, should be granted.

*2. Connochie's Liability for the December Transactions*

Connochie contends he cannot be held liable for the December transactions because at the time of the transactions he did not have a contractual relationship with the Plaintiff and did not receive a commission, fee or any other remuneration for the transactions. He asserts that Plaintiff made it clear that she intended to use her broker, Charles Schwab, to make any stock purchases, and that he merely expressed his opinion as to investment in Health Care Products, Seven Mile High Corporation, and Strategic Communications Corporation. Connochie argues that these opinions cannot be the basis for a cause of action against him.

The Oklahoma Securities Act, Okla.Stat.tit. 71, §101-502, creates liability for fraud committed in connection with "the offer, sale, or purchase of any security." Connochie contends that his statements to Plaintiff in December, 1989, were not made in connection with an "offer, sale or purchase of a security" and thus are not actionable under these statutes. Mid-America Fed. Sav. & Loan Assn. v. Shearson/American Express, Inc., 886 F.2d 1249, 1253-54 (10th Cir. 1958). The Court agrees.

Connochie did not "sell" any stock to Plaintiff in December of 1989 "by means of" the alleged misrepresentations and thus did not violate OKLA.STAT.tit. 71, §408(a)(2). Likewise, Connochie's alleged misrepresentations were not made "in connection with" the

"sale" of any securities by Connochie to Plaintiff in December of 1989 and thus were not in violation of OKLA.STAT.tit. 71, §101.

The Oklahoma Securities Act does not create liability for "freebie" advice given to an investor who subsequently buys the recommended securities from another broker.<sup>3</sup> Connochie's motion for partial summary judgment on Plaintiff's claims under the Oklahoma Securities Act for purchases she made through Charles Schwab in December of 1989, should be granted.

Connochie also seeks summary judgment on Plaintiff's deceit and common law fraud claims arising from the December, 1989, conversations. Connochie argues that his statements regarding the various companies were merely his opinions and are not actionable. He further contends that statements made by a seller of stock as to cost or profit, by themselves, do not constitute actionable misrepresentations.

The tort of deceit is set out in OKLA.STAT.tit. 76, §2 as follows:

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<sup>3</sup> While Plaintiff admits that §408(a) only imposes liability on actual purchasers or sellers of securities, Plaintiff makes a belated attempt (in her response brief) to bring a claim under §408(c)(2). Plaintiff's petition explicitly states which statutory sections Defendant allegedly violated and does not mention §408(c)(2). Regardless, the Court concludes Plaintiff has not stated a claim under §408(c)(2).

Section 408(c)(2) imposes liability on a person who receives "consideration ... for advice as to the value of securities ... [and] engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person." The Court concludes neither Connochie nor IAAC received any consideration for the advice Connochie gave Plaintiff in December, 1989. For this reason, the Court concludes both Defendants are entitled to summary judgment on any claim under §408(c)(2).

One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for damages which he thereby suffers.

In Oklahoma, the elements of common law fraud are as follows:

(1) the Defendant made a material misrepresentation to the Plaintiff;

(2) the misrepresentation was knowingly or recklessly made;

(3) the misrepresentation was made with the intent that it be relied on by Plaintiff; and

(4) the misrepresentation was relied upon by Plaintiff to his or her detriment.

Silver v. Slusher, 770 P.2d 878 (Okla. 1988).

Plaintiff contends Connochie deceived her by making untrue statements and material misrepresentation regarding his expertise and the expertise of IAAC's research department. Plaintiff also contends that Connochie made misrepresentations concerning the subject companies regarding financial stability, impending mergers, major transactions of the companies, availability of stock, analyst's reports and research department recommendations. Plaintiff asserts these misrepresentations were recklessly made and that she relied upon these statements to her detriment. The Court finds that Plaintiff has made a sufficient showing to create material questions of fact regarding whether the statements were made, whether they were true and whether the statements were made as assertions of fact or were presented as Connochie's opinions and expectations.

The tort of deceit and the Oklahoma common law of fraud do not require Connochie to have actually "sold" any stock to Plaintiff,

been compensated for his advice or to have in any way benefitted from the alleged deceit and fraud. Therefore, the Court concludes material questions of fact exist as to both the deceit and common law fraud claims regarding the statements made by Connochie, their truthfulness and his knowledge of their truthfulness. For this reason, Connochie's motion for partial summary judgment on these claims as they relate to the December transactions is hereby denied.

### *3. Statute of Limitations*

Connochie and IAAC seek summary judgment on all of Plaintiff's claims on the grounds the claims are barred by the statute of limitations. The parties agree that all of Plaintiff's claims are controlled by a two-year statute of limitations. OKLA.STAT.tit. 12, §95 and OKLA.STAT.tit. 71, §408(f). Defendants contend that all of Plaintiff's claims had accrued by April 2, 1990, (the day Connochie terminated his employment with IAAC) and therefore the two-year limitations period had expired when this lawsuit was filed on May 18, 1992.

IAAC first contends that any claim for negligent supervision of Connochie accrued no later than Connochie's last day at IAAC, April 2, 1990, and therefore is barred by the statute of limitations. Plaintiff does not respond to this contention and the Court concludes any claim Plaintiff may have against IAAC for negligence in the hiring or supervision of Connochie is barred and IAAC's motion for summary judgment on such claims is hereby granted.

IAAC and Connochie also contend the limitations period has run on Plaintiff's causes of action sounding in fraud. However, these claims do not accrue until the fraud is discovered. OKLA.STAT.tit. 12, §95 and OKLA.STAT.tit. 71, §408(f). The two-year period begins to run from the time the aggrieved party should have discovered the alleged fraud in the exercise of reasonable care and diligence. Sade v. Northern Natural Gas Co., 483 F.2d 230 (10th Cir. 1973) and Harjo's Heirs v. Stanley, 305 P.2d 864 (Okla. 1957).

Defendants assert Plaintiff should have discovered the alleged fraud when the price of the stocks started to decline or when Connochie left IAAC. Defendants point out that Plaintiff admits she became nervous in March of 1990 when the value of the stocks began to plummet. Plaintiff contends Connochie continued his fraud by making misrepresentations concerning the cause of the price decline and that she did not discover the fraud until much later.

The Court concludes a genuine issue of material facts exists regarding when Plaintiff should have discovered the alleged fraud and when in fact Plaintiff actually discovered the alleged fraud. If the trier of fact ultimately concludes either of these dates is prior to May 17, 1990, Plaintiff's fraud claims will be barred. Defendants' motions for partial summary judgment on Plaintiff's fraud claims based on the statute of limitations are hereby denied.

#### *4. Punitive Damages*

Defendants also seek summary judgment on Plaintiff's claim for punitive damages. Defendants assert Plaintiff has failed to show gross negligence on behalf of Connochie or IAAC. The Court

concludes a genuine issue of material fact exists as to the actions, knowledge and intent of both Defendants. Until these facts are resolved by the trier of fact, a ruling on Plaintiff's claim for punitive damages would be premature. For this reason, the motions for partial summary judgment on Plaintiff's claim for punitive damages are hereby denied.

For all the reasons stated above, IAAC's motion for partial summary judgment (Docket #37) and Connochie's motion for partial summary judgment (Docket #45) are GRANTED in part and DENIED in part as set forth in this Order. In summary, IAAC is granted summary judgment as to all of Plaintiff's claims relating to the December transactions and is granted summary judgment as to Plaintiff's negligence claim. IAAC's motion is denied in all other respects. Connochie is granted summary judgment as to Plaintiff's claims relating to the December transactions which are based on the Oklahoma Securities Act. Connochie's motion is denied in all other respects. <sup>4</sup>

IT IS SO ORDERED THIS 6<sup>th</sup> DAY OF JULY, 1993.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

<sup>4</sup> The Court was advised by a pleading filed July 2, 1993, that the Plaintiff and Defendant Connochie had reached a settlement as to the claims against Connochie. The portions of this Order addressing such claims will become moot upon the entry of appropriate closing papers.

DATE JUL 8 1993

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JUL - 7 1993

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

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

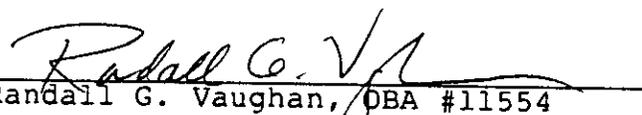
NORMAN MCCONNELL, )  
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Plaintiff, )  
)  
v. )  
)  
TYCO LABORATORIES, INC., a New )  
Hampshire Corporation; )  
ARMIN PLASTICS OKLAHOMA, INC., )  
an Oklahoma corporation, and )  
EMPLOYEE BENEFIT PLAN )  
ADMINISTRATION, INC., a New )  
Hampshire Corporation, )  
)  
Defendants. )

No. 93-C-0169-E

<sup>OF</sup>  
STIPULATION ~~FOR~~ DISMISSAL

It is hereby stipulated by Norman McConnell, Plaintiff, and Tyco Laboratories, Inc., Armin Plastics Oklahoma, Inc. and Employee Benefit Plan Administration, Inc., Defendants, that the above-entitled action be dismissed with prejudice with each party to bear their respective attorneys fees and costs of the action.

Pray, Walker, Jackman Williamson  
& Marlar

  
Randall G. Vaughan, OBA #11554  
900 Oneok Plaza  
Tulsa, Oklahoma 74103  
(918) 584-4136  
Attorneys for Defendants

Herrold, Herrold & Davis, Inc.

  
Marlin R. Davis, OBA 10777  
7130 South Lewis, Suite 520  
Tulsa, Oklahoma 74136-5426  
(918) 494-4050  
Attorneys for Plaintiff



ENTERED ON DOCKET  
DATE JUL 07 1993

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

HARRY ROBINSON and KAY ROBINSON;  
husband and wife; EVA MAY  
McCARTHY; and GEORGE SAMUEL  
ROBINSON,

Plaintiffs,

vs.

VOLKSWAGENWERK AG, a foreign  
corporation; GREER & GREER; and  
HERZFELD & RUBIN, a foreign  
professional corporation,

Defendants.

No. 88-C-367-E  
(89-C-604-E - Consolidated)

FILED

JUL 02 1993

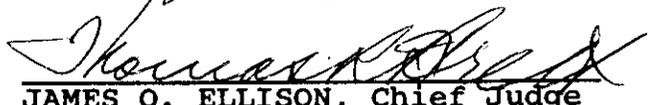
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

RULE 54(b) CERTIFICATION  
FOR APPEAL FROM ORDER OF DISMISSAL DATED JUNE 18,  
FILED JUNE 21, AND ENTERED ON DOCKET JUNE 22, 1993

The malpractice claims against Defendants Greer & Greer remain unadjudicated in Case No. 88-C-367-E. The court finds, however, that there is no just reason for delay in regard to entry of a final judgment in 88-C-367-E in regard to the common law fraud claims.

IT IS, THEREFORE, ORDERED that the Order and Judgment entered on the docket on June 22, 1993, was intended to be and is a final adjudication and express direction for the entry of judgment in 88-C-367-E within the meaning of Fed.R.Civ.P. 54(b) in regard to all claims against Defendants Herzfeld & Rubin and Volkswagenwerk AG.

So ORDERED this 2<sup>nd</sup> day of July, 1993.

for   
JAMES O. ELLISON, Chief Judge  
United States District Court

~~\_\_\_\_\_~~

02



ENTERED ON DOCKET  
DATE JUL 07 1993

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 08 1993

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 vc. )  
 )  
 LARS E. JENSEN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 92-C-858-E

ORDER OF DISMISSAL

Now on this 8th day of July, 1993, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Lars E. Jensen have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Lars E. Jensen, be and is dismissed without prejudice.

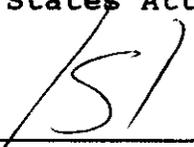
~~S/ JAMES O. ELISON~~  
~~Richard M. Lawrence, Clerk~~

United States District Judge

~~S/ JAMES O. ELISON~~

SUBMITTED BY:

F. L. DUNN, III  
United States Attorney



**KATHLEEN BLISS ADAMS, OBA #13625**  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

KBA/11f

ENTERED ON DOCKET  
DATE JUL 06 1993

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

UNITED STATES OF AMERICA )  
 )  
 Plaintiff, )  
 )  
 vc. )  
 )  
 ALFRED WARNER, )  
 )  
 Defendant. )

JUL 03 1993

Shirley L. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-344-E

ORDER OF DISMISSAL

Now on this 2nd day of July, 1993, it appears that the Defendant in the captioned case is financially unable to pay his debt at this time and therefore attempts to collect on the debt have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Alfred Warner, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

United States District Judge

SUBMITTED BY:

F. L. DUNN, III  
United States Attorney

151

**KATHLEEN BLISS ADAMS, OBA #13625**  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

KBA/llf

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

**FILED**  
JUL 02 1993

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

91-C-0809-E ✓

GROVER HAROLD PHILLIPS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DUNNAHOO AND ASSOCIATES LEASING, )  
 )  
 Defendant. )

ORDER

On September 19, 1991, the United States Bankruptcy Court dismissed Appellant Grover Phillips' Adversary Complaint. Phillips now appeals that decision pursuant to 28 U.S.C. § 158(a).<sup>1</sup>

The pertinent facts are as follows. Phillips leased two vehicles from Dunnahoo & Associates ("Dunnahoo"). In August of 1988, he defaulted on the leases. More than a year later, Phillips filed a Chapter 7 bankruptcy petition on January 19, 1989. When filling out the bankruptcy schedules, Phillips inadvertently omitted Dunnahoo as a creditor.<sup>2</sup> Then, on April 20, 1989, the Bankruptcy Court ordered a discharge in Phillips' case. The case was closed on June 12, 1989.

On August 18, 1989, Dunnahoo sued Phillips in the Tulsa County District Court, seeking to collect the money owed on the leases. Three months later, on November 28,

<sup>1</sup> Appellant's objections under Bankruptcy Rule 8009(a)(2) is noted. However, the objection will be denied. (See, generally, In Re Russell, 746 F.2d 1419 (10th Cir. 1984).

<sup>2</sup> The Bankruptcy Court also found that Dunnahoo did not have notice or knowledge of Phillips' bankruptcy filing.

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1989, Phillips filed a motion with the Bankruptcy Court to reopen his case. That motion was denied on December 19, 1989. On March 7, 1990, the state court entered a default judgment against Phillips. Dunnahoo, however, was unsuccessful in collecting the judgment.

On November 5, 1990, Phillips filed the adversary proceeding leading to this appeal. He asked the Bankruptcy Court to reopen his case so he could amend his schedules and, as a result, get his debt to Dunnahoo discharged. The Bankruptcy Court dismissed the adversary proceeding on August 26, 1991.

Boiled down, the issue is whether the Bankruptcy Court abused its discretion by not reopening the case.<sup>3</sup> That decision meant that Phillips could not amend his bankruptcy schedule to list Dunnahoo as a creditor, and, as a result, could not discharge the debt owed to Dunnahoo. The applicable statute is 11 U.S.C. §350(b). It states that "a case may be reopened in the court in which the case has been closed...to accord relief to the debtor or for other cause."

The decision to reopen a bankruptcy case and allow amendment of schedules is committed to the sound discretion of the bankruptcy judge. The decision will not be set aside absent abuse of discretion. *In Re Rosinski*, 759 F.2d 539, 540-541 (6th Cir. 1985). An abuse of discretion occurs when this Court has a "definite and firm conviction that the

---

<sup>3</sup> *The Appellant frames the following issues: 1) Whether 11 U.S.C. §523(a)(3)(a) prohibits a debtor previously discharged in a Chapter 7 "no asset case" from seeking relief under 11 U.S.C. § 350(b) to reopen his case to discharge a pre-petition debt that was inadvertently omitted, where such omission was not the result of fraudulent intent or design, and the creditor suffers no harm?, and 2) Whether the Bankruptcy Court erred and abused its discretion in dismissing Appellant's Adversary Complaint and determined that Section 523(a)(3)(A) barred discharge of a pre-petition debt that was inadvertently omitted by the Appellant in his Chapter 7 bankruptcy case? Such issues set up the following two-step analysis. First, does §523(a)(3)(a) prohibit a debtor from seeking relief under §350(b)? However, that question need not be examined here. Even assuming arguendo that such relief is not prohibited, the second step of the analysis -- and the most pertinent question -- is whether the Bankruptcy Court abused its discretion under §350(b).*

lower court has committed a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *United States v. Ortiz*, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986).

In this case, the Bankruptcy Court found that Phillips' bankruptcy was a "no-asset" case. The court also found that Phillips did not willfully, maliciously or fraudulently fail to list Dunnahoo as a creditor. Instead, the court found that, while Phillips' omission was inadvertent and an oversight, the case would still not be re-opened.

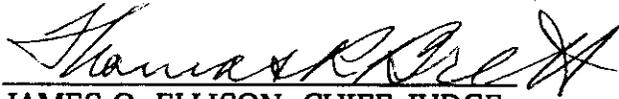
Appellant points out that "in a no-asset bankruptcy where notice has been given..., a debtor may reopen the estate to add an omitted creditor where there is no evidence or fraud or intentional design. *Matter of Stark*, 717 F.2d 322, 324 (7th Cir. 1983). But case law also exists that states a case should not be reopened for the debtor's mere inattention, neglect or to "relieve a party of the consequences of his own mistake or ignorance." *Virgin Islands Bureau v. St. Croix Hotel Corporation*, 60 B.R. 412, 414 (D. Virgin Islands 1986) *aff'd* 867 F.2d 169 (3rd Cir. 1989).

In the instant case, no law examined by this Court required the Bankruptcy Court under §350(b) to re-open Phillips' case. Under *Stark*, the Bankruptcy Court certainly had the option of doing so because Phillips neither committed fraud or intentionally omitted Dunnahoo. Yet, the Bankruptcy Court also could opt (as it eventually did) to not open the case. Refusing to open the case also is supported by the holding in *Virgin Islands Bureau*, *supra*.

After reviewing the record, this Court does not have a "definite and firm conviction that the lower court has committed a clear error of judgment or exceeded the bounds of

permissible choice in the circumstances." The Bankruptcy Court, within its sound discretion, declined to re-open Appellant's case. Thus, the decision is **AFFIRMED**.

SO ORDERED THIS 2<sup>nd</sup> day of July, 1993.

for   
JAMES O. ELLISON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

EO 7-6-93

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

ROCKNE PORTER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DELL WOOD, an individual; )  
 STAFF ONE, INC., an Oklahoma )  
 corporation; SERVICE )  
 PERFORMANCE GROUP, INC., )  
 an Oklahoma corporation; )  
 SPEEDY PRINT, a d/b/a of )  
 DELL WOOD and/or STAFF ONE, )  
 INC.; and AMERICA'S )  
 TRAVEL CONNECTION, a Texas )  
 corporation, )  
 )  
 Defendants. )

**FILED**

**JUL 2 1993**

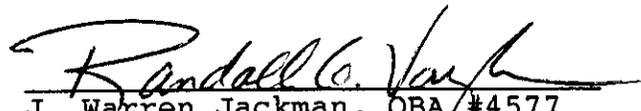
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

No. 93-C-340 E

**JOINT STIPULATION OF  
DISMISSAL WITH PREJUDICE**

Come now the Plaintiff and Defendants, by and through their respective attorneys, pursuant to Federal Rule of Civil Procedure 41, and stipulate to the Dismissal With Prejudice of the above captioned case and claims, either asserted or unasserted, arising out of the transactions forming the subject matter of the action. Each party shall bear his or its own attorney fees and costs incurred in connection with this action.

  
R. Thomas Seymour  
Attorney at Law  
230 Mid-Continent Tower  
Tulsa, OK 74103  
  
ATTORNEY FOR PLAINTIFF

  
J. Warren Jackman, OBA #4577  
Randall G. Vaughan, OBA #11554  
Pray, Walker, Jackman,  
Williamson & Marlar  
900 Oneok Plaza  
Tulsa, OK 74103  
  
ATTORNEYS FOR DEFENDANTS



ENTERED ON DOCKET  
DATE JUL 02 1993

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

MICHAEL LEROY COLEMAN, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 DAN M. REYNOLDS, )  
 )  
 Respondent. )

No. 93-C-483-B

**FILED**  
JUL 2 1993  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner's motion to dismiss without prejudice is granted.  
Accordingly, this action is hereby dismissed without prejudice.

SO ORDERED THIS 2nd day of July, 1993.

*Thomas R. Brett*  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

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

**FILED**  
JUL 1 1993

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JOHN C. TENNISON and	)
JUDITH TENNISON,	)
	)
Plaintiffs,	)
	)
v.	)
	)
GALLAGHER-PLUMER, LTD.,	)
et al.,	)
	)
Defendants.	)

93-C-288-B

ORDER

This order pertains to the Motion to Dismiss of Defendant Gallagher-Plumer, Ltd. (Docket #2)<sup>1</sup>. Plaintiffs have failed to file a response to the motion. Pursuant to Local Rule 15(A), this failure constitutes a waiver of objection and a confession of the matters raised in the pleading.

Gallagher-Plumer, Ltd. has presented the affidavit of John B. Stuart, stating that it is an insurance and reinsurance broker, not an insurer, as alleged by the plaintiffs in their petition. (See Exhibit No. 1 to the Motion to Dismiss). Service of process upon Gallagher-Plumer, Ltd. was attempted by serving Mendes & Mount - New York, which rejected the papers because it is not the service agent for service of process upon Gallagher-Plumer, Ltd. (See Exhibits No. 1 and No. 2 of Motion to Dismiss). Service by mail has not been attempted.

Gallagher-Plumer, Ltd. claims that since it is not an insurer, Plaintiffs' allegations in their first and second causes of action do not state claims upon which relief can be

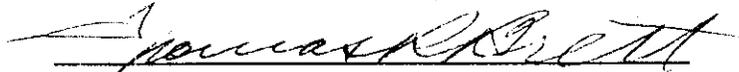
<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

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granted. In addition, Gallagher-Plumer, Ltd. has not been properly served as required by Federal Rule of Civil Procedure 4(c)(2)(c).

The Motion to Dismiss of Defendant Gallagher-Plumer, Ltd. (Docket #2) is granted.

Dated this 13<sup>th</sup> day of June, 1993.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

DATE 7-1-93

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

ROBERT D. CABERRA,  
Plaintiff,

vs.

No. 93-C-392E

BOARD OF COUNTY  
COMMISSIONERS OF  
DELAWARE COUNTY,  
OKLAHOMA;  
JIM EARP, individually  
and in his official capacity as  
Delaware County Sheriff; and  
ROBERT HOPPER, M.D.,

Defendants.

July  
U.S. DISTRICT COURT

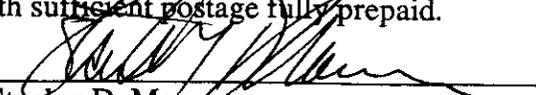
NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW Stanley D. Monroe, attorney for Robert D. Cabrerra, Plaintiff herein, and hereby gives notice of the dismissal of this action with prejudice pursuant to Rule 41(a)(1).

  
STANLEY D. MONROE OBA # 6305  
Attorney for Plaintiff  
1515 South Denver Avenue  
Tulsa, OK 74119-3899  
(918) 599-8118

CERTIFICATE OF MAILING

I hereby certify that on the \_\_\_\_ day of July, 1993, a true and correct copy of the above and foregoing pleading was mailed to Mr. Winston H. Connor, II, Assistant District Attorney, Delaware County Courthouse, P. O. Box 528, Jay, Oklahoma 74346 and Mr. Daniel S. Sullivan, Best, Sharp, Holden, Sheridan, Best & Sullivan, 808 Oneok Plaza, 100 West 5 Street, Tulsa, OK 74103-4225, with sufficient postage fully prepaid.

  
Stanley D. Monroe

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 93-C-0189-B

ALL MONIES IN ACCOUNT  
 NO. 900330600 IN THE  
 NAME OF MICHAEL J. WARD  
 AND REBECCA S. WARD  
 AT OKLAHOMA HIGHWAY  
 CREDIT UNION,  
 OKLAHOMA CITY, OKLAHOMA;  
 and  
 ALL MONIES IN INDIVIDUAL  
 RETIREMENT ACCOUNT  
 NO. 002250911 IN THE NAME OF  
 MICHAEL J. WARD AT  
 BANK OF OKLAHOMA,  
 TULSA, OKLAHOMA;  
 and  
 ALL MONIES IN ACCOUNT  
 NO. 62208883-1-4 IN THE  
 NAME OF MICHAEL J. WARD  
 AND REBECCA S. WARD  
 AT SHEARSON LEHMAN BROTHERS,  
 TULSA, OKLAHOMA;  
 and  
 ALL MONIES IN KEMPER MONEY  
 MARKET TAX EXEMPT FUND  
 ACCOUNT NO. 89151036-9,  
 IN THE NAME OF  
 MICHAEL J. WARD AND  
 REBECCA SUE WARD, JOINT  
 TENANTS WITH RIGHT OF  
 SURVIVORSHIP, AT KEMPER  
 SERVICE COMPANY,  
 KANSAS CITY, MISSOURI;  
 and  
 ONE 1992 PLYMOUTH DUSTER,  
 2-DOOR, VEHICLE TITLE,  
 AND KEYS,  
 VIN 3P3XP6439NT322700;  
 and  
 ONE 1992 DODGE DYNASTY  
 4-DOOR, VEHICLE TITLE,  
 AND KEYS,  
 VIN 1B3XC56R4ND847307,

Defendants.

JUDGMENT OF FORFEITURE BY  
DEFAULT AND BY STIPULATION

**FILED**

JUN 30 1993

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT OF FORFEITURE  
BY DEFAULT AND BY STIPULATION**

This cause having come before this Court upon the plaintiff's Application for Judgment of Forfeiture by Default and by Stipulation against the defendant properties, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 3rd day of March 1993, alleging that the defendant properties were subject to forfeiture pursuant to 18 U.S.C. § 981, because they were involved in a transaction or attempted transaction(s) in violation of 18 U.S.C. §§ 1956 and 1957 of the laws of the United States; an Amendment to Complaint for Forfeiture In Rem was filed on March 8, 1993, correcting an erroneous account number for funds deposited in Bank of Oklahoma.

Warrants of Arrest and Notices In Rem were issued on the 3rd day of March 1993, by Clerk of the United States District Court for the Northern District of Oklahoma, to the United States Marshals for the Northern and Western Districts of Oklahoma and the Western District of Missouri, and an Amended Warrant of Arrest and Notice In Rem was issued for the United States Marshal for the Northern District of Oklahoma on March 8, 1993, reflecting the corrected account number at Bank of Oklahoma.

The United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant properties as follows:

1) ALL MONIES IN ACCOUNT  
NO. 900330600 IN THE  
NAME OF MICHAEL J. WARD  
AND REBECCA S. WARD  
AT OKLAHOMA HIGHWAY  
CREDIT UNION,  
OKLAHOMA CITY, OKLAHOMA,  
SERVED MARCH 8, 1993;

and

2) ALL MONIES IN INDIVIDUAL  
RETIREMENT ACCOUNT  
NO. 001250911 IN THE NAME OF  
MICHAEL J. WARD AT  
BANK OF OKLAHOMA,  
TULSA, OKLAHOMA,  
SERVED MARCH 12, 1993;

and

3) ALL MONIES IN ACCOUNT  
NO. 62208883-1-4 IN THE  
NAME OF MICHAEL J. WARD  
AND REBECCA S. WARD  
AT SHEARSON LEHMAN BROTHERS,  
TULSA, OKLAHOMA,  
SERVED MARCH 4, 1993;

and

4) ALL MONIES IN KEMPER MONEY  
MARKET TAX EXEMPT FUND  
ACCOUNT NO. 89151036-9,  
IN THE NAME OF  
MICHAEL J. WARD AND  
REBECCA SUE WARD, JOINT  
TENANTS WITH RIGHT OF  
SURVIVORSHIP, AT KEMPER  
SERVICE COMPANY,  
KANSAS CITY, MISSOURI,  
SERVED MARCH 6, 1993;

and

5) ONE 1992 PLYMOUTH DUSTER,  
2-DOOR, VEHICLE TITLE,  
AND KEYS,  
VIN 3P3XP6439NT322700,  
SERVED MARCH 4, 1993;

and

6) ONE 1992 DODGE DYNASTY  
4-DOOR, VEHICLE TITLE,  
AND KEYS,  
VIN 1B3XC56R4ND847307,  
SERVED MARCH 4, 1994.

The following individuals were determined to be potential claimants in this action with possible standing to file a claim herein, and the United States Marshal for the Northern District of Oklahoma personally served the following persons and entities having a potential interest in this action, to-wit:

MICHAEL J. WARD	Served March 8, 1993, by serving Ronald H. Mook, his attorney.
-----------------	--

REBECCA WARD, a/k/a REBECCA S. WARD and Rebecca Sue Ward	Served March 8, 1993, by serving Ronald H. Mook, her attorney
--	---

United States Marshals 285s reflecting the services set forth above are on file herein.

All persons interested in the defendant properties hereinafter described were required to file their claims herein within ten (10) days after service upon them of the Warrant of Arrest and Notice In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

Pursuant to Plea Agreement of Michael J. Ward in the Department of the Army Court Martial case in Ft. Stewart Georgia, defendant Michael J. Ward agreed to the forfeiture of the

defendant currency. Thereafter, Michael J. Ward and Rebecca Ward, a/k/a Rebecca S. Ward and Rebecca Sue Ward, entered into a Stipulation for Forfeiture with the plaintiff, United States of America, consenting to the forfeiture of all of the defendant properties. The Stipulation for Forfeiture was filed on May 11, 1993.

No other persons or entities upon whom personal service was effectuated more than thirty (30) days ago have filed a Claim, Answer, or other response or defense.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending, on May 27, June 3 and 10, 1993. The United States Marshal originally was requested to also publish in USA Today, a newspaper of general circulation in the United States, but the United States Marshal for the Northern District of Oklahoma and the undersigned counsel for plaintiff subsequently canceled publication in USA Today because of the exorbitant cost of such publication. Inasmuch as it appears that Michael J. Ward and Rebecca Ward, a/k/a Rebecca S. Ward and Rebecca Sue Ward, are the only persons or entities with standing to file a claim against the defendant properties, cancellation of publication in USA Today does not jeopardize the rights of any other persons or

entities. Proof of Publication in the Tulsa Daily Commerce and Legal News was filed herein on June 28, 1993.

No other claims in respect to the defendant properties have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant properties, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, default exists as to the defendant properties and all persons and/or entities interested therein, except Michael J. Ward and Rebecca S. Ward, who have stipulated to forfeiture of the defendant properties.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant properties:

- 1) ALL MONIES IN ACCOUNT  
NO. 900330600 IN THE  
NAME OF MICHAEL J. WARD  
AND REBECCA S. WARD  
AT OKLAHOMA HIGHWAY  
CREDIT UNION,  
OKLAHOMA CITY, OKLAHOMA;  
  
and
- 2) ALL MONIES IN INDIVIDUAL  
RETIREMENT ACCOUNT  
NO. 001250911 IN THE NAME OF  
MICHAEL J. WARD AT  
BANK OF OKLAHOMA,  
TULSA, OKLAHOMA;  
  
and

3) ALL MONIES IN ACCOUNT  
NO. 62208883-1-4 IN THE  
NAME OF MICHAEL J. WARD  
AND REBECCA S. WARD  
AT SHEARSON LEHMAN BROTHERS,  
TULSA, OKLAHOMA;

and

4) ALL MONIES IN KEMPER MONEY  
MARKET TAX EXEMPT FUND  
ACCOUNT NO. 89151036-9,  
IN THE NAME OF  
MICHAEL J. WARD AND  
REBECCA SUE WARD, JOINT  
TENANTS WITH RIGHT OF  
SURVIVORSHIP, AT KEMPER  
SERVICE COMPANY,  
KANSAS CITY, MISSOURI;

and

5) ONE 1992 PLYMOUTH DUSTER,  
2-DOOR, VEHICLE TITLE,  
AND KEYS,  
VIN 3P3XP6439NT322700;

and

6) ONE 1992 DODGE DYNASTY  
4-DOOR, VEHICLE TITLE,  
AND KEYS,  
VIN 1B3XC56R4ND847307,

and that such properties be, and they are, hereby forfeited to  
the United States of America for disposition by the United States  
Marshals Service according to law.

**S/ THOMAS R. BRETT**

---

THOMAS R. BRETT, JUDGE OF THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

A handwritten signature in cursive script, reading "Catherine Depew Hart". The signature is written in black ink and is positioned above a horizontal line.

CATHERINE DEPEW HART  
Assistant United States Attorney

N:\UDD\CHOOK\FC\WARD2\03134