

ENTERED ON DOCKET

DATE 5/31/94

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAY 27 1994

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

MAGNOLIA PETROLEUM, LTD., et. al.,)
Plaintiffs,)
)
vs.)
)
KOCH OIL COMPANY, a division of)
Koch Industries, Inc.,)
Defendant.)

Case No. 91-C-368-B

JOINT STIPULATION OF DISMISSAL

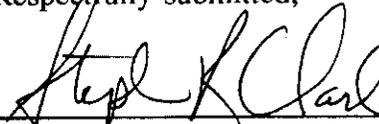
COME NOW the Plaintiffs Steven Snead and Mark Snead and Defendant Koch Oil Company, a division of Koch Industries, Inc., and agree that the above-captioned matter as set forth in Plaintiff's Petition For Judgment against Defendant in the above-captioned matter has been fully compromised and settled and the same is hereby dismissed with prejudice. All costs to be taxed to the party incurring such costs.



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ATTORNEY FOR PLAINTIFFS

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT
KOCH OIL COMPANY, a Division of
KOCH INDUSTRIES, INC.

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

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MAY 27 1994

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

THOMAS WESLEY HUEY

Plaintiff,

v.

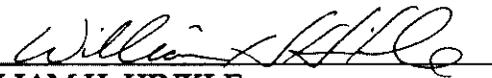
Case No. 93-C-689B

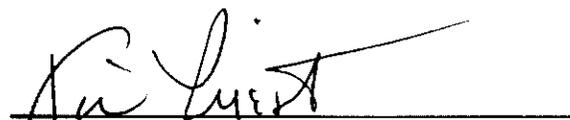
MUTUAL OF OMAHA INSURANCE
COMPANY, and UNITED OF OMAHA
LIFE INSURANCE COMPANY

Defendants.

STIPULATION OF DISMISSAL

COME NOW the parties, through their respective counsel, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and stipulate to the dismissal of the above-styled and numbered action in its entirety, with prejudice, with each party to bear its own costs and attorney's fees.


WILLIAM H. HINKLE
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ENTERED ON DOCKET

DATE 5-31-94

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

F I L E D

MAY 26 1994

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

JOSEPHINE G. CRITTENDEN,)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, Donna Shalala, Secretary,)
)
Defendant.)

93-C-0131-B ✓

ORDER

Now before the Court is Plaintiff Josephine Crittenden's appeal of the decision by the Secretary of Health and Human Services to deny her Social Security disability benefits. Two issues are raised by Plaintiff: (1) Whether the Administrative Law Judge ("ALJ") properly analyzed her allegations of pain and (2) Whether the ALJ erred in his hypothetical questioning of the vocational expert. For the reasons discussed below, the Secretary's decision is affirmed.

I. Standard of Review

In examining whether the Secretary erred, this Court's review is limited in scope by 42 U.S.C. § 405(g).¹ The Court's role "on review is to determine whether the Secretary's decision is supported by substantial evidence." *Campbell v. Bowen*, 822 F.2d 1518, 1521 (10th Cir. 1987). Substantial evidence is what "a reasonable mind might deem adequate

¹ Section 405(g) reads, in part: "Any individual, after the final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow...the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive."

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to support a conclusion." *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987). A finding of "no substantial evidence" is where a conspicuous absence of credible choices or no contrary medical evidence exists. *Trimiar v. Sullivan*, 966 F.2d 1326 (10th Cir. 1992).

Grounds for reversal also exist if the Secretary fails to apply the correct legal standard or fails to provide this Court with a sufficient basis to determine that appropriate legal principles have been followed. *Smith v. Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1985).²

II. Legal Analysis

At the time of the hearing, Plaintiff was 44 years old, had an eighth-grade education and had previously worked as a pet department manager and waitress. She applied for disability benefits, claiming disability since December 20, 1989. Plaintiff said she was disabled because of a right elbow injury.

On March 18, 1991, the ALJ found that Plaintiff was not disabled. He concluded that she had the residual functional capacity to work "except for the ability to use the right upper extremity for repetitive work, lifting more than two pounds, excessive squeezing, gripping or grasping." *Record at 23*. Given those limitations, the ALJ concluded that Plaintiff could work as a clerical helper and/or in "administrative support." *Id. at 24*.

On appeal, Plaintiff raises two issues. First, did the ALJ properly evaluate Plaintiff's pain? Second, did the ALJ err in his hypothetical questioning of the vocational expert?

² When deciding a claim for benefits under the Social Security Act, the Administrative Law Judge ("ALJ") must use the following five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. 20 C.F.R. § 404.1520(b)-(f) (1991). Once the Secretary finds the claimant either disabled or nondisabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988).

A. Evaluation of Plaintiff's Pain

The standard to be applied when evaluating complaints of pain is examined in *Luna v. Bowen*, 834 F.2d 161 (10th Cir. 1987). The ALJ must first determine whether a claimant has established a pain-producing impairment by objective medical evidence. The ALJ must then decide whether there is a "loose nexus" between the impairment and a claimant's subjective allegations of pain. If those two prongs are met, the question becomes whether, considering all the subjective and objective evidence, a claimant's pain is in fact disabling. *Id.* at 163-164.

The ALJ failed to specifically discuss the two prong *Luna* test. It appears, however, that he found the objective medical evidence established that Plaintiff's right elbow produced pain. The ALJ also apparently concluded that a "loose nexus" existed between the elbow injury and the Plaintiff's subjective complaints of pain. Therefore, the question is whether, considering all the subjective and objective evidence, Plaintiff's pain was disabling.

As noted by the ALJ, the objective medical evidence supporting Plaintiff's pain was sparse. X-rays were unremarkable. A February 28, 1990 report did indicate "tenderness" in Plaintiff's right upper arm.³ On August 28, 1990, Dr. Ted Peters -- one of Plaintiff's treating physicians -- wrote that she continued to have "aching pain over the lateral aspect of her arm." *Record at 145*. He also wrote:

She is unable to perform household activities such as vacuuming or sweeping...There is pain with full extension, with strong grasp, ...Grip

³ An excerpt of the report stated: "Right upper extremity reveals tenderness well localized to the anterior and lateral aspect of the lateral epicondyle of the humerus. There is pain with strong grasp, with resisted extension of the wrist, or with passive flexion of the wrist with the elbow in full extension..."*Id.* at 139-144.

strength does not register compared to 64 pounds on the uninjured side...I would recommend she be retrained for a more sedentary occupation. She will be unable to do heavy lifting, squeezing, grasping, or repetitive activity with her right hand. *Id.* at 145-146.

No doctor concluded that Plaintiff could not work. Dr. Peters found that she was temporarily disabled from February 23, 1990 to August 28, 1990. But, as noted in the foregoing excerpt, he found that she could work in a job that did not require substantial use of her right arm. The remaining medical evidence in the record support Dr. Peters' findings.

Since the objective medical evidence supports the ALJ's finding that Plaintiff did not have disabling pain, the next question is whether the ALJ properly analyzed the subjective evidence.

In *Luna*, the Tenth Circuit set forth the factors to determine a claimant's credibility regarding subjective complaints of pain as (1) a claimant's persistent attempts to find relief for his pain and his willingness to try any treatment prescribed; (2) regular use of crutches or a cane; (3) regular contact with a doctor; (4) possibility that psychological disorders combine with physical problems; (5) claimant's daily activities; and (6) dosage, effectiveness and side effects of medication. These factors, however, are not an exhaustive list. *Luna*, 834 F.2d at 165.

In this case, the ALJ analyzed the *Luna* factors on page 19 of the Record. He discussed her willingness to try various treatments. He discussed her visits to the doctor and her daily activities.⁴ He also noted her medication. He noted that she used a TENS

⁴ Plaintiff's daily activities include making the beds, shopping for groceries, doing some laundry, cleaning parts of her house, reading and visiting friends and relatives.

unit. After examining these factors, the ALJ found Plaintiff's subjective complaints to not be credible. Record at 23. Such a decision was proper under the *Luna* guidelines. Furthermore, substantial evidence supports the ALJ's finding that Plaintiff did not have disabling pain.

B. The ALJ's Hypothetical Question

Testimony elicited by hypothetical questions that do not relate with precision all of a claimant's impairments cannot constitute substantial evidence to support the Secretary's decision. *Hargis v. Sullivan*, 945 F.2d 1482, 1492 (10th Cir. 1991).

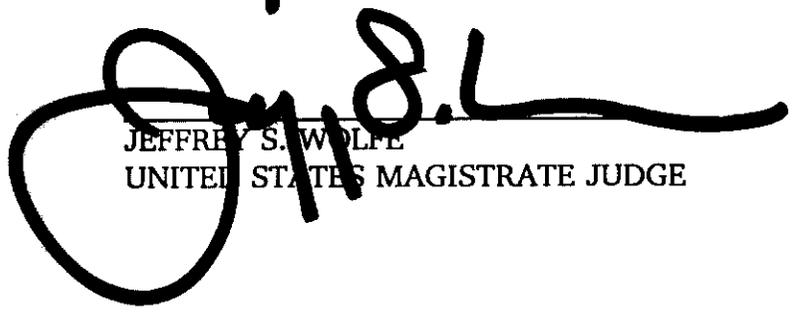
The issue here focuses on whether Plaintiff could use her right arm. She testified that she could not use it. Plaintiff asserts the ALJ erred by not including that part of her testimony in the hypothetical. However, no evidence supports Plaintiff's testimony. In fact, the medical evidence supports the fact that she could lift two pounds with her right arm -- which was part of the hypothetical question.⁵ Based on that hypothetical question, the vocational expert concluded that a person with Plaintiff's limitations could work. As a result, the Court finds that the ALJ did not err on the hypothetical question.

III. Conclusion

Plaintiff applied for disability benefits, claiming she was unable to work after December 20, 1989. On April 21, 1992, the Secretary found that she could work and, as a result, should not receive disability benefits. That decision is supported by substantial evidence. Therefore, the Secretary's decision is AFFIRMED.

⁵ On May 2, 1990, Dr. Peters, a treating physician, wrote that Plaintiff could lift two pounds with her right arm. Record at 155.

SO ORDERED THIS 26th day of May, 1994.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE 5-31-94

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

FILED

MAY 27 1994

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

GREGORY L. RUCKS,)
)
 Plaintiff,)
)
 vs.)
)
 GARY BOERGERMANN,)
)
 Defendant.)

Case No. 92-C-263-B

ORDER

Now before the Court is the Plaintiff's Objection to the Report and Recommendation of the Magistrate Judge (Docket #19).

Plaintiff's Complaint alleges that Defendant Gary Boergermann, a Tulsa police officer, violated his Fourth, Fifth, Eighth and Fourteenth Amendment rights during the investigation and arrest of Plaintiff on April 21, 1991. Both parties have filed motions for summary judgment.

On March 18, 1994, the Magistrate Judge entered a Report and Recommendation addressing both motions for summary judgment. He concluded there are genuine issues of material fact regarding the events of April 21, 1991, and thus concluded Plaintiff's motion for summary judgment should be denied. The Magistrate Judge further recommended that the Defendant's motion for summary judgment be denied with respect to Plaintiff's due process claim but should be granted with respect to Plaintiff's Fourth and Eight Amendment claims.

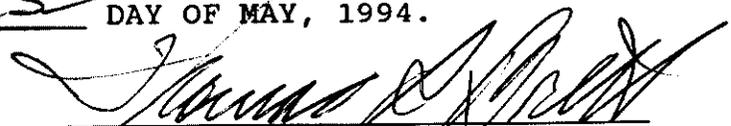
Plaintiff now objects to the Magistrate's Report and Recommendation. Plaintiff contends the Magistrate Judge "failed to

Or

recommend appropriate resolution of the dispositive matters" as required by 28 U.S.C. §636(b)(1)(B). The Court has reviewed the pleadings, the briefs of the parties and the Magistrate Judge's report and recommendation and hereby concludes the Magistrate Judge has properly recommended an appropriate resolution of each of the dispositive matters raised in the motions. The Court further concludes the Report and Recommendation of the U.S. Magistrate Judge should be and is hereby AFFIRMED. The parties shall comply with the following schedule in this matter.

- June 17, 1994 AMEND THE PLEADINGS OR ADD ADDITIONAL PARTIES;
- June 27, 1994 EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (UNNECESSARY IF WITNESS' DEPOSITION TAKEN);
- July 5, 1994 COMPLETE ALL DISCOVERY;
- July 15, 1994 FILE AGREED PRE-TRIAL ORDER & EXCHANGE ALL PRE-NUMBERED EXHIBITS
- July 22, 1994 FILE SUGGESTED VOIR DIRE, JURY INSTRUCTIONS, TRIAL BRIEFS, AND MOTIONS IN LIMINE;
- Aug. 1, 1994 RESPONSES TO MOTIONS IN LIMINE
- Aug. 5, 1994, at 9:30 a.m. PRE-TRIAL CONFERENCE (Plaintiff to appear by phone)
- Sept. 19, 1994, at 9:30 a.m. JURY TRIAL

IT IS SO ORDERED THIS 25th DAY OF MAY, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 26 1994

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

PEGGY MORTON,)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, Donna Shalala, Secretary,)
)
Defendant.)

92-C-0301-B ✓

ORDER

The Secretary of Health and Human Services denied Plaintiff Peggy E. Morton Title XVI Social Security disability benefits. Plaintiff now challenges that decision.¹ In addition, Plaintiff has filed a Motion To Remand For Consideration of New Evidence (docket #6).²

The first issue to be discussed is the Motion To Remand For Consideration of New Evidence. Section 405(g) of 42 U.S.C. reads:

The court may...order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for failure to incorporate such evidence into the record in a prior proceeding...

In other words, in order to justify a remand under 405(g), the evidence must be (1) new, (2) material, and (3) good cause must be shown for the failure to incorporate the evidence into the record in a prior proceeding. *Dorsey v. Heckler*, 702 F.2d 597, 604 (5th Cir.

¹ At the time of the hearing before the Administrative Law Judge, Plaintiff was 28 years old and had a seventh grade education. She alleges that she has dyslexia and can read and write at the third-grade level. She also contends she suffers from paranoid schizophrenia, major depression and arthritis. The ALJ found that Plaintiff was not disabled and that she could work in sedentary assembly.

² The appeal was filed on April 10, 1992. The case was originally referred to Magistrate Judge John Leo Wagner. The case was subsequently transferred to the undersigned. The parties consented to proceed before the undersigned on April 4, 1994.

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1983).

In this case, the evidence in question are psychiatric reports of Plaintiff taken after May 30, 1991 -- the date of the ALJ's denial decision. Plaintiff concedes that such evidence came after the denial date, but notes it "concerns a psychiatric impairment about which the claimant testified at her hearing."

Using the previously mentioned three-prong test, the evidence is "new" because it is not duplicative or cumulative. *Wilkins v. Secretary*, 953 F.2d 93, 96 (4th Cir. 1991). The next question is whether the evidence is material. Evidence is material if it relates to the time period for which benefits were denied. *Haywood v. Sullivan*, 888 F.2d 1463, 1471 (5th Cir. 1989). Evidence is not material if it relates to a later-acquired disability or a subsequent deterioration of the previously non-disabling condition. *Id.* Also, see *Hargis v. Sullivan*, 945 F.2d 1482, 1493 (Proffered evidence must relate to the time period for which benefits were denied).

This evidence was taken after the ALJ's denial decision. However, the proffered evidence does relate to the time period for which benefits have been denied. The Secretary appears to contend that the evidence is not material because it was taken after the denial decision date. However, the Court does not agree. Plaintiff's psychiatric examinations relate to the time period in question. The fact such examinations took place after the denial date does not, in itself, make the evidence immaterial.³

The final question on this issue is whether good cause exists to remand the case. A remand is proper when a reviewing court concludes that the Secretary's decision "might

³ The ALJ certainly may take into consideration the date of the examinations in determining what weight to give the new evidence.

reasonably have been different" had he considered the new evidence. *Cagle v. Califano*, 638 F.2d 219, 221 (10th Cir. 1981).

Although the question is a close call, the undersigned finds that "good cause" exists for two reasons. First, the evidence subsequent to the ALJ's denial decision may shed more light on Plaintiff's alleged impairments -- paranoid schizophrenia and recurrent major depression. Second, the ALJ made his decision without examining Plaintiff's psychiatric records from her hospitalizations in Texas.⁴ The ALJ was aware of the records, but failed to examine them. Although it is unclear as to what the records reflect, the undersigned believes those records, coupled with the new evidence, suggests that a remand is proper.

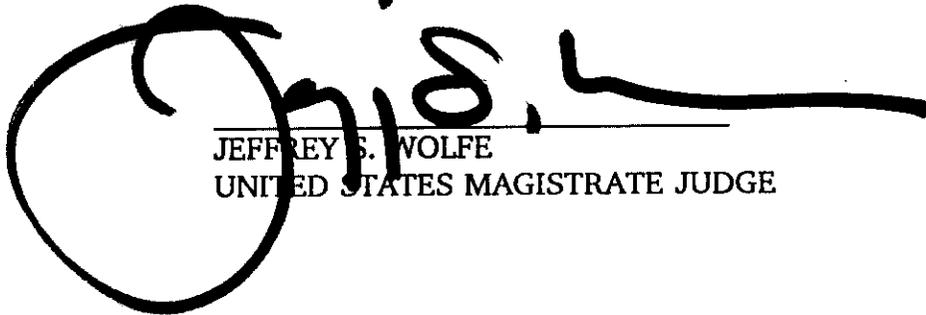
The hospital records appear to be from the mid-1980's. As previously mentioned, the new evidence offered by Plaintiff stems from examinations done after the ALJ denial decision (May 19, 1991). The Secretary argues that such evidence has little probative value because the Plaintiff's onset date is November of 1989. That argument from a chronological perspective has merit; but the nature of psychiatric opinion is such that it is quite possible for a later opinion to reflect on earlier-held behavior or conditions. The ALJ should review the evidence to determine its probative value. Such is not the province of this Court on appeal.

In summary, the Court finds that "good cause" exists and that the additional evidence should be examined by the ALJ. The case is REMANDED pursuant to 42 U.S.C.

⁴ At the hearing before the ALJ, Dr. Cullen Mancuso, the Secretary's consulting medical expert, stated that Plaintiff had been hospitalized in Texas during the mid 1980s. Dr. Mancuso testified that he has seen "references" to those hospital reports, but that he had not seen the reports. "All I have," Dr. Mancuso testified, "are references to those psychiatric hospitalizations with no specifics as to what the admitting or discharge diagnosis was at that time..." The ALJ did inquire as to the availability of those records, but it is unclear as to what effort, if any, Plaintiff made in getting the records to the ALJ. This issue also goes to the ALJ's duty to inquire.

§405(g).⁵ The issue remains whether Plaintiff was disabled between November of 1989 and May 19, 1991. The "new evidence" together with the records of the Texas hospitalizations shall be examined and a determination made in light of all of the evidence now available.

SO ORDERED THIS 26th day of May, 1994.



JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

⁵ *The consulting medical expert shall review the additional evidence. The ALJ then must conduct a supplemental hearing where the expert testifies.*

ENTERED
MAY 31 1994

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

FILED

MAY 31 1994

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

GEORGE CRITESER)
)
 Plaintiff,)
)
 v.)
)
 DONNA E. SHALALA, Dept. Health and)
 Human Services,)
)
 Defendant.)

Case No. 92-C-1109-B

ORDER

In 1990, the Social Security Administration awarded disability benefits to Plaintiff George Criteser. Less than a year later, however, the Appeals Council reopened the case, vacated the award and ordered the Administrative Law Judge ("ALJ") to conduct another hearing. The ALJ did so and then denied disability benefits to Plaintiff. Plaintiff now appeals that decision to this Court.

Plaintiff raises several issues. The **crux** of the appeal is whether the Secretary erred by first awarding and then denying **benefits**. Intertwined in this question is whether the Secretary erred in deciding that Plaintiff was not entitled to a trial work period. For the reasons discussed below, the Secretary's decision is REVERSED.

I. Procedural History

The procedural history of this case is unusual. Plaintiff applied for disability benefits on November 3, 1989, claiming he had **been** unable to work since March 15, 1987 because of lower back pain.

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The Secretary initially denied the application on January 8, 1990. However, the ALJ held a hearing and found that Plaintiff had been disabled since March 15, 1987. As part of the decision, the ALJ found Plaintiff's testimony credible and found that Plaintiff did not have the residual functional capacity to perform sedentary work. Based on the ALJ's decision, the Secretary sent a Notice of Award [of benefits] to Plaintiff on October 27, 1990.

Subsequent to the award notice, the Appeals Council found out that Plaintiff had worked for some eight (8) months in 1989.¹ That information prompted the Council, pursuant to 20 C.F.R. §404.989, to vacate the award and remand the case to the ALJ for hearing.²

Pursuant to the Council's Order, the ALJ held another hearing. Following that hearing, on December 9, 1991, the ALJ held that Plaintiff was not entitled to disability benefits. Contrary to his earlier decision, the ALJ found that Plaintiff's testimony was not credible and that he could perform light work. Record at 18. Part, if not all, of the reason for the ALJ's finding of no disability rested on the fact that Plaintiff worked during 1989. The Appeals Council declined to review this decision and Plaintiff filed the instant appeal.

¹ In 1989, Plaintiff worked at several types of jobs. Record at page 214. He earned \$266.35 in January; \$485.75 in February; \$439.69 in March; \$536 in April; \$514.40 in May; \$1,302 in June; \$519.50 in July; \$504 in August and \$220 in October. Plaintiff did not report these earnings prior to the first hearing.

² The Appeals Council sent a letter to Plaintiff on May 23, 1991 concerning the remand. On September 12, 1991, the Appeals Council issued an Order officially vacating and remanding the case. The Order read, in part: "The ALJ found that the claimant did not engage in substantial gainful activity after March 15, 1987, the claimant's alleged onset date. However, in a memorandum dated April 2, 1991, the Office of Disability and International Operations advised the further development of the record now reveals that the claimant worked at the substantial gainful activity level from February 1989 through August 1989. This information was not available to the ALJ at the time he issued his decision." Record at 27.

The procedural peculiarity continued once the case reached the Court. Plaintiff filed his brief on May 17, 1993. The Secretary subsequently asked for three extensions of time, which were granted. Then, on August 12, 1993, the Secretary filed a Motion To Remand pursuant to 42 U.S.C. §405(g). Wrote the Secretary:

It appears that the ALJ arrived at a different decision based on a change in his belief of plaintiff's credibility; however, this is not clear from the decision. It is respectfully submitted that further development is necessary so the ALJ can provide his rationale with specific references to the record in support of his residual functional capacity assessment... Motion To Remand (docket #14).

Plaintiff opposed the motion and, on September 7, 1993, a hearing was held on the motion.³ The Court denied the Secretary's Motion To Remand. The Secretary then filed a brief, contending that the ALJ's decision was proper (*docket #18*).

II. Legal Analysis

Two issues must be examined. First, did the Secretary err by reopening the case? Second, did the Secretary err in finding that Plaintiff was not disabled due, in part, to his six months of work in 1989? Stated another way, was the Plaintiff eligible for a trial work period?

As mentioned earlier, the Secretary reopened the case in September of 1991 pursuant to 20 C.F.R. § 404.988. That regulation allows the Secretary to reopen a case "within four years of the date of the notice of the initial determination" for "good cause." Under the regulation, good cause exists when new and material evidence is furnished. 20 C.F.R. § 404.989.

³ A transcript of that hearing is attached to the record.

In this case, the Secretary properly reopened the case in September 1991, within the four-year deadline. The information of Plaintiff's 1989 work activities was new and material. *See, Cieutat v. Bowen*, 824 F.2d 348, 357-358 (5th Cir. 1987)(Evidence of claimant's six month employment constituted good cause).

The second issue is whether the Secretary erred by not allowing Plaintiff's a "trial work" period. A trial work period enables an individual to test his or her ability to return to work without losing disability insurance benefits. *20 C.F.R. § 404.1592(a)*. Under the Social Security Act, "any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period." *42 U.S.C. § 422(c)(2)*.

In this case, the ALJ first found Plaintiff disabled. But, after discovering that Plaintiff had worked in 1989, the ALJ reversed course and denied benefits. In that second decision, the ALJ wrote:

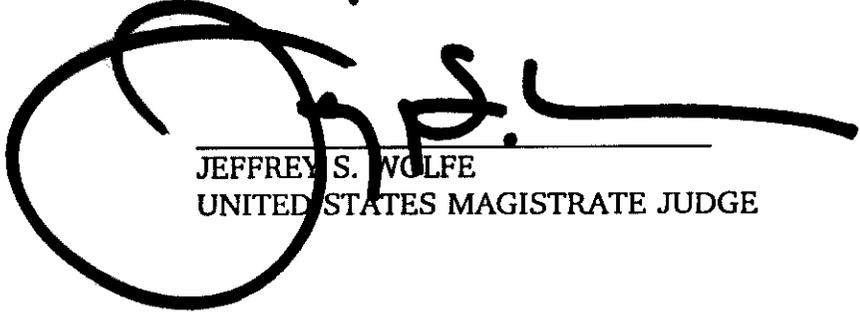
The evidence shows the claimant earned more than \$300 from February 1989 through August 1989. The months of January and October 1989 showed earnings of less than \$300 per month. Therefore, there are seven months during which the claimant had earnings...presumed to be substantial gainful activity...As to the claimant's position that he should be allowed a trial work period for this work activity, that argument is appropriate only if the claimant is granted benefits, something which this opinion does not do. Therefore, inasmuch as there is no grant of benefits, the ALJ finds that the claimant is not entitled to a trial work period...The ALJ finds that the claimant last engaged in substantial gainful activity from February 1989 to August 1989. *Record at 13.*

The ALJ's conclusion that Plaintiff was not eligible for a trial work period is incorrect. In *Walker v. Secretary of Health & Human Services*, 943 F.2d 1258, 1260 (10th Cir. 1991), the court concluded that an individual does not have to adjudged disabled and

actually receiving benefits to be entitled to a work period.⁴ Therefore, Plaintiff is eligible for a trial work period.

The decision whether to remand for further proceedings or simply award benefits is within the discretion of this Court. *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir. 1987). As a general rule, the Court would remand the case to allow the ALJ to re-examine the evidence in light of this opinion. But the procedural actions of the Secretary in first granting and then denying benefits already has resulted in a four-year wait for Plaintiff. Another remand would only cause more delay. Therefore, the Court remands the case to the Secretary with instructions to REVERSE its decision to deny benefits.⁵ Plaintiff is hereby awarded benefits from the onset date of March 15, 1987.

SO ORDERED THIS 31st day of May, 1994.



JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

⁴ The *Walker* court wrote: "A fair reading of the [Social Security] Act indicates that an individual who suffers from an impairment that has lasted, or is expected to last, twelve months is entitled to disability insurance benefits, as well as a trial work period, after waiting five months." *Id.* at 1260.

⁵ To describe this case as odd is an understatement. First, the Secretary awarded benefits to Plaintiff on September 5, 1990. At that time, the ALJ found Plaintiff's testimony credible and that his disability was supported by the treating physician's notes. The ALJ also found that Plaintiff could not perform sedentary work. *Record* at 34. Then, once the Appeals Council remanded the case, the ALJ denied benefits -- despite the fact he examined virtually the same medical evidence. The ALJ found the second time around that (1) the claimant could perform light work, (2) that Plaintiff's testimony was not credible and (3) That, in effect, the treating physician's notes did not support a disability finding. Based on the record, it appears the ALJ reversed course solely because of the Plaintiff's work activities in 1989. Upon review of the evidence, the Court holds that the ALJ's initial decision to award disability benefits to be the just result. Plaintiff, therefore, was disabled as March 15, 1987. His work in 1989 was a "trial work period" and should not have been used to deny him benefits.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

MAY 31 1994

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

McNABB COAL COMPANY, INC.,)

Plaintiff,)

v.)

BRUCE BABBITT, SECRETARY OF)
THE INTERIOR, et al.,)

Defendants.)

Civil Action
No. 88-C-281-E
No. 88-C-1525-E
(consolidated)

PERMANENT INJUNCTION

This matter came on for a hearing on April 14, 1994, on the Secretary's motion for a permanent injunction due to the alleged failure of McNabb Coal Company, Inc. ("McNabb"), to comply with the Settlement Agreement, as modified and as approved by the court. Although the court initially granted the Secretary's motion from the bench, the court stayed its injunction after the parties, at the court's urging, reached a tentative settlement in the court's chambers. The court finds that McNabb has failed to comply with the first required element of the proposed settlement, making the proposed settlement unworkable.

The court held, in its Order filed April 28, 1989, that McNabb's mine is a surface coal mining operation subject to the requirements of Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1201 et seq., and ordered McNabb to reclaim the mine. The Settlement Agreement approved by the court on November 2, 1990, provided a plan of action for bringing McNabb back into compliance with the law through a combination of re-

back into compliance with the law through a combination of re-permitting and reclamation of the mine. The court's original injunction has been stayed during the operation of the settlement. A progression of events now require the court to reinstate the injunction.

FINDINGS OF FACT:

1. McNabb is more than a year behind schedule for compliance with the Settlement Agreement, has not received a new coal mining permit, and has not posted any new reclamation bond. McNabb has reclaimed, at most, about 1/7 of the pit system that existed in November 1990.

2. Under the settlement agreement, as modified, McNabb should by now have reclaimed or obtained a new permit or permits for at least 2/7 of the pit system that existed when the settlement was reached in October 1990, and should by now have obtained a new permit for the entire pit area in Section 32, T 20N, R 15E, Rogers County. However, McNabb's permit application has been persistently delayed and has only recently reached the stage of substantive review by the Oklahoma Department of Mines ("ODOM"). This review will take several months, even assuming that the application may ultimately be approved.

3. McNabb has not shown that it will be able to post an adequate bond for a new permit if and when its pending permit application is approved. McNabb's financial condition is so weak that it has not even been able to pay its consulting engineering firm for the work necessary to complete the permitting process.

The tentative settlement reached in the court's chambers on April 14, 1994, was contingent on McNabb demonstrating, by May 15, 1994, that it has an irrevocable commitment from some source to providing a reclamation bond to McNabb for the pending permit application in a sum of at least \$450,000. McNabb has not obtained such a commitment.

CONCLUSIONS OF LAW:

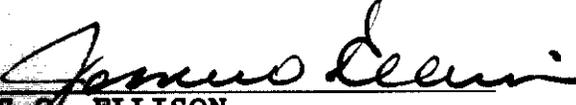
1. This court has continuing jurisdiction to enforce the settlement pursuant to paragraph XI (a) of the Settlement Agreement and the Order Approving Settlement Agreement filed November 2, 1990, in addition to the court's inherent power to enforce settlements. This enforcement may include an appropriate injunction.

2. It is appropriate to order McNabb to cease all mining operations at its Oklahoma mine because of its failure to comply with the settlement agreement, and its inability to demonstrate that it can comply in the future. A surface mining permit may not be issued without the posting of an adequate reclamation bond. 30 U.S.C. § 1259. A business entity that does not have the financial capacity to comply with a law regulating interstate commerce, such as SMCRA, must cease the business.

3. McNabb must reclaim it's mine because this is what the SMCRA requires.

IT IS THEREFORE ORDERED:

1. That McNabb shall immediately cease all mining operations, for both coal and non-coal materials, at its mine in Rogers and Wagoner Counties, Oklahoma, and shall proceed to reclaim the entire mine.
2. McNabb shall reclaim the mine to the applicable standards of the SMCRA, as reflected in the Oklahoma Permanent Regulatory Program approved by the Secretary at 30 C.F.R. Part 936.
3. Said reclamation shall commence immediately. All backfilling and grading of the mine shall be completed by September 1, 1994, and all seeding and mulching for revegetation shall be completed by October 15, 1994.
4. McNabb shall discuss with the Office of Surface Mining Reclamation and Enforcement ("OSM") the details for how the mine should be reclaimed. If the parties cannot reach an accord regarding the way the mine should be reclaimed, they may move the court for a hearing on their dispute.
5. McNabb shall continue making payments on reclamation fees owed to the Secretary pursuant to the terms of the Settlement Agreement.
6. Pursuant to Fed. R. Civ. P. 65, this order is binding upon McNabb Coal Company, Inc., its officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order.


JAMES G. ELLISON
Chief United States District Judge

Prepared By:

STEPHEN C. LEWIS
UNITED STATES ATTORNEY

By: Phil Pinnell

PHIL PINNELL
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma
(918) 581-7463

Of Counsel:

GERALD A. THORNTON, Attorney
U.S. Department of the Interior
Office of the Field Solicitor
P.O. Box 15006
Knoxville, Tennessee 37901
(615) 545-4303

b:\McNabb\Permment.Inj

ENTERED ON DOCKET

DATE 5-31-94

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

F I L E D

MAY 31 1994

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

BRUCE G. BOLZLE,)
)
Debtor,)
)
VIVIAN S. NEMEC,)
)
Appellee,)
)
v.)
)
BRUCE G. BOLZLE,)
)
Appellant(s).)

93-C-0834-E

ORDER

Now before this Court is Bruce C. Bolzle's appeal of a decision by the United States Bankruptcy Court for the Northern District Court of Oklahoma. The dispute stems from a state court judgment where a jury awarded Appellee Vivian Nemec \$35,000 in actual damages, \$8,000 in punitive damages, attorney fees of \$10,711.83 and \$2,195.60 in costs for breach of contract and for fraud. Bolzle later filed bankruptcy. Nemec then filed a summary judgment motion, asking the Bankruptcy Court to find the state court judgment nondischargeable under 11 U.S.C. §523(a)(2)(A). The Bankruptcy Court granted Nemec's motion and Bolzle now appeals.

On appeal, Bolzle raises two issues. First, did the Bankruptcy Court err by not allowing it an opportunity to respond to the summary judgment motion? Second, did the Bankruptcy Court err in its legal analysis?

The first issue involves the following procedural facts. On September 1, 1993, the Bankruptcy Court held a Scheduling Conference. While the conference was postponed,

Nemec filed its Motion For Summary Judgment on that same day. Then, on September 13, 1993, the Bankruptcy Court granted the Motion For Summary Judgment, concluding the state court judgment debt was nondischargeable. The Bankruptcy Court, however, did not allow Bolzle to respond to the motion prior to granting it.¹

The question, therefore, is whether the Bankruptcy Court erred by not allowing Bolzle to respond. Federal Rule of Civil Procedure 56(c) provides that a motion for summary judgment shall be served at least 10 days before the hearing date. The purpose of this requirement is stated below:

The extended 10-day time period for service of the motion is especially important in the Rule 56 context because it provides an opportunity for the opposing party to prepare himself as well as he can with regard to whether summary judgment should be entered. In theory, the additional time ought to produce a well-prepared and complete presentation on the motion to facilitate its disposition by the court. In addition, since opposition to a summary judgment motion often is a difficult task, usually involving preparation of both legal and factual arguments as well as affidavits, and since the results of failure are drastic, it is felt that the additional time is needed to assure that the summary judgment process is fair. *10 C. Wright & A. Miller, Federal Practice and Procedure § 2719, at 6-7 (1973).*

In this case, Bolzle was made aware of the Motion For Summary Judgment on September 1, 1993. Twelve days later, the Bankruptcy Court granted the motion without waiting for Bolzle to respond. Under Local Rule 7.1 of this Court, the non-moving party has 15 days after the filing of the motion to file a response. Simply granting a summary judgment motion without allowing a response and/or conducting a hearing is improper.

¹ Exactly why the Bankruptcy Court acted as it did is unclear. In an April 19, 1994 hearing before this Court, Appellant's counsel stated that the Bankruptcy Court postponed the Scheduling Conference to give him an opportunity to respond to Nemec's Motion For Summary Judgment. However, according to Appellant's counsel, the Bankruptcy Court then granted the summary judgment motion before Appellant's response time had expired.

It is true that the 10-day rule of Fed.R.Civ.P. 56(c) is not absolute and can be waived by the opposing party. *Prospero Associates v. Burroughs Corp.*, 714 F.2d 1022, 1024 (10th Cir. 1983). Also, see, *Osbakken v. Venable*, 931 F.2d 36 (10th Cir. 1991)("It is settled law that noncompliance with the time provisions of Rule 56(c) deprives the court of authority to grant the motion for summary judgment unless the party has waived this requirement.")

In this case, there is no showing that Bolzle waived his right to respond. In fact, it appears the Bankruptcy Court had given him time to respond and then issued its Order prior to that response date. Given those circumstances, this Court vacates the Bankruptcy Court's September 13, 1993 Order Granting Summary Judgment.

The case is REMANDED. The Bankruptcy Court must give Bolzle sufficient time to respond to the Motion For Summary Judgment and then re-examine its Order accordingly.²

SO ORDERED THIS 27th day of May, 1994.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

² *The issue before the Bankruptcy Court is whether Bolzle's debt to Nemec should be discharged. Under 11 U.S.C. §523(a)(2)(A), Nemec must prove each of the five elements: (1) Bolzle made a false or willful representation; (2) the representation with the intent to deceive Nemec; (3) Nemec relied on the representation; (4) Nemec's reliance was reasonable; and (5) Nemec sustained a loss as a result of Bolzle's representation. In Re Mullet, 817 F.2d 677, 680 (10th Cir. 1987). The Bankruptcy Court invoked the doctrine of collateral estoppel to bar relitigation of the factual issues underlying those five elements. Determining whether such a ruling was proper is difficult since it is unclear as to what evidence, if any, Bolzle plans to present to the Bankruptcy Court on remand. However, on the record (as it stands now), summary judgment findings (applying the doctrine of collateral estoppel) were proper on elements Nos. 1, 2, 3 and 5. But the record (as it stands now) does not support a summary judgment finding of element 4 (i.e. whether Nemec's reliance was reasonable).*

ENTERED ON DOCKET

DATE 5-31-94

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

CAROLYN KENNEY,
Plaintiff,

vs.

JIM KENNEY, GARY GLANZ, and
OLLIE W. GRESHAM,
Defendants.

Case No. 93-C-0237 E

FILED

MAY 2 1994

Richard L. ... Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JAMES P. DICKERSON,
Plaintiff,

v.

JIM KENNEY, GARY GLANZ, and
OLLIE W. GRESHAM,
Defendants.

Case No. 93-C-0238 E

ORDER GRANTING DISMISSAL WITHOUT PREJUDICE

This matter comes before this Court upon the Plaintiffs' Motion for Dimissal Without Prejudice. It is hereby ordered that the case is dismissed without prejudice, and that the parties shall pay their own costs and attorney fees.

S/ JAMES O. ELLISON

JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

ENTERED ON DOCKET

DATE 5-31-94

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

CAROLYN KENNEY,
Plaintiff,

vs.

JIM KENNEY, GARY GLANZ, and
OLLIE W. GRESHAM,
Defendants.

Case No. 93-C-0237 E

FILED

MAY 27 1994

Richard M. [unclear], Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JAMES P. DICKERSON,
Plaintiff,

v.

JIM KENNEY, GARY GLANZ, and
OLLIE W. GRESHAM,
Defendants.

Case No. 93-C-0238 E ✓

ORDER GRANTING DISMISSAL WITHOUT PREJUDICE

This matter comes before this Court upon the Plaintiffs' Motion for Dimissal Without Prejudice. It is hereby ordered that the case is dismissed without prejudice, and that the parties shall pay their own costs and attorney fees.

S/ JAMES O. ELLISON

JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

ENTERED ON DOCKET

DATE 5-27-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Twana Bell; COUNTY TREASURER,
Osage County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Osage County, Oklahoma,

Defendants.

)
) **F I L E D**
)

) MAY 20 1994
)

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

) CIVIL ACTION NO. 94-C-143-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day
of May, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, COUNTY TREASURER, Osage County,
Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County,
Oklahoma, appear by John S. Boggs, Jr., Assistant District
Attorney, Osage County, Oklahoma; and the Defendant, TWANA J.
BELL, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, TWANA J. BELL, was served a
copy of Summons and Complaint on April 13, 1994; that the
Defendant, COUNTY TREASURER, Osage County, Oklahoma, acknowledged
receipt of Summons and Complaint on March 2, 1994; and that
Defendant, BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma,
acknowledged receipt of Summons and Complaint on February 23,
1994.

It appears that the Defendants, COUNTY TREASURER, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, filed their Answer on March 3, 1994; and that the Defendant, TWANA J. BELL, has failed to answer and default has therefore been entered by the Clerk of this Court.

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

Lot Seven (7), Block One (1), SKYLINE RIDGE SIXTH, an Addition to Tulsa, Osage County State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on January 23, 1984, Millard B. Latimer and Alicia Latimer, husband and wife, executed and delivered to Shearson/American Express Mortgage corporation a mortgage note in the amount of \$45,600.00, payable in monthly installments, with interest thereon at the rate of Thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, Millard B. Latimer and Alicia Latimer, husband and wife, executed and delivered to Shearson/American Express Mortgage Corporation, a mortgage dated January 23, 1984, covering the above-described property. Said mortgage was recorded on February 2, 1984, in Book 0649, Page 892, in the records of Osage County, Oklahoma.

The Court further finds that on June 13, 1990, Shearson Lehman Mortgage Corporation formerly Shearson/American Express Mortgage Corporation assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on September 14, 1990, in Book 779, Page 750, in the records of Osage County, Oklahoma.

On September 7, 1989, Millard B. Latimer and Alicia Latimer, husband and wife, granted a general warranty deed to Twana J. Bell, a single person. This deed was recorded with the Osage County Clerk on September 14, 1989, in Book 760 at Page 305 and Twana J. Bell assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on June 10, 1990, the Defendant, TWANA J. BELL, a single person, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on August 1, 1990, February 1, 1991, and February 1, 1992.

The Court further finds that the Defendant, TWANA J. BELL, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, TWANA J. BELL, is indebted to the Plaintiff in the principal sum of \$68,216.31, plus interest

at the rate of Thirteen percent per annum from January 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$53.31 which became a lien on the property as of 1993 and a claim against the property in the amount of \$36.63 which became a claim as of 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, TWANA J. BELL, in the principal sum of \$68,216.31, plus interest at the rate of Thirteen percent per annum from January 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action, and 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 the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, have and recover judgment in the amount of \$89.94 for personal property taxes for the years 1992, 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, TWANA J. BELL, to satisfy the money judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER AND BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, in the amount of \$89.94, personal

property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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

S/ JAMES O. ELLISON

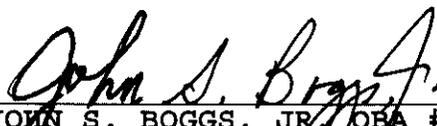
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



JOHN S. BOGGS, JR., OBA #0920
Assistant District Attorney
District Attorneys Office
Osage County Courthouse
Pawhuska, Oklahoma 74056
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-143-E

NBK:flv

DATE 5-26-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
Richard Hamons; Beneficial)
Oklahoma, Inc.; City of Glenpool,)
Oklahoma; COUNTY TREASURER, Tulsa)
County, Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

F I L E D

MAY 26 1994

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

CIVIL ACTION NO. 94-C-131

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day of May, 1994. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, RICHARD HAMONS; BENEFICIAL OKLAHOMA, INC.; CITY OF GLENPOOL, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, RICHARD HAMONS, acknowledged receipt of Summons and Complaint on February 24, 1994; that the Defendant, CITY OF GLENPOOL, Oklahoma, acknowledged receipt of Summons and Complaint on or about March 22, 1994; that the Defendant, BENEFICIAL OKLAHOMA, INC., was served by Marshal Service a copy of Summons and Complaint on April 11, 1994; that

Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 24, 1994; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 23, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on March 15, 1994; that the Defendants, RICHARD HAMONS, BENEFICIAL OKLAHOMA, INC., and CITY OF GLENPOOL, Oklahoma, have failed to answer and default has therefore been entered by the Clerk of this Court.

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

Lot Five (5), Block Seven (7), BRENTWOOD, an Addition to the Town of Glenpool, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on July 7, 1980, the Defendant, RICHARD HAMONS, a single person, executed and delivered to Midland Mortgage Co., a mortgage note in the amount of \$42,950.00, payable in monthly installments, with interest thereon at the rate of Eleven and One-Half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, RICHARD HAMONS, executed and delivered to Midland Mortgage Co., a

mortgage dated July 7, 1980, covering the above-described property. Said mortgage was recorded on July 11, 1980, in Book 4484, Page 231, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 1, 1986, Midland Mortgage Co., assigned the above-described mortgage note and mortgage to Trinity Mortgage Co. This Assignment of Mortgage was recorded on March 10, 1986, in Book 4928, Page 1937, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 24, 1989, Trinity Mortgage Co. of Dallas assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on February 6, 1989, in Book 5165, Page 1404, in the records of Tulsa County, Oklahoma.

The Court further finds that on, March 28, 1989, the assignment was corrected and recorded with the Tulsa County Clerk in Book 5174, on Page 365, correcting the name of said mortgage company, Trinity Mortgage Co. to Trinity Mortgage Co. of Dallas.

The Court further finds that on February 1, 1989, the Defendant, RICHARD HAMONS, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on March 1, 1990.

The Court further finds that the Defendant, RICHARD HAMONS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly

installments due thereon, which default has continued, and that by reason thereof the Defendant, RICHARD HAMONS, is indebted to the Plaintiff in the principal sum of \$64,330.17, plus interest at the rate of Eleven and One-Half percent per annum from February 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$35.00 which became a lien on the property as of June 26, 1992, \$27.00 which became a lien on the property as of June 25, 1993, and a claim in the amount of \$26.00 for 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, RICHARD HAMONS, in the principal sum of \$64,330.17, plus interest at the rate of Eleven and One-Half percent per annum from February 1, 1994 until judgment, plus

interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action, and 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 the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$88.00 for personal property taxes for the years 1991, 1992, 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, RICHARD HAMONS, to satisfy the judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$88.00, personal property taxes which are
currently due and owing.

The surplus from said sale, 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
pursuant to 12 U.S.C. 1710(1) there shall be no right of
redemption (including in all instances any right to possession
based upon any right of redemption) in the mortgagor or any other
person subsequent to the foreclosure sale.

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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-131-E

NBK:flv

ENTERED ON DOCKET

DATE 5-26-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RANDY DALE BIAS; TAMMY BIAS;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

MAY 26 1994

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

CIVIL ACTION NO. 94-C-63-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day
of May, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, COUNTY TREASURER, Tulsa County,
Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, RANDY DALE
BIAS and TAMMY BIAS, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, COUNTY TREASURER, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on February 3, 1994; and that Defendant, BOARD OF COUNTY
COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on January 25, 1994.

The Court further finds that the Defendants, RANDY DALE
BIAS and TAMMY BIAS, were served by publishing notice of this
action in the Tulsa Daily Commerce & Legal News, a newspaper of

general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 9, 1994, and continuing through April 13, 1994, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, RANDY DALE BIAS and TAMMY BIAS, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, RANDY DALE BIAS and TAMMY BIAS. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is

sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on February 15, 1994; and that the Defendants, RANDY DALE BIAS and TAMMY BIAS, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a 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 One (1), RIVERVIEW PARK SECOND ADDITION, BLOCKS 1 Through 4, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on November 30, 1988, the Defendant, RANDY DALE BIAS, executed and delivered to Commonwealth Mortgage Company of America, L.P., Limited Partnership his mortgage note in the amount of \$50,291.00, payable in monthly installments, with interest thereon at the rate of (8.875%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, RANDY DALE BIAS, executed and delivered to Commonwealth Mortgage Company of America, L.P., Limited Partnership, a mortgage dated November 30,

1988, covering the above-described property. Said mortgage was recorded on December 2, 1988, in Book 5143, Page 764, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 31, 1990, Commonwealth Mortgage Company of America, L.P., Limited Partnership by Commonwealth Mortgage Corporation of America, its general partner, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on November 21, 1990, in Book 5289, Page 2333, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, RANDY DALE BIAS, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, RANDY DALE BIAS, is indebted to the Plaintiff in the principal sum of \$67,172.33, plus interest at the rate of 8.875 percent per annum from January 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$43.00 which became a lien on the property as of June 26, 1992, and \$31.00 which became a lien on the property as of June 25, 1993, and a claim in the amount of \$31.00 for 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, RANDY DALE BIAS, in the principal sum of \$67,172.33, plus interest at the rate of 8.875 percent per annum from January 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action and 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 the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$105.00 for personal property taxes for the years 1991, 1992, 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, RANDY DALE BIAS, to satisfy the money judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$105.00, personal property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession

based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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

S/ JAMES C. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-63-E

NBK:flv

ENTERED ON DOCKET

DATE MAY 26 1994

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

FILED

MAY 25 1994

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

PAINWEBBER/GEODYNE ENERGY INCOME)
 PRODUCTION PARTNERSHIP I-D, et al,)
)
 Plaintiffs,)
)
 vs.)
)
 SUN OPERATING LIMITED PARTNERSHIP,)
)
 Defendant.)

Case No. 93-C-168-B ✓

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 25th day of May, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

13

ENTERED ON DOCKET

DATE 5-26-94

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 93-C-39-E
)
 195.0 CONTIGUOUS ACRES,)
 et al.,)
)
 Defendants.)

FILED

MAY 26 1994

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

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 25th day of May, 1994.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE MAY 26 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
 JOSE MARRERO, JR.; PENELOPE ANN)
 MARRERO, aka ANN MARRERO; CITY OF)
 GLENPOOL, Oklahoma;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
MAY 25 1994

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

CIVIL ACTION NO. 94-C 186B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day
of May, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma**, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, **JOSE
MARRERO, JR., PENELOPE ANN MARRERO aka ANN MARRERO, and CITY OF
GLENPOOL, Oklahoma**, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, **JOSE MARRERO and PENELOPE
ANN MARRERO aka ANN MARRERO**, were served with Summons and
Complaint on April 22, 1994; that the Defendant, **CITY OF
GLENPOOL, Oklahoma**, acknowledged receipt of Summons and Complaint
on or about March 24, 1994; that Defendant, **COUNTY TREASURER,**

Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 3, 1994; and Defendant, BOARD OF COUNTY COMMISSIONER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 2, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on March 21, 1994; and that the Defendants, JOSE MARRERO, JR., PENELOPE ANN MARRERO aka ANN MARRERO, and CITY OF GLENPOOL, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-Two (22), Block Seven (7),
GLENPOOL PARK, an Addition in the Town of
Glenpool, Tulsa County, State of Oklahoma,
according to the Recorded Amended Plat
thereof.

The Court further finds that on October 7, 1986, the Defendants, JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO, husband and wife, executed and delivered to Bank of Glenpool their mortgage note in the amount of \$44,841.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO, husband and wife, executed and delivered to Bank of Glenpool a mortgage dated October 7, 1986, covering the above-described property. Said mortgage was recorded on October 10, 1986, in Book 4975, Page 1809, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 13, 1986, Bank of Glenpool assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on October 20, 1986, in Book 4977, Page 497, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 20, 1987, Mortgage Clearing Corporation assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on December 3, 1987, in Book 5067, Page 2419, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 1, 1987, the Defendant, JOSE MARRERO, JR., entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on March 1, 1989 and September 1, 1989.

The Court further finds that the Defendants, JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements,

by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO**, are indebted to the Plaintiff in the principal sum of \$67,426.15, plus interest at the rate of 9.5 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, **COUNTY TREASURER, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$34.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$24.00 which became a lien on June 25, 1993; and a claim against the subject property in the amount of \$30.00 for tax year 1993. Said liens and claim are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property

The Court further finds that the Defendants, **JOSE MARRERO, JR., PENELOPE ANN MARRERO aka ANN MARRERO, and CITY OF GLENPOOL, Oklahoma**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of

redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, **JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO**, in the principal sum of \$67,426.15, plus interest at the rate of 9.5 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action 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 the Defendant, **COUNTY TREASURER, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$88.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **JOSE MARRERO, JR., PENELOPE ANN MARRERO aka ANN MARRERO, CITY OF GLENPOOL, Oklahoma**, and the **BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **JOSE MARRERO, JR. and PENELOPE ANN MARRERO aka ANN MARRERO**, to satisfy the money judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$88.00, personal property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

for Catherine Depew Hart

NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. Dennis Semler

J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C 186B

NBK:lg

ENTERED ON DOCKET

DATE 5-26-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RODNEY D. CHANEY;)
 SANDRA K. CHANEY)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

MAY 26 1994

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

CIVIL ACTION NO. 94-C-320-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day
of May, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, COUNTY TREASURER, Tulsa County,
Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, RODNEY D.
CHANEY and SANDRA K. CHANEY, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, RODNEY D. CHANEY,
acknowledged receipt of Summons and Complaint on April 4, 1994;
that the Defendant, SANDRA K. CHANEY, acknowledged receipt of
Summons and Complaint on April 6, 1994; that Defendant, COUNTY
TREASURER, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on April 8, 1994; and that Defendant, BOARD

OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 4, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on April 25, 1994; and that the Defendants, RODNEY D. CHANEY and SANDRA K. CHANEY, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that on January 31, 1992, RODNEY D. CHANEY and SANDRA K. CHANEY filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 92-B-306-C. On May 21, 1992, the personal liability of the Defendants, RODNEY D. CHANEY and SANDRA K. CHANEY, on the debt represented by the subject note and mortgage was discharged by the United States Bankruptcy Court for the Northern District of Oklahoma, the case was subsequently closed on August 31, 1992.

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

Lot Fifteen (15), Block Sixty-one (61),
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, Oklahoma, according
to the Recorded Plat thereof.

The Court further finds that on April 25, 1986, the Defendant, RODNEY D. CHANEY, executed and delivered to First

Security Mortgage Company, his mortgage note in the amount of \$40,274.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, RODNEY D. CHANEY, executed and delivered to First Security Mortgage Company a mortgage dated April 25, 1986, covering the above-described property. Said mortgage was recorded on May 2, 1986, in Book 4939, Page 1976, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 25, 1986, First Security Mortgage Company assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on November 30, 1986, in Book 4991, Page 2390, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1988, Mortgage Clearing Corporation assigned the above-described mortgage note and mortgage to Triad Bank, N.A. This Assignment of Mortgage was recorded on July 18, 1989, in Book 5195, Pages 644-973, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 15, 1989, Triad Bank, N.A. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on November 17, 1989, in Book 5220, Page 1261, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 1, 1989, the Defendant, RODNEY D. CHANEY, entered into an agreement with the

Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on 1990, 1991, 1992.

The Court further **finds** that the Defendant, RODNEY D. CHANEY, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, RODNEY D. CHANEY, is indebted to the Plaintiff in the principal sum of \$50,103.45, plus interest at the rate of Nine percent **per annum** from March 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further **finds** that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$14.00 which became a lien on the property as of June 26, 1993, and a claim in the amount of \$15.00 for personal property taxes due for 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further **finds** that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further **finds** that the Defendant, SANDRA K. CHANEY, has no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, RODNEY D. CHANEY, in the principal sum of \$50,103.45, plus interest at the rate of Nine percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action, 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 the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$29.00 for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, SANDRA K. CHANEY, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, RODNEY D. CHANEY, to satisfy the judgment in rem of the Plaintiff 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 according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$29.00, personal property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession

based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

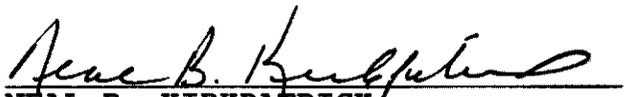
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-320-E

NBK/flv

ENTERED
DATE MAY 11 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

vs.)

CLIFFORD L. THOMAS; SADIE)
PRISCILLA THOMAS; COUNTY)
TREASURER, Osage County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Osage County,)
Oklahoma,)

Defendants.)

CIVIL ACTION NO. 93-C-253-B

FILED

MAY 23 1994

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day of May, 1994. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage County, Oklahoma; and the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Clifford L. Thomas, was served with Summons and Complaint on May 5, 1993; that the Defendant, Sadie Priscilla Thomas, was served with Summons and Complaint on May 5, 1993; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on March 30, 1993; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on March 29, 1993.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on April 1, 1993; and that the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

The South 5 feet of Lot 8, and all of Lot 7, in Block 2, Monarch Heights, an Addition to Tulsa, Osage County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that on February 16, 1976, the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$10,500.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs,

a mortgage dated February 16, 1976, covering the above-described property. Said mortgage was recorded on March 1, 1976, in Book 459, Page 439, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, are indebted to the Plaintiff in the principal sum of \$4,055.86, plus interest at the rate of 9 percent per annum from November 1, 1992 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$14.84 (\$6.84 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$ -0-, plus penalties and interest, for the year of N/A. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$ 153.⁴¹ which became a lien on the property as of

7/1/93. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, in the principal sum of \$4,055.86, plus interest at the rate of 9 percent per annum from November 1, 1992 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action in the amount of \$14.84 (\$6.84 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), 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 the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$ -0-, plus penalties and interest, for ad valorem taxes for the year N/A, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of \$ 153.41 for personal property taxes for the year 7/1/93, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Clifford L. Thomas and Sadie Priscilla Thomas, to satisfy the money judgment of the Plaintiff 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, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$ -0-, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$ 153.41, personal property taxes which are currently due and owing.

The surplus from said sale, 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 the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS N. ...

UNITED STATES DISTRICT JUDGE

APPROVED:
STEPHEN C. LEWIS
~~United States Attorney~~

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

JOHN S. BOGGS, JR., OBA #0920
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-253-B

PB/esf

Oklahoma, acknowledged receipt of Summons and Complaint on March 30, 1994.

It appears that the Defendant, ROSELEE CRANKE, has not been served herein, having previously filed a quit-claim deed to the Defendant, JOSEPH P. CRANKE, on September 6, 1990 should be dismissed as a defendant to this action.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on April 25, 1994; that the Defendant, JOSEPH P. CRANKE, filed his Answer on April 15, 1994;

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a 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 Three (3), ARROW SPRINGS PARK, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on December 16, 1988, the Defendants, JOSEPH P. CRANKE and ROSELEE CRANKE, executed and delivered to Commonwealth Mortgage Company of America, L.P., a mortgage note in the amount of \$42,817.00, payable in monthly installments, with interest thereon at the rate of Eight and Seven-Eighths percent (8.875%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, JOSEPH P. CRANKE and ROSELEE CRANKE, then husband and wife, executed and

delivered to Commonwealth Mortgage Company of America, L.P., a mortgage dated December 16, 1988, covering the above-described property. Said mortgage was recorded on December 20, 1988, in Book 5146, Page 2126, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 26, 1990, Commonwealth Mortgage Company of America, L.P., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 11, 1990, in Book 5282, Page 1089, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1990, the Defendants, JOSEPH P. CRANKE and ROSELEE CRANKE, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose.

The Court further finds that the Defendants, JOSEPH P. CRANKE and ROSELEE CRANKE, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreement, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, JOSEPH P. CRANKE, is indebted to the Plaintiff in the principal sum of \$58,455.68, plus interest at the rate of Seven and Seven Eighths percent per annum from February 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$48.00 which became a lien on the property as of June 25, 1993, and a claim in the amount of \$47.00 for 1993 taxes. Said lien and claim are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, ROSELEE CRANKE, should be dismissed from this action.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, JOSEPH P. CRANKE, in the principal sum of \$58,455.68, plus interest at the rate of Eight and Seven-Eighths percent per annum from February 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action, and 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 the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$95.00 for personal property taxes for the years 1992, 1993, plus interest, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, ROSELEE CRANKE, is dismissed from this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, JOSEPH P. CRANKE, to satisfy the money judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$95.00, personal property taxes which are
currently due and owing, plus interest.

The surplus from said sale, 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
pursuant to 12 U.S.C. 1710(1) there shall be no right of
redemption (including in all instances any right to possession
based upon any right of redemption) in the mortgagor or any other
person subsequent to the foreclosure sale.

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

S/ THOMAS H. BROWN

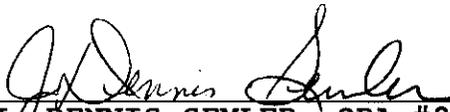
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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Assistant United States Attorney
3900 U.S. Courthouse
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J. DENNIS SEMLER, OBA #8076
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(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-301-B

NBK:flv

ENTERED ON DOCKET

DATE MAY 25 REC'D

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOMMY LAWSON HALL;
CITY OF BROKEN ARROW, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 94-C-355-B ✓

FILED

MAY 25 1994

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

O R D E R

Upon the Motion of the United States of America, acting on behalf of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 23rd day of May, 1994.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

NBK: flv

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MAY 25 1994

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

FILED

MAY 24 1994

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

GEORGIA B. RECORD,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,

Defendant.

92-C-841-B ✓

ORDER

Now before the Court is Plaintiff Georgia G. Record's appeal of the Secretary's denial of Social Security benefits. This appeal stems from a Supplemental Administrative Hearing dated October 7, 1991.¹ Two issues are raised: (1) whether the Administrative Law Judge ("ALJ") erred in his hypothetical questioning of the vocational expert; and (2) whether substantial evidence supports the ALJ's decision. For the reasons discussed below, the ALJ's decision is affirmed.

I. Standard of Review

Judicial review of the Secretary's decision is limited in scope by 42 USC 405(g) which states that the Secretary's findings of fact must be affirmed if supported by substantial evidence. *Richardson v. Perales*, 402 U.S. 389, 390 (1971). Substantial evidence is such relevant evidence that "a reasonable mind might deem adequate to support a conclusion." *Jordan v. Heckler*, 785 F.2d 1314, 1316 (10th Cir. 1987). The standard is more than a scintilla and less than a preponderance.

¹On April 24, 1990, the plaintiff attended an Administrative Hearing and received a denial decision. The plaintiff filed a timely Request for Review of the Denial Decision and the Appeals Council remanded the case to further develop the Claimant's medical evidence.

Grounds for reversal also exist if the Secretary fails to apply the correct legal standard or fails to provide this Court with a sufficient basis to determine that appropriate legal standards have been followed. *Smith v. Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1985).²

II. Summary of Medical Evidence

Plaintiff Georgia G. Record was 58 years old at the time of the Supplemental Administrative Hearing.³ She is a high school graduate who worked as a medical transcriptionist for approximately sixteen years at Children's Medical Center, until November 30, 1981 when she was involved in a car accident. She did not work as a medical transcriptionist again until September 8, 1988. She worked for approximately six (6) months, until March 3, 1989 at Gilcrease Medical Center.

The Plaintiff's medical records date back to the car accident in November, 1981. The record indicates that as a result of the accident, the Plaintiff suffered a fracture of the middle left finger and pain in the left knee and lower back. In addition, in the early 1980's Plaintiff experienced cardiac problems including recurrent atrial fibrillation and angina. Plaintiff has also received treatment for episodes of dizziness, hypothyroidism (controlled by medication) and non-insulin dependent diabetes.

The record also includes several fairly recent reports of depression. On March 13,

²When deciding a claim for benefits under the Social Security Act, the Administrative Law Judge must use the following five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. 20 C.F.R. Section 404.1520(b)-(f). Once the Secretary finds the claimant either disabled or nondisabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988). In the instant case, the Secretary, at step 4, found that the plaintiff could return to her past relevant work but also discussed other possible employment under step 5.

³The Plaintiff's date of birth is October 16, 1932.

1989, Dr. Dan Calhoun, an internist, diagnosed depression and recommended anti-depressants and counseling. On June 13, 1989 Dr. Robert Ashley noted "severe depression" and also recommended therapy, including anti-depressants. The last report by Dr. Donald Inbody dated July 21, 1989, also diagnosed severe depression but found no evidence of impaired attention and concentration. All three reports were the result of a single visit by the plaintiff and there is no evidence in the record that she followed through on any of the recommendations. In addition to the medical reports, the plaintiff also complains of pain, headaches and hand cramping.

III. Legal Analysis

Two issues are raised. The first is whether the Administrative Law Judge's ("ALJ") hypothetical question was proper. The second issue is whether substantial evidence supports the ALJ's decision.

A. The Hypothetical Question

The issue is whether the hypothetical question presented to the Vocational Expert was proper. The plaintiff contends that the hypothetical was improper because it did not list the plaintiff's numerous impairments and inaccurately asked the witness to assume that the plaintiff could perform sedentary work. This argument is without merit for the following reasons.

First, the hypothetical need not include allegations which are not supported by the medical evidence. *Simmons v. Bowen*, 711 F. Supp 503 (N.D. Iowa 1989); *Luthi v. Bowen*, 654 F.Supp 281 (W.D. Mo. 1986). Plaintiff specifically contends that, when cross-examined by her attorney, the Vocational Expert agreed that a person whose hands cramp

would be unable to do the plaintiff's past relevant work. However, as noted by the ALJ, the record provides no credible evidence to support the plaintiff's allegation of hand cramping after ten minutes of use. In addition, Plaintiff successfully performed her past relevant work from September, 1988 to March, 1989.

Second, the ALJ did restrict the range of sedentary work activity in his hypothetical to accommodate the plaintiff's diminished ability to bend, squat and stand. It also referred to the freedom to change postural positions as needed.⁴ Furthermore, there is no medical evidence to confirm that the plaintiff cannot lift up to ten pounds or sit for six hours out of an eight-hour work day. See, Social Security Ruling 83-10. As a result, this Court finds the hypothetical question was proper.⁵

B. Substantial Evidence

The next issue is whether substantial evidence supports the ALJ's decision. Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 390 (1971). For the following reasons, this Court finds that the ALJ's decision is supported by substantial evidence.

Ms. Record's brief alleges that she is disabled because of severe pain, headaches, an inability to use her hands and depression. To determine if plaintiff's pain is disabling, the ALJ sought guidance from both Social Security Ruling 88-13 and *Luna v. Bowen*, 834 F.2d

⁴The hypothetical question was presented as follows: "...I would like for you to assume a hypothetical person the same age, education, sex, background training and experience as this claimant who's capable of performing a full range of sedentary work, limited by limited bending, both as to frequency and degree, limited squatting, limited climbing, limited time on the feet, and free to change position as needed." Record at 190.

⁵Assuming *arguendo* that the hypothetical was improper, the ALJ in the instant case need not rely on the vocational expert testimony because it was determined that the plaintiff can perform her past relevant work.

161 (10th Cir. 1990). Under *Luna*, the ALJ must consider all the evidence presented that could reasonably produce the alleged pain once a claimant demonstrates a pain-causing impairment. *Luna at 165*. The ALJ may evaluate a claimant's credibility based on whether the medical records are consistent with the subjective complaints of the severity of the pain. *Tally v. Sullivan*, 908 F.2d 585 (10th Cir. 1990).

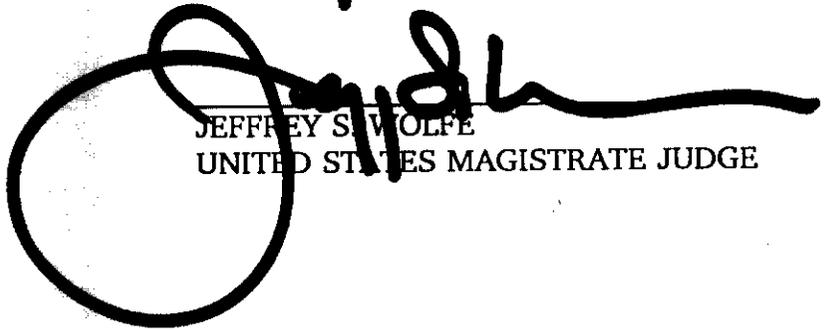
In examining the record, the ALJ found "multiple and vague complaints of aches and pains" which were not supported by the objective record. *Record at 36, 38*. The aches and pains varied from headaches, hand cramps, dizziness and chest pain. The medical record does not support the plaintiff's complaints of either daily headaches since 1981 or hand cramping after ten minutes of use. Dr. Dan Calhoun on March 13, 1989, did not place any physical restrictions on the plaintiff. A physical examination on July 7, 1989 by Dr. Richard Cooper also failed to note a physical disability. In addition, the ALJ noted the plaintiff's ability to sustain full-time employment as a medical transcriptionist from September 8, 1988 to March 3, 1989 in spite of these complaints. Thus, this Court agrees that the lack of medical evidence and the plaintiff's ability to sustain employment support a determination that the plaintiff's allegations of pain are not fully credible.

There is, however, medical evidence to support the plaintiff's allegation of depression. As discussed earlier, the record includes three reports from 1989 of depression. Dr. Calhoun, though an internist, felt that the plaintiff suffered from possibly disabling depression. *Record at 954*. Dr. Ashley and Dr. Inbody, both psychiatrists, also diagnosed depression. Dr. Inbody, however, found no evidence of impaired attention or concentration. *Record at 871*. Furthermore, all three reports were the result of one-time visits and the

plaintiff never followed through on any recommendation of therapy or anti-depressant medication. As a result, more medical evidence is needed to support a finding that the plaintiff's depression is disabling.

In conclusion, this Court finds that the evidence in the Record does not support a finding of no substantial evidence. Therefore, the Secretary's decision is affirmed.

SO ORDERED THIS 24th day of May, 1994.



JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET
DATE 5-25-94

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AMERICAN MEGATRENDS, INC.)

Plaintiff,)

v.)

COMPUTERIZED AUTOMATION)
TECHNOLOGIES, INC., d/b/a)
PC DESIGN,)

Defendant.)

Case No. 93-C-01903 *E*

F I L E D

MAY 25 1994

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

ORDER GRANTING DISMISSAL

Now on this 11 day of May, 1994 the Plaintiff's Application to Dismiss Case With Prejudice comes on for hearing. After considering the Application the Court finds that the Application should be granted.

IT IS THEREFORE ADJUDGED AND DECREED that the Plaintiff's Application to Dismiss Case With Prejudice is granted **dismissing** all claims of any party to this action with prejudice, all terms of the settlement agreement having been performed, and each party to bear their own attorney fees and costs.

S/ JAMES C. SMITH

UNITED STATES DISTRICT JUDGE

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

M.R. TUDOR, INC., an)
Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
WORLDFLINE, INC., a Florida)
corporation; DEAN WORLDWIDE,)
INC., formerly d/b/a MAXXIM)
INTERNATIONAL; RAM-FORWARDING,)
INC., a Texas corporation,)
d/b/a MAXXIM INTERNATIONAL;)
and ELLIOTT MARINE SERVICES,)
INC., a Texas corporation,)
)
Defendants.)

ENTERED ON DOCKET
MAY 24 1994
DATE _____

No. 92-C-889-C

FILED

MAY 23 1994

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

ORDER

The above-styled action was tried to the Court on November 9 and November 10, 1993. After considering the pleadings, the testimony and exhibits admitted at trial, all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following Findings of Fact and Conclusions of Law in accordance with Rule 52, F.R.Cv.P., as follows:

FINDINGS OF FACT

1. Plaintiff M.R. Tudor, Inc. ("Tudor") is an Oklahoma corporation with its principal place of business within the State of Oklahoma.

2. Defendant, Dean Worldwide, Inc. ("Dean") is a foreign corporation. At all times relevant hereto, Dean was doing business

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as Maxxim International ("Maxxim"). Defendant Worldline, Inc. ("Worldline"), a foreign corporation, did not appear but was served with process in this action on June 15, 1993.

3. Tudor is in the business of selling used heavy earthmoving and construction equipment throughout the United States and abroad. It uses "freight forwarders" to ship such equipment overseas to its customers.

4. Dean is a freight forwarder licensed by the Federal Maritime Commission.

5. Tudor had earlier employed Maxxim as a freight forwarder to arrange the shipment of certain equipment from California to the Canary Islands. In that shipment, Tudor experienced several problems relating to Maxxim's services.

6. Thereafter, Tudor had another large shipment to make to Las Palmas, Canary Islands, consisting of heavy earthmoving equipment. This second shipment gave rise to the present litigation. Maxxim represented to Tudor that Maxxim had special expertise to effect the shipment.

7. Because of the problems experienced by Tudor in the first shipment, Tudor agreed to allow Maxxim to handle the second shipment subject to the following conditions: (a) that Maxxim would deal only with carriers which owned or controlled the vessel on which Tudor's cargo would be shipped, (b) that Maxxim would deal only with a carrier which was established and substantial enough to perform as it quoted and represented that it would, and (c) that Maxxim deal only with principals, not brokers.

8. Maxxim agreed to handle the shipment under the above-described conditions. Such conditions were material terms of the contract between Tudor and Maxxim. Additionally, Maxxim was provided with a copy of plaintiff's letter of credit for the subject transaction and was aware of the time constraints on Tudor imposed by the letter of credit.

9. Despite the imposed condition that Maxxim not deal with brokers, Maxxim obtained a quote from Elliott Marine Services, Inc. ("Elliott"), a charter broker in Houston, as to shipment by Worldline, Inc. ("Worldline"). Maxxim characterizes Elliott as the "agent" for Worldline.

10. Maxxim conveyed this quote, among others, to Tudor. Maxxim recommended that Tudor select Worldline as the carrier to ship the equipment to Las Palmas. When Tudor questioned Bob Gray ("Gray"), Maxxim's district manager in Dallas, about Worldline, Gray did not relate that this would be Worldline's maiden voyage. Tudor elected to ship its equipment on the vessel offered by Worldline originally scheduled to load in Houston on or about March 1, 1991.

11. Maxxim informed Tudor that the intended vessel to ship the equipment was the M/V Istiklal. Maxxim further informed Tudor that the Istiklal would load the equipment at Houston on March 8, 1991, and that if the equipment was not at the dock in Houston on that date, Tudor would incur detainage charges of \$6,500.00 per day, pro rata.

12. In order to meet the March 8 loading date cutoff, Tudor

arranged to have the equipment transported over land from California to the port at Houston on an expedited basis at an additional cost of \$2,700.00 to Tudor.

13. At the time that Maxxim made the recommendation that Tudor ship on Worldline, Worldline did not own any vessels and did not own or control the Istiklal. Gray had conducted no investigation of Worldline. He testified that he knew the vessel was "under charter", which in the Court's view should have indicated that Worldline did not own the vessel.

14. At the time that Maxxim made the recommendation that Tudor ship on Worldline, the shipment would have been Worldline's first voyage, which Gray knew or should have known. Tudor had no contact with Worldline or Elliott. Tudor would not have approved Worldline if it had known this was Worldline's first voyage.

15. Tudor delivered the equipment at the terminal where Maxxim had directed the equipment to be delivered (Inbesa terminal in the port of Houston) by March 8, 1991, as required.

16. On March 8, 1991, Tudor sent two of its employees to Houston to stencil the equipment and see the Istiklal load. Upon arrival at the dock in Houston, Tudor's employees located the equipment and were met by one of Maxxim's employees; the Istiklal was not at the dock. Tudor telephoned Gray and inquired regarding the Istiklal's location. Gray told Tudor that the Istiklal was in port in Houston, but was loading pipe at another private berth and would be over to pick up the equipment and set sail in time to deliver the equipment to Las Palmas on time. Gray told Tudor that

Elliott told him that the Istiklal was in Houston. Elliott denies telling Gray that the Istiklal was in Houston. Because the Istiklal was not at the dock and Gray told Tudor that he did not know at which berth the Istiklal was located, Tudor instructed his employees to return to Tulsa.

17. In fact, on March 8, 1991, the Istiklal was reported at Lattakia, Syria.

18. On March 12, 1991, Gray prepared an "overlay" or "onionskin" of a bill of lading for the shipment of plaintiff's equipment, which identified the shipper of the equipment as plaintiff and the vessel as the Istiklal, and identified Dean (by its tradename Maxxim International) as the freight forwarder for the shipper.

19. On March 13, 1991, Worldline advised Gray that the Istiklal definitely would not arrive at Houston to perform the voyage for Tudor. At the request of Gray, Worldline directly notified Tudor by fax on March 14, 1991, that the Istiklal would not perform the voyage as intended. The March 14 fax was the first communication between Worldline and Tudor.

20. The Istiklal never arrived at Houston to ship the equipment to Las Palmas.

21. Worldline offered a substitute vessel to load in Houston on March 25 or 26, but plaintiff elected to ship its equipment on the Delmas AAEL Vessel Nordwoege, scheduled to depart the Port of Houston on March 23, 1991. The additional charge was \$36,122.14. The equipment was properly delivered to Las Palmas on the

substitute vessel.

22. Tudor incurred transportation charges to move the equipment from Inbesa terminal to Houston City Dock 31 in the amount of \$4,885.00, which Tudor would not have incurred if the voyage had been performed by Worldline.

23. Tudor incurred the sum of \$2,000.00 to spray the cargo with protectorant, which Tudor would not have incurred had Maxxim not recommended a vessel that could not store the cargo below deck.

24. Tudor incurred additional wharfage and handling fees in the amount of \$7,330.47, which it would not have incurred had Maxxim performed as represented.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction to decide this matter based on both original jurisdiction in admiralty pursuant to 28 U.S.C. §1333, and jurisdiction based on diversity of citizenship and amount in controversy pursuant to 28 U.S.C. §1332.

2. This Court has in personam jurisdiction over Maxxim.

3. Any Proposed Finding of Fact above that might be appropriately characterized as a Conclusion of Law is incorporated herein. To the extent that any Proposed Conclusion of Law constitutes a Finding of Fact, it should be so considered.

Negligence

4. In order for Tudor to prevail against Maxxim on its alternative claim for negligence, Tudor must show by a preponderance of the evidence (1) that a duty existed on the part of Maxxim to protect Tudor from injury; (2) that Maxxim violated

that duty; and (3) that Maxxim's violation of its duty to Tudor proximately caused Tudor's damages. MBA Commercial Construction, Inc. v. Hannaford, 818 P.2d 469, 473 (Okla. 1991).

5. The Court finds that all three elements have been satisfied by the requisite burden of proof.

6. Maxxim's violation of its duty to Tudor was the proximate cause of Tudor's damages. But for Maxxim's representations to Tudor that Worldline owned the Istiklal and was an established liner service, Tudor would not have allowed Worldline to act as the carrier for the shipment. Further, had Maxxim acted with due diligence to ascertain whether Worldline owned or controlled the vessel for the shipment and whether the nominated vessel was in position to perform the carriage, Tudor could have avoided the loss it suffered. The failure of Maxxim to ascertain the location of the vessel at the time it was booked or to determine whether a vessel had been chartered by Worldline for the voyage, at the outset constituted negligence. Further, Maxxim's failure to disclose to Tudor that the nominated vessel was not in port in Houston when Maxxim represented that it was caused delay which precluded Tudor from making alternative shipping arrangements to avoid its damages. Under the facts of this case, the court finds that Maxxim's negligence in making these representations to Tudor was the proximate cause of Tudor's damages. See, Meyer v. Moore, 529 P.2d 676, 681 (Okla. 1958). Maxxim argues that it was the failure of Worldline to perform which was the proximate cause of Tudor's damages. However, the very reason Tudor imposed the

conditions on Maxxim which it did was to prevent such events as occurred. Maxxim's breach of its duty was at least a concurrent cause.

Breach of Contract

7. In order for Tudor to prevail against Maxxim on its alternative claim for breach of contract¹, Tudor must establish that it entered into an agreement with Maxxim to do a certain thing and that Maxxim breached that agreement thereby causing harm to Tudor. Tudor has established that it had a contract with Maxxim to provide services, whereby Maxxim agreed to locate a carrier for the shipment which owned or controlled the vessel on which the equipment would be shipped, which was substantial enough to perform as it quoted that it would and that the equipment would be shipped for the rate quoted by Maxxim.

8. Maxxim breached its contract with Tudor by contracting with Worldline, a company which did not own or control the vessel and which had not made even one voyage, and by not providing carriage at the rate quoted to Tudor and accepted by Tudor or otherwise within the terms of the booking note.

9. Maxxim's breach of its contract with Tudor is a direct cause of Tudor's damage. See Ingersoll Milling Machine Co. v. M/V

¹ Under Oklahoma law, a tort may arise in the course of the performance of a contract and that tort may then be the basis for recovery even though it is the contract that creates the relationship between the parties. Woods Petroleum v. Delhi Gas Pipeline, 700 P.2d 1023, 1027 (Okla. Ct. App.1983) (citing Hall Jones oil Corp. v. Claro, 459 P.2d 858 (Okla.1969) and Oklahoma Natural Gas Co. v. Pack, 97 P.2d 768 (Okla.1939)). A plaintiff may therefore seek to recovery under both theories in the alternative.

Bodena, 829 F.2d 293, 304-05 (2d Cir.1987), cert. denied, 484 U.S. 1042 (1988).

Breach of Fiduciary Duty

10. In order to prevail on its alternate claim against Maxxim for breach of fiduciary duty, Tudor must establish that Maxxim had a fiduciary duty to Tudor and that Maxxim breached that duty thereby causing Tudor's damages.

11. As Tudor's freight forwarder in the transaction, Maxxim had a fiduciary duty to Tudor. United States v. Ventura, 724 F.2d 305, 311 (2d Cir.1983). Maxxim admits that it had a fiduciary duty to Tudor. This duty included obtaining for Tudor "the cheapest and the most efficient and most economical transportation" that it could. Id. Maxxim's fiduciary duty to Tudor is further set out in 46 C.F.R. §510.22(b) and (c) which state:

(b) *Withholding Information.* No licensee shall withhold any information concerning a forwarding transaction from its principal.

(c) *Due Diligence.* Each licensee shall exercise due diligence to ascertain the accuracy of any information it imparts to a principal concerning any forwarding transaction.

Maxxim breached its fiduciary duty to Tudor by signing the booking note with Worldline in its own capacity, by withholding material information from Tudor regarding the facts that Worldline did not own the vessel, had not chartered the vessel, that the shipment was to be Worldline's inaugural voyage and by telling Tudor that the vessel was in Houston when it was not. Further, Maxxim breached its fiduciary duties to Tudor by putting its interests ahead of

those of Tudor by booking the transaction as an account receivable when the shipment had not occurred, and by leading Tudor on about the whereabouts of the Istiklal when it knew or should have known that regardless of whether the vessel had been chartered, it was not in position to make the voyage as represented. These were material facts which would have affected Tudor's decision to employ Maxxim as its freight forwarder and allow Worldline to act as the carrier. Furthermore, Maxxim breached its fiduciary duty to Tudor by failing to take reasonable steps to ascertain the accuracy of information which it imparted to Tudor. Maxxim's breach of this fiduciary duty directly caused Tudor's damages.

Fraud

12. In order to prevail on its alternate claim against Maxxim for fraud, Tudor must show that Maxxim made material, false representations with knowledge of their falsity, or recklessly without knowledge of their truth and as a positive assertion, with the intention that the representations be acted upon by Tudor, and which were in fact relied upon by Tudor to Tudor's injury. Dawson v. Tindell, 733 P.2d 407, 408 (Okla. 1987). Such proof must be made by clear and convincing evidence. Tice v. Tice, 672 P.2d 1168, 1171 (Okla. 1983).

13. Maxxim made the following false representations to Tudor: (a) that Worldline owned or controlled the Istiklal, (b) that Worldline was an established carrier, (c) that the Istiklal was in Houston and would load the Equipment. Maxxim knew at the that it made these representations to Tudor that the representations were

false. Maxxim intended that Tudor rely and act upon the representations in hiring Maxxim as its freight forwarder and allowing Worldline to act as the carrier in the shipment. Tudor did in fact rely upon Maxxim's false representations. Tudor was damaged as a direct result of its reliance on Maxxim's false representations.

14. Maxxim's actions in defrauding Tudor were willful and malicious and caused injury to Tudor and Tudor's property.

Third-Party Beneficiary Breach of Contract

15. In order to prevail on its alternate claim against Worldline for breach of contract on a third-party beneficiary theory, Tudor must prove that it had a beneficial interest in a contract which will entitle it to sue thereon. Northern Natural Gas Co. v. Grounds, 666 F.2d 1279, 1287 (10th Cir. 1981). In order to determine whether Tudor has such a beneficial interest in the booking note executed between Worldline and Maxxim, the Court must determine whether Worldline and Maxxim intended to benefit Tudor by that contract. Id. In making this determination, the Court construes the contract in the light of all surrounding circumstances. Id.

16. It is clear from the circumstances of this case that the booking note entered into between Worldline and Maxxim was for Tudor's benefit to ship Tudor's equipment. The shipment was the very purpose for the contract.

17. Although Worldline was duly served with process, it has made no appearance or offered any defense. Therefore default

judgment is appropriate. Tudor is entitled to recover from Worldline for breach of the booking note.

18. Worldline breached the booking note by failing to cause the Istiklal or a substitute to present in Houston to ship the equipment to Las Palmas under the terms of the booking note.

19. Worldline's breach of the booking note caused Tudor damages because Tudor was required to expedite overland shipment of the equipment to Houston to meet the March 8, 1991 cutoff date, spray the equipment with protectorant, incur additional wharfage charges by having to move the equipment to another dock, and additional ocean freight charges when it had to book space on another vessel in order to ship the equipment to Las Palmas. Further, Tudor lost the value of the letter of credit to him due to the delay between sailing dates (3/12/92-3/24/92).

20. Tudor is entitled to judgment in its favor against Maxxim on its claims of negligence, breach of contract, fraud and breach of fiduciary duty in the principal amount of \$62,153.69, plus pre- and post-judgment interest thereon at the rate of 3.54 percent until paid in full.

21. Because the Court finds that there is clear and convincing evidence that Maxxim is guilty of conduct evincing a wanton or reckless disregard of Tudor's rights, the Court awards Tudor exemplary damages in the amount of \$25,000.00, which amount shall be included in Tudor's judgment against Maxxim.

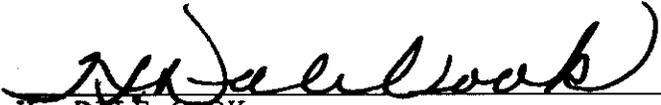
22. Tudor is entitled to judgment against Worldline in the principal amount of \$62,153.69, plus pre- and post-judgment

interest thereon at the rate of 3.54 percent until paid in full.

23. As the prevailing party and by statute, Tudor is entitled to its costs and pursuant to 12 O.S. §936, a reasonable attorneys' fee incurred in this matter to be paid by Maxxim.

The parties are granted ten days in which to submit a judgment, agreed to in form, for the Court's signature.

IT IS SO ORDERED this 23rd day of May, 1994.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 5-24-94

FILED

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

MAY 24 1994

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

IN RE:)
)
 SUNBELT FREIGHT, INC.,)
)
 Employer Tax I.D. #73-0761474)
)
 Debtor.)
)
 SUNBELT FREIGHT, INC.,)
)
 Plaintiff,)
)
 v.)
)
 GENERAL PURPOSE STEEL, INC..)
)
 Defendant.)

Case No. 91-01539-W
(Chapter 11)

Adv. No. 93-0120-W

Dist Ct. Case No. 94-C-53E

STIPULATION OF DISMISSAL

Comes now the Plaintiff and pursuant to Rule 41(a)(1)(ii) Fed. R. Civ. Proc. hereby stipulates to the dismissal of the above District Court case, with prejudice.

DOERNER, STUART, SAUNDERS,
DANIEL, ANDERSON & BIOLCHINI

By: 
 Sam G. Bratton II
 320 South Boston, Suite 500
 Tulsa, Oklahoma 74103
 (918) 582-1211

Attorneys for Plaintiff
Sunbelt Freight, Inc.

APPROVED:

WILLIAM P. PARKER, P.C.

By: 
 William P. Parker, Esq.
 2212 N.W. 50th
 Suite 163
 Oklahoma City, OK 73112

Attorneys for Defendant

ENTERED ON DOCKET

DATE 5-24-94

FILED

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

MAY 24 1994

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

N-R INDUSTRIES, INC., an)
 Oklahoma corporation,)
)
 Plaintiff,)
)
 v.)
)
 MID-WESTERN MACHINERY COMPANY,)
 INC., a Missouri corporation,)
)
 Defendant.)

Case No. 93-C-1081-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW, the Plaintiff, N-R Industries, Inc., and the Defendant, Mid-Western Machinery Company, Inc., and hereby stipulate that Plaintiff dismisses all claims and causes of action against Defendant in the above-captioned matter as Plaintiff and Defendant have settled all claims therein, each party to pay its own costs and attorney fees.

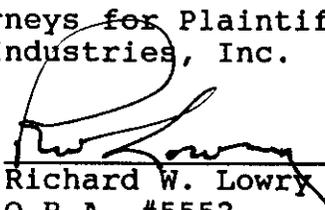
Respectfully submitted,

LOGAN & LOWRY
P. O. Box 558
Vinita, OK 74301-0558
(918) 256-7511

LESTER, BRYANT, SOLANO,
PILGRIM & GANZ, P.C.
320 South Boston, Suite 1002
Tulsa, OK 74103-3703
(918) 592-1900

Attorneys for Plaintiff
N-R Industries, Inc.

Attorneys for Defendant
Mid-Western Machinery Company,
Inc.

By: 
Richard W. Lowry
O.B.A. #5552
Donna L. Smith
O.B.A. #12865

By: 
Mary J. Rounds
O.B.A. #7779

FILED

MAY 24 1994

MAY 23 1994

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

MAGNOLIA PETROLEUM, LTD., et. al.,)
Plaintiffs,)
vs.)
KOCH OIL COMPANY, a division of)
Koch Industries, Inc.)
Defendant.)

Case No. 91-C-368-B

JOINT STIPULATION OF DISMISSAL

COME NOW the Plaintiffs Magnolia Petroleum, Ltd., International Searchers, Inc. and Enerlex, Inc. and Defendant Koch Oil Company, a division of Koch Industries, Inc., and agree that the above captioned matter as set forth in Plaintiffs' Petition For Judgment against Defendant in the above-captioned matter has been fully compromised and settled and the same is hereby dismissed with prejudice. All costs to be taxed to the party incurring such costs.



Sam T. Allen, IV
LOEFFLER, ALLEN & HAM
Loeffler-Allen Building
P.O. Box 230
Sapulpa, Oklahoma 74067
(918)-224-5302

ATTORNEY FOR PLAINTIFFS

Respectfully submitted,



Cathy A. Sayles (KS. S. Ct. #12596)
Koch Industries, Inc.
P.O. Box 2256
Wichita, Kansas 67201-2256
(316)832-8941 - Telephone

and

Stephen Clark OBA #1713
McCORMICK, ANDREW & CLARK
Suite 100
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

ATTORNEYS FOR DEFENDANT
KOCH OIL COMPANY, a Division of
KOCH INDUSTRIES, INC.

CERTIFICATE OF SERVICE

The undersigned attorney for Defendant Koch Oil Company, a Division of Koch Industries, Inc., hereby certifies that a true and correct copy of the foregoing has this day been mailed by United States Mail, postage prepaid, to the attorney for Plaintiff, Mr. Sam T. Allen, IV, LOEFFLER, ALLEN & HAM, Loeffler-Allen Building, P.O. Box 230, Sapulpa, Oklahoma 74067, this 23rd day of May, 1994.



Cathy A. Sayles
Stephen Clark

ENTERED ON DOCKET

DATE 5-24-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MARY T. JACKSON;)
)
 SHERRIE K. JACKSON;)
)
 STATE OF OKLAHOMA ex rel.)
)
 Oklahoma Tax Commission;)
)
 COUNTY TREASURER, Osage County,)
)
 Oklahoma;)
)
 BOARD OF COUNTY COMMISSIONERS,)
)
 Osage County, Oklahoma,)
)
 Defendants.)

FILED

MAY 23 1994

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

CIVIL ACTION NO. 94-C-69-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day
 of May, 1994. The Plaintiff appears by Stephen C.
 Lewis, United States Attorney for the Northern District of
 Oklahoma, through Neal B. Kirkpatrick, Assistant United States
 Attorney; the Defendants, COUNTY TREASURER, Osage County,
 Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County,
 Oklahoma, appear by John S. Boggs, Jr., Assistant District
 Attorney, Osage County, Oklahoma; the Defendant, STATE OF
 OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D.
 Ashley, Assistant General Counsel; and the Defendants, MARY T.
 JACKSON and SHERRIE K. JACKSON, appear not, but make default.

The Court being fully advised and having examined the
 court file finds that the Defendant, MARY T. JACKSON,
 acknowledged receipt of Summons and Complaint on February 13,
 1994; that the Defendant, SHERRIE K. JACKSON, acknowledged
 receipt of Summons and Complaint on February 13, 1994; that the

Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and Complaint on January 28, 1994; that Defendant, COUNTY TREASURER, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on January 31, 1994; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on January 31, 1994.

It appears that the Defendants, COUNTY TREASURER, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, filed their Answer on February 3, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on February 18, 1994; and that the Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, have failed to answer and default has therefore been entered by the Clerk of this Court.

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

LOT 15, BLOCK 9, IN SKYLINE RIDGE FOURTH, AN ADDITION TO TULSA, OSAGE COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on October 30, 1986, the Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, executed and delivered to Commonwealth Mortgage Corporation of America, their mortgage note in the amount of \$54,443.00, payable in monthly

installments, with interest thereon at the rate of Nine and One-Half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, executed and delivered to Commonwealth Mortgage Corporation of America a mortgage dated October 30, 1986, covering the above-described property. Said mortgage was recorded on November 13, 1986, in Book 705, Page 650, in the records of Osage County, Oklahoma.

The Court further finds that on December 4, 1986, Commonwealth Mortgage Corporation of America assigned the above-described mortgage note and mortgage to Citicorp Homeowner Services, Inc. This Assignment of Mortgage was recorded on March 16, 1987, in Book 711, Page 336, in the records of Osage County, Oklahoma.

The Court further finds that on February 3, 1987, Citicorp Mortgage, Inc., successor in interest to Citicorp Homeowner Services, Inc., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on February 16, 1988, in Book 730, Page 117, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, made default under the terms of the aforesaid note and mortgage, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, MARY T.

JACKSON and SHERRIE K. JACKSON, are indebted to the Plaintiff in the principal sum of \$86,845.60, plus interest at the rate of Nine and One-Half percent per annum from January 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$16.25 which became a lien on the property as of June 1993. Said lien is inferior to the interest of the Plaintiff, United States of America. Property taxes for the year 1993 are also due in the amount of \$24.19.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of a Tax Warrant filed December 13, 1990, in the amount of \$83.59, plus accrued and accruing interest.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the

Secretary of Housing and Urban Development, have and recover judgment against the Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, in the principal sum of \$86,845.60, plus interest at the rate of Nine and One-Half percent per annum from January 1, 1994 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action, 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 the Defendant, COUNTY TREASURER, Osage County, Oklahoma, have and recover judgment in the amount of \$40.44 for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover judgment in rem in the amount of \$83.59 for taxes for the year 1989, plus accrued and accruing interest, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, MARY T. JACKSON and SHERRIE K. JACKSON, to satisfy the money judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$83.59, plus accrued and accruing interest for taxes which are currently due and owing.

Fourth:

In payment of Defendant, COUNTY TREASURER, Osage County, Oklahoma, in the amount of \$40.44, personal property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession

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

S/ JAMES O. ELLISON

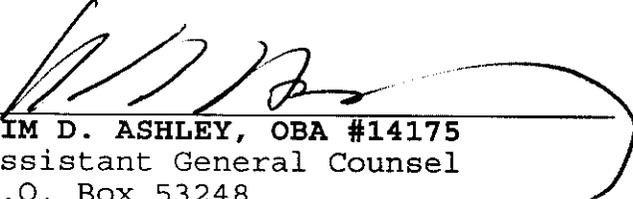
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


JOHN S. BOGGS, JR. OBA #0920
Assistant District Attorney
Osage County Courthouse
Pawhuska, Oklahoma 74056
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma


KIM D. ASHLEY, OBA #14175
Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 94-C-69-E

NBK:flv

ENTERED ON DOCKET

DATE 5-24-94

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

FILED

ALLSTATE INSURANCE COMPANY, an)
Illinois corporation,)

Plaintiff,)

v.)

HARVEY SANDERS, Individually)
and as spouse and Personal)
Representative of the Estate)
of Rosetta Sanders, deceased,)

Defendant.)

MAY 23 1994

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

No. 93-C-958-E

STIPULATION OF DISMISSAL

COMES NOW the above-named parties, Allstate Insurance Company and Harvey Sanders, Individually and as spouse and Personal Representative of the Estate of Rosetta Sanders, Deceased, and hereby dismiss the above-styled action. This Dismissal is made pursuant to Fed.R.Civ.P., Rule 41(a)(1).



Harvey Sanders, Individually and
as spouse and Personal
Representative of the Estate of
Rosetta Sanders, Deceased



Allstate Insurance Company

ENTERED ON DOCKET

DATE 5-23-94

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

FILED

MAY 23 1994

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

DON S. HUTCHISON,)
)
 Plaintiff,)
)
 vs.)
)
 THE QUAPAW COMPANY, and)
)
 THOMAS D. KISER, JR.,)
)
 Defendants.)

Case No. C-93-637E

ORDER OF DISMISSAL WITH PREJUDICE

This matter coming on for hearing before the Court on this 20 day of May, 1994, upon the Application of the Plaintiff for order of dismissal with prejudice in this cause, and the Court being advised in the premises and having examined the Application of the Plaintiff herein, finds that all issues of law and fact heretofore existing between the parties have been settled, compromised, released and extinguished, for valuable consideration flowing from Plaintiff to Defendants and from Defendants to Plaintiff, and further finds that there remains no issue of law or fact to be determined in this cause. The Court further finds that the Plaintiff desires to dismiss his cause to future actions for the reasons stated, and that his Application should be granted.

BE IT, THEREFORE, ORDERED, ADJUDGED, AND DECREED BY THE COURT that all issues of law and fact heretofore existing between the Plaintiff and the Defendants have been settled, compromised,

released and extinguished for valuable consideration, and that there remains no issue to be determined in this cause between the parties.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiff's cause and any causes arising therefrom, be and the same are hereby dismissed with prejudice to all future actions thereon.

S/ JAMES O. ELLISON

JUDGE

ENTERED ON DOCKET

DATE 5-23-94

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

SHERRI K. MCDOUGLE,)
)
 Plaintiff,)
)
 vs.)
)
 F. L. SMITHE MACHINE CO.,)
 INC., a New York corporation,)
 ORION-NEEMCO, INC., a)
 Massachusetts corporation,)
 G. F. HOWATT, INC. (formerly)
 known as Orion-Neemco, Inc.),)
 a Massachusetts corporation,)
 and HARDIMAN TOOL & DIE, INC.)
 (successor to Orion-Neemco,)
 Inc.), a Massachusetts)
 corporation,)
)
 Defendants.)

Case No. 94-C-499-E

F I L E D

MAY 23 1994

Richard M. Law Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**ORDER GRANTING
PLAINTIFF'S APPLICATION FOR DISMISSAL WITHOUT PREJUDICE**

On this 19 day of May, 1994, Plaintiff's Application for Dismissal Without Prejudice comes before this Court. For good cause shown, the Court finds that Plaintiff's Application should be and hereby is granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Sherri K. McDougale may dismiss without prejudice to refiling her action herein against the Defendants.

JAMES G. HANCOCK

JUDGE OF THE DISTRICT COURT

MAY 23 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MARION F. PATTON aka MARION)
 FRANCIS PATTON; M. CAROL PATTON)
 aka MIRIAM CAROL PATTON; STATE)
 OF OKLAHOMA, ex rel. Oklahoma)
 Tax Commission; COMMONWEALTH)
 MORTGAGE CORPORATION OF AMERICA)
 SUCCESSOR IN INTEREST TO)
 COMMONWEALTH MORTGAGE COMPANY OF)
 AMERICA, L.P.; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED

MAY 23 1994
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 94-C 208B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 20th day
of May, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and **Board of County Commissioners, Tulsa County,**
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendants, **MARION F.**
PATTON aka MARION FRANCIS PATTON and M. CAROL PATTON aka MIRIAM
CAROL PATTON, appear by their attorney Greg A. Farrar; the
Defendant, **STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION,**
appears by its attorney Kim D. Ashley; and Defendant,

**COMMONWEALTH MORTGAGE CORPORATION OF AMERICA SUCCESSOR IN
INTEREST TO COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P.**

appears not, having previously filed its Disclaimer of Interest.

The Court being fully advised and having examined the court file finds that the Defendant, **STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION**, acknowledged receipt of Summons and Complaint on March 10, 1994; that Defendant, **COUNTY TREASURER, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 10, 1994; and that Defendant, **BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 10, 1994.

It appears that the Defendants, **COUNTY TREASURER, Tulsa County, Oklahoma**, and **BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, filed their Answers on March 23, 1994; that the Defendants, **MARION F. PATTON aka MARION FRANCIS PATTON** and **M. CAROL PATTON aka MIRIAM CAROL PATTON**, filed their Answer on April 11, 1994, disclaiming any right, title or interest to the subject property; and that the Defendant, **STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION**, filed their Answer on March 30, 1994; and that the Defendant, **COMMONWEALTH MORTGAGE CORPORATION OF AMERICA SUCCESSOR IN INTEREST TO COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P.**, filed their Disclaimer of Interest on March 25, 1994, disclaiming any interest in the property.

The Court further finds that on July 29, 1991, **MARION F. PATTON aka MARION FRANCIS PATTON** and **M. CAROL PATTON aka MIRIAM CAROL PATTON** filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 91-02687. The personal liability

of the Defendants MARION F. PATTON aka MARION FRANCIS PATTON and M. CAROL PATTON aka MIRIAM CAROL PATTON on the subject note and mortgage was discharged on November 22, 1991, and the case was closed on January 3, 1992.

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

Lot Fifteen (15), Block One (1), MARSHALL HEIGHTS SECOND ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 5, 1987, the Defendants, MARION F. PATTON and M. CAROL PATTON, executed and delivered to Mercury Mortgage Co., Inc., their mortgage note in the amount of \$63,369.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, MARION F. PATTON and M. CAROL PATTON, executed and delivered to Mercury Mortgage Co., Inc., a mortgage dated March 5, 1987, covering the above-described property. Said mortgage was recorded on March 10, 1987, in Book 5007, Page 558, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 14, 1988, Mercury Mortgage Co., Inc., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban

Development, his successors and assigns. This Assignment of Mortgage was recorded on September 14, 1988, in Book 5128, Page 306, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 1, 1988, the Defendants, MARION F. PATTON and M. CAROL PATTON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on January 1, 1990.

The Court further finds that the Defendants, MARION F. PATTON aka MARION FRANCIS PATTON and M. CAROL PATTON aka MIRIAM CAROL PATTON, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, MARION F. PATTON aka MARION FRANCIS PATTON and M. CAROL PATTON aka MIRIAM CAROL PATTON, are indebted to the Plaintiff in the principal sum of \$97,433.24, plus interest at the rate of 9 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes, for the tax year 1991, for \$32.00, and entered on the lien docket June 26, 1992; and for the tax year 1990, for \$7.00, and entered on the lien docket June 20, 1991. Said liens

are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION**, has liens on the property which is the subject matter of this action by virtue of tax warrants; tax warrant number ITI8800769900, in the amount of \$800.34, plus interest, penalties, and costs, and filed on June 30, 1988; tax warrant number ITI8900590900, in the amount of \$252.80, plus interest, penalties, and costs, and filed on May 5, 1989; and tax warrant number ITI9000333500, in the amount of \$312.83, plus interest, penalties, and costs, and filed on April 17, 1990. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that Defendant, **COMMONWEALTH MORTGAGE CORPORATION OF AMERICA SUCCESSOR IN INTEREST TO COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P.**, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, **BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the

Secretary of Housing and Urban Development, have and recover an in rem judgment against the Defendants, **MARION F. PATTON aka MARION FRANCIS PATTON and M. CAROL PATTON aka MIRIAM CAROL PATTON**, in the principal sum of \$97,433.24, plus interest at the rate of 9 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.02 percent per annum until paid, plus the costs of this action, 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 the Defendant, **COUNTY TREASURER, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$39.00 for personal property taxes for the years 1990 and 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGE, AND DECREED that the Defendant, **STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION**, have and recover judgment in rem in the amount of \$1,365.97, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **COMMONWEALTH MORTGAGE CORPORATION OF AMERICA SUCCESSOR IN INTEREST TO COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P. and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **MARION F. PATTON aka MARION**

FRANCIS PATTON and M. CAROL PATTON aka MIRIAM CAROL PATTON, to satisfy the in rem judgment of the Plaintiff 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 according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, in the amount of \$1,365.97, plus accrued and accruing interest for state taxes which are currently due and owing.

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$39.00, personal property taxes which are currently due and owing.

The surplus from said sale, 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 pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

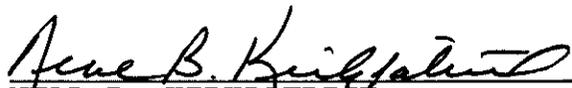
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

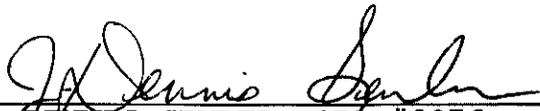
S/ THOMAS

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841

Attorney for Defendants,
Tulsa County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



GREG A. FARRAR, OBA # 2832
Farrar & Farrar, P.C.
P.O. Box 2982
Tulsa, OK 74101-2982
(918) 587-7441

Attorney for Defendants,
MARION F. PATTON
aka MARION FRANCIS PATTON, and
M. CAROL PATTON
aka MIRIAM CAROL PATTON



KIM D. ASHLEY, OBA # 14175
Assistant General Counsel
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141

Attorney for Defendant,
STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION

Judgment of Foreclosure
Civil Action No. 94-C 208B

NBK:lg

MAY 23 1994

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

FILED

MAY 20 1994

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

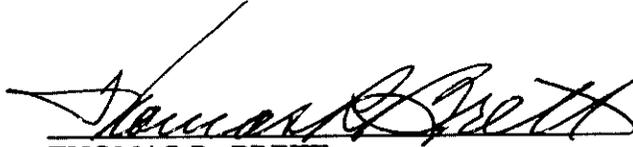
94-C-43-B

JUDITH BLANKENSHIP,)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, DONNA SHALALA,)
SECRETARY,)
)
Defendant.)

ORDER

Upon the motion of the defendant, Secretary of Health and Human Services, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary for reconstruction of the claim file.

Dated this 20 day of May, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

4

MAY 25 1994

FILED
MAY 20 1994

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

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

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN AIRLINES, INC., Et.,)
 Al.,)
)
 Defendants.)

Consolidated Cases Nos.

89-C-868-B
89-C-896-B
90-C-859-B

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 20th day of May, 1994, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's ("ARCO") NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 1006) filed herein on September 9, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutteridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ADJUDGES, ORDERS and DECREES:

1. The settlements encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 1006) in the above captioned action between the Plaintiff ARCO and Defendants Albert Equipment Company, Breene M. Kerr, Capital City Oil, Inc., Frank Smith, Fred Jones Ford of Oklahoma City, Fred Jones Ford of Tulsa, Frisco Railroad, Glenn Spees, J.A. Riggs Tractor Company, Marvin G. Spees, Moline Paint Manufacturing Co.,

URE Company, and Western Company of North America, Inc. ("Settling Parties") is found to be in good faith, and a final judgment barring all claims against the Settling Parties associated with the Site under state and federal law, except to the extent that such claims are preserved by the settlement, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against the Settling Parties should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against the Settling Parties pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. The Settlement Agreement shall be modified as agreed by the parties at the September 24, 1993 hearing. Specifically, paragraph II.C. shall be modified to read:

C. Release and Covenant Not to Sue. Except to enforce the obligations under this Agreement, and as limited by II D. below, upon the Effective Date of this Agreement, ARCO hereby: (1) releases the Settling Party, as defined herein, of any and all rights, entitlements, suits, causes of action and claims it may have against the Settling Party, jointly and/or severally, under

federal and state law, including response costs under CERCLA, incurred in performing the actions set forth in ROD I and ROD II, should it be performed; and (2) covenants not to sue the Settling Party with respect to all costs expended or to be expended at the Glenn Wynn site as required by ROD I and the Consent Decree, and Claims for all monitoring costs and other response obligations required under ROD II, and the cost of vapor extraction of the Glenn Wynn Lagoons should it be required by EPA or OSDH.

6. Any breach of any Settling Party's representation and warranty that it neither possesses nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, or by other parties to this litigation in documents furnished to ARCO's counsel and the document depository and in other databases generated, renders the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or the

Settling Parties with respect to claims which are preserved by the settlements.

9. There being no just reason to delay the entry of this Judgment, this Court hereby directs entry of a Final Judgment and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: May 20th '94 Thomas R. Brett
Thomas R. Brett
United States District Court Judge

Presented by:

Alan Au
Alan Au, Esq.
Attorney for Plaintiff,
Atlantic Richfield Company

John H. Tucker
John H. Tucker, Esq.
Lead Counsel
for Group IV

MAY 20 1994

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

FILED
MAY 20 1994

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

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN AIRLINES, INC., Et.,)
 Al.,)
)
 Defendants.)

Consolidated Cases Nos.

89-C-868-B
89-C-896-B
90-C-859-B

ORDER DETERMINING GOOD FAITH OF SETTLEMENT

Now on this *20th* day of *May*, 1994, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO'S) NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 1006) filed herein on September 9, 1993. The Plaintiff ARCO appears by its attorney, Larry Gutteridge, the Defendants appears by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS and ORDERS as follows:

1. The Magistrate's Report and Recommendation pertaining the hearing on September 24, 1993, should be and is approved.
2. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 1006) in the above captioned action between the Plaintiff ARCO and

Defendants Albert Equipment Company, Breene M. Kerr, Capital City Oil, Inc., Frank Smith, Fred Jones Ford of Oklahoma City, Fred Jones Ford of Tulsa, Frisco Railroad, Glenn Spees, J.A.Riggs Tractor Company, Marvin G. Spees, Moline Paint Manufacturing Co., URE Company, and Western Company of North America, Inc. ("Settling Parties") is found to have been entered into in good faith, and all claims against the Settling Parties for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlement.

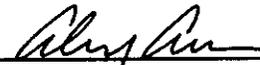
Dated:

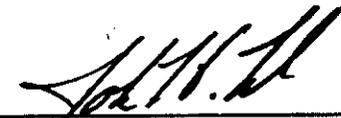
May 20th, '94



Thomas R. Brett
United States District Court Judge

Presented by:


Alan Au, Esq.
Attorney for Plaintiff,
Atlantic Richfield Company


John H. Tucker, Esq.
Lead Counsel
for Group IV

ENTERED ON DOCKET

DATE 5-23-94

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

MAY 20 1994

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

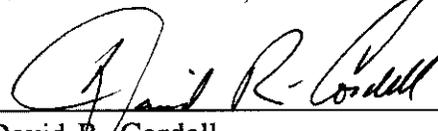
SILVERADO FOODS, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
RUDYARD ESQUIVEL,)
an individual,)
)
Defendant.)

Case No. 94-C-391-E

NOTICE OF DISMISSAL WITH PREJUDICE

The Plaintiff, Silverado Foods, Inc., pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure, hereby dismisses the above entitled action with prejudice.

DAVID R. CORDELL, OBA #11272
SEAN H. MCKEE, OBA #14277

By: 

David R. Cordell
Conner & Winters
2400 First National Tower
15 East 5th Street
Tulsa, Oklahoma 74103-4391
(918) 586-5711

OF COUNSEL:

CONNER & WINTERS
2400 First National Tower
15 East 5th Street
Tulsa, Oklahoma 74103-4391
(918) 586-5711

Attorneys for Plaintiff,
SILVERADO FOODS, INC.