

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CHARLES RUSSELL HADLEY;)
PATRICIA ANN HADLEY;)
KENTON D. WHITHAM;)
JEAN D. WHITHAM;)
KENTON D. WHITHAM, FAMILY LIMITED)
PARTNERSHIP;)
STATE OF OKLAHOMA, ex rel.)
OKLAHOMA TAX COMMISSION;)
STATE OF OKLAHOMA, ex rel.)
STATE INSURANCE FUND;)
STATE OF OKLAHOMA, ex rel.)
OKLAHOMA EMPLOYMENT SECURITY)
COMMISSION;)
CITY OF BROKEN ARROW, Oklahoma;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

AUG 6 1994

FILED

AUG 18 1994

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

CIVIL ACTION NO. 94-C-349-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day
of Aug, 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 Defendant, STATE OF
OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D.
Ashley, Assistant General Counsel; the Defendant, CITY OF BROKEN
ARROW, Oklahoma, appears by Michael Vanderburg, City Attorney,

ENTERED ON DOCKET

DATE 8-19-94

Broken Arrow, Oklahoma; the Defendant, KENTON D. WHITHAM, appears not having previously filed a Disclaimer; the Defendant, JEAN D. WHITHAM, appears not having previously filed a Disclaimer, the Defendant, KENTON D. WHITHAM, FAMILY LIMITED PARTNERSHIP, appears not having previously filed a Disclaimer, The Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, appears not having previously filed a Disclaimer, the Defendant, STATE OF OKLAHOMA, ex rel. STATE INSURANCE FUND, appears not having previously filed a Disclaimer; and the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, KENTON D. WHITHAM, acknowledged receipt of Summons and Complaint on April 15, 1994; that the Defendant, JEAN D. WHITHAM, acknowledged receipt of Summons and Complaint on April 15, 1994; that the Defendant, KENTON D. WHITHAM, FAMILY LIMITED PARTNERSHIP, acknowledged receipt of Summons and Complaint on April 15, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and Complaint on April 12, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, acknowledged receipt of Summons and Complaint on April 12, 1994; that the Defendant, STATE OF OKLAHOMA ex rel. STATE INSURANCE FUND, acknowledged receipt of Summons and Complaint on April 28, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint on April 11, 1994; ; that the Defendant, CHARLES RUSSELL HADLEY, was served a copy of Summons and Complaint on

June 3, 1994; that the Defendant, PATRICIA ANN HADLEY, was served a copy of Summons and Complaint on June 3, 1994; that Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 15, 1994; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 11, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on April 29, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on May 4, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its answer on May 4, 1994; that the Defendant, KENTON D. WHITHAM, filed his Disclaimer on May 9, 1994; that the Defendant, JEAN D. WHITHAM, filed her Disclaimer on May 9, 1994; that the Defendant, KENTON D. WHITHAM, FAMILY LIMITED PARTNERSHIP, filed its Disclaimer on May 9, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION, filed its Disclaimer on April 14, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. STATE INSURANCE FUND, filed its Disclaimer on May 9, 1994; and that the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 7, 1990, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-2250-W. On July 29, 1991, the United States Bankruptcy

Court for the Northern District of Oklahoma filed its Discharge of Debtor and on April 21, 1992 the case was subsequently closed.

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-nine (29), Block Three (3),
MELINDA 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 June 30, 1989, the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, executed and delivered to Woodland Bank their mortgage note in the amount of \$46,554.00, payable in monthly installments, with interest thereon at the rate of Ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, executed and delivered to Woodland Bank a mortgage dated June 30, 1989, covering the above-described property. Said mortgage was recorded on July 6, 1989, in Book 5193, Page 463, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 6, 1989, Woodland Bank assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on July 18, 1989, in Book 5195, Page 1262, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 4, 1990, 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 April 5, 1990, in Book 5245, Page 1738, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 1, 1990, the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, 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, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, 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, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, are indebted to the Plaintiff in the principal sum of \$69,221.16, plus interest at the rate of Ten 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, 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 state taxes in the amount of \$1,350.00, plus accrued and accruing interest, which became a lien on the property as of March 13, 1990; and a lien in the amount of \$1,406.55, plus accrued and accruing interest, which became a lien on May 1, 1992. Said liens are inferior to the interest of the Plaintiff, United

States of America.

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 \$35.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$34.00 which became a lien on the property as of June 25, 1993; and a claim in the amount of \$40.00 for 1993 taxes. Said liens and claim are inferior to the **interest** of the Plaintiff, United States of America.

The Court further **finds** that the Defendant, CITY OF BROKEN ARROW, Oklahoma, claims no right title or interest in the subject real property, except **insofar** as is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further **finds** that the Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, are in default, and have no right, title or interest in the subject real property.

The Court further **finds** that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; STATE OF OKLAHOMA, ex rel. STATE INSURANCE FUND; STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION; KENTON D. WHITHAM; JEAN D. WHITHAM; and KENTON D. WHITHAM, FAMILY LIMITED PARTNERSHIP, claim 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 Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, in the principal sum of \$69,221.16, plus interest at the rate of Ten percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.49 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover judgment In Rem in the amount of \$2,756.55 , plus accrued and accruing interest, for state taxes, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$109.00 for personal property taxes for the years 1991, 1992, and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the

Defendants, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, County, Oklahoma STATE OF OKLAHOMA, ex rel. OKLAHOMA EMPLOYMENT SECURITY COMMISSION; STATE OF OKLAHOMA, ex rel. STATE INSURANCE FUND; KENTON D. WHITHAM; JEAN D. WHITHAM; and KENTON D. WHITHAM, FAMILY LIMITED PARTNERSHIP, 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, CHARLES RUSSELL HADLEY and PATRICIA ANN HADLEY, 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$2,756.55,

plus accrued and accruing interest.

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$109.99, personal property taxes which are currently due and owing.

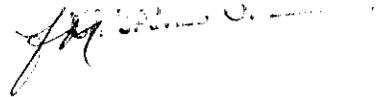
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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.

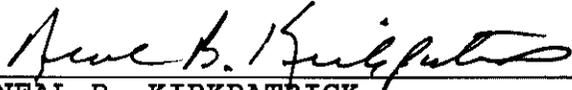
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE



APPROVED:

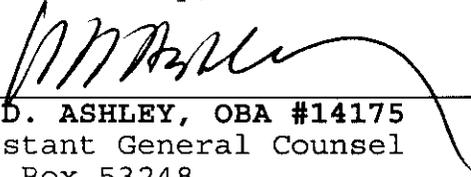
STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
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406 Tulsa County Courthouse
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Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



KIM D. ASHLEY, OBA #14175
Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission



MICHAEL R. VANDERBURG, OBA #9180
City Attorney,
CITY OF BROKEN ARROW
P. O. Box 610
Broken Arrow, OK 74012
(918) 251-5311
Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-349-E

NBK:flv

FILED

AUG 18 1994

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

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

**UNITED STATES OF AMERICA,

Plaintiff,**

vs.

**JOSEPH WALTER PAVILANIS aka
JOSEPH W. PAVILANIS; CANDACE
L. PAVILANIS: MONTGOMERY WARD
CREDIT CORP.; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,**

Defendants.

CIVIL ACTION NO. 94-C-445-B

**ENTERED ON DOCKET
DATE AUG 19 1994**

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that the Judgment of Foreclosure filed July 27, 1994 be vacated and that this action shall be dismissed without prejudice.

Dated this 18 day of Aug, 1994.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

**STEPHEN C. LEWIS
United States Attorney**

**KATHLEEN BLISS, OBA #13625
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463**

KB/esf

**NOTE: THIS DOCUMENT IS TO BE FILED AND
BY THE CLERK OF COURT AND
PROCESSED AS A RECEIPT
UPON RECEIPT**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 18 1994

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN BARRY DEETER)
 aka Steven B. Deeter;)
 DEBORAH JEAN GWIN)
 fka Deborah Jean Deeter)
 fka Debbie J. Deeter)
 fka Debbie Deeter;)
 STATE OF OKLAHOMA, ex rel.)
 DEPARTMENT OF HUMAN SERVICES)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

ENTERED ON DOCKET
AUG 19 1994
DATE _____

CIVIL ACTION NO. 94-C-284-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day
of Aug., 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 Defendant, STATE OF
OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, appears by Karen
Dale; and the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN
GWIN fka Deborah Jean Deeter, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF HUMAN SERVICES, acknowledged receipt of Summons and

Complaint on April 11, 1994; that Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1994; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1994.

The Court further finds that the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, 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 May 19, 1994, and continuing through June 23, 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, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, 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, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter. 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 of Washington, D.C., his successors and assigns, 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, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on April 12, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, filed its Answer on July 25, 1994; and that the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, STEVEN BARRY DEETER, is one and the same person as, and is sometimes referred to as Steven B. Deeter; and the Defendant, DEBORAH JEAN GWIN is one and the same person as and formerly referred to as, Debbie J. Deeter, Debbie Deeter and Deborah Jean Deeter.

The Court further finds that on March 30, 1990, Steven B. Deeter and Deborah Jean Deeter, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-00795-W. This case was Discharged on July 25, 1990, and subsequently closed on March 8, 1991.

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 SIXTEEN (16), BLOCK TWELVE (12), MAPLEWOOD
ADDITION TO THE CITY OF TULSA, COUNTY OF
TULSA, STATE OF OKLAHOMA, ACCORDING TO THE
RECORDED PLAT THEREOF**

A/K/A 6214 EAST MARSHALL PLACE, TULSA, OKLAHOMA

The Court further finds that on September 3, 1987, the Defendants, STEVEN B. DEETER and DEBBIE J. DEETER, then husband and wife, executed and delivered to Firstier Mortgage Co., a mortgage note in the amount of \$40,800.00, payable in monthly installments, with interest thereon at the rate of Ten and One-Half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, STEVEN B. DEETER and DEBBIE J. DEETER, then husband and wife, executed and delivered to Firstier Mortgage Co., a mortgage dated September 3, 1987, covering the above-described property. Said mortgage was

recorded on September 10, 1987, in Book 5050, Page 2272, in the records of Tulsa County, Oklahoma.

The Court further **finds** that on June 6, 1988, Firsttier Mortgage Co. assigned the above-described mortgage note and mortgage to Leader Federal Savings and Loan Association. This Assignment of Mortgage was recorded on September 29, 1988, in Book 5129, Page 572, in the records of Tulsa County, Oklahoma.

The Court further **finds** that on December 18, 1990, Leader Federal Bank for Savings fka Leader Federal Savings and Loan Association, 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 18, 1990, in Book 5294, Page 1895, in the records of Tulsa County, Oklahoma.

The Court further **finds** that on January 1, 1991, the Defendants, STEVEN B. DEETER and DEBORAH JEAN DEETER, then husband and wife, 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 July 1, 1991.

The Court further **finds** that the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, 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, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, are indebted to the Plaintiff in the principal sum of \$56,605.41, plus interest at the rate of Ten and One-Half percent per annum from January 3, 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 \$20.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$13.00 which became a lien as of June 25, 1993; and a claim in the amount of \$13.00 for 1993 property taxes. Said liens and claim are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, has a lien on the property which is the subject matter of this action by virtue of a Judgment in the amount of \$ 706.00, plus interest, filed in Tulsa County District Court on August 13, 1991, and became a lien on the property as of August 15, 1991; and a lien on the property by virtue of a Judgment in the amount of \$1,750.00, which became a lien on the property as of July 28, 1992. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, are

in default, and have no 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 judgment In Rem against the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, in the principal sum of \$56,605.41, plus interest at the rate of Ten and One-Half percent per annum from January 3, 1994 until judgment, plus interest thereafter at the current legal rate of 5.49 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 \$46.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, have and recover judgment in the amount of \$2,456.00 for Judgments recorded on August 15, 1991, and July 28, 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, STEVEN BARRY DEETER and DEBORAH JEAN GWIN fka Deborah Jean Deeter, 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 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.
DEPARTMENT OF HUMAN SERVICES, in the amount of
\$706.00, plus interest.

Fourth:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$20.00, personal property taxes which are
currently due and owing.

Fifth:

In payment of Defendant, STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF HUMAN SERVICES, in the amount of
\$1,750.00.

Sixth:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$26.00, 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:

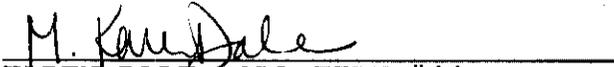
STEPHEN C. LEWIS
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County Treasurer and
Board of County Commissioners,
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Attorney for Defendant,
State of Oklahoma, ex rel.
Department of Human Services

Judgment of Foreclosure
Civil Action No. 94-C-284-B

NBK:flv

ENTERED ON DOCKET

DATE AUG 19 1994

FILED

AUG 18 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

PITNEY BOWES,

Plaintiff,

vs.

COMMERCIAL MAILING SYSTEMS,
and JEFFREY R. LYNCH,

Defendants.

Case No. 94-C-464-BU

ORDER

As it appears that the parties have reached a settlement and compromise of this matter, it is hereby 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 or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within 30 days of the date of this Order for the purpose of obtaining a final determination, the plaintiff's action shall be deemed dismissed with prejudice.

ENTERED this 18 day of July, 1994.

Michael Burrage
MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE AUG 18 1994

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

FILED

AUG 17 1994

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

SHANNON GARDNER,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF HEALTH AND HUMAN)
 SERVICES,)
)
 Defendant.)

93-C-0222-B

ORDER

Shannon Lee Gardner applied for Social Security disability benefits. The Secretary of Health and Human Services denied the application. Ms. Gardner now appeals that decision, raising three issues. First, did the Administrative Law Judge ("ALJ") properly follow this Circuit's "treating physician" rule? Second, should the ALJ have called a Vocational Expert to testify? Last, does substantial evidence support the Secretary's decision that Ms. Gardner can return to her previous work as a teller, cashier or a secretary. For the reasons stated below, the case is REMANDED .

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

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."

14

(10th Cir. 1987). Substantial evidence is what "a reasonable mind might deem adequate to support a conclusion." *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987).² A finding of "no substantial evidence" is where a conspicuous absence of credible choices or no contrary medical evidence exists. *Triniar 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).³

II. Legal Analysis

Ms. Gardner applied for disability benefits on February 6, 1991, claiming an onset date of December 11, 1990. She alleges she is disabled because of Chronic Fatigue Syndrome and dysthymia. Gardner, 21 at the time of the hearing before the ALJ, has a 12th grade education and has previously worked as a teller/secretary, tour guide and cashier/secretary.

² One treatise summarized what is considered evidence in a disability case: "Evidence may consist of, but is not limited to, objective medical evidence such as medical signs and laboratory findings; other medical evidence such as medical history, opinions, and statements concerning treatment received by the claimant; statements made by the claimant or others concerning the claimant's impairments, restrictions, daily activities, efforts to work, or any other relevant statements made to medical sources during the course of examination or treatment, or to the SSA [Secretary] during interviews, on applications, in letters or in testimony; medical evidence from other sources; decisions by any agency, governmental or otherwise, about whether the claimant is disabled or blind; and, at the administrative law judge and Appeals Council level of determination, findings made by nonexamining medical or psychological consultants or nonexamining physicians or psychologists. In addition, the SSA may consider opinions expressed by medical experts based on their review of the claimant's case record. Social Security Law and Practice, §37.1 (1993).

³ 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).

In a five-page opinion, the ALJ found that Ms. Gardner could return to her past relevant work. In doing so, the ALJ ignored the opinions of two treating physicians, found Ms. Gardner's testimony to be not credible and relied on a report by a physician who examined Plaintiff but one time. The ALJ also did not discuss the examination of the Secretary's consulting psychologist. Consequently, the court finds the ALJ's analysis of the case improper and the case is remanded.

Of particular concern is the way the ALJ evaluated Ms. Gardner's testimony, the "treating physician" reports and the report of the psychologist. Plaintiff testified that she had to quit work because of extreme fatigue, muscle aches, ringing in the ears, severe headaches, memory and lack of concentration. She testified that she sometimes sleeps 11 to 15 hours per day and, in effect, cannot work. This testimony, however, was found to be "exaggerated". The ALJ did not otherwise explain his credibility determination.

In addition, Dr. Francisco Soto, a treating physician, diagnosed Ms. Gardner on April 17, 1990 with "Chronic Fatigue Syndrome". *Id. at 149*. The ALJ, however, discounted and/or ignored that diagnosis, in part, because it came "eight months prior to claimant's alleged onset date."⁴ He also discounted the diagnosis because it was not supported by other evidence.

The ALJ handled the reports of Dr. Leon Anderson in similar fashion. Dr. Anderson, a treating physician, diagnosed Ms. Gardner with Chronic Fatigue Immune Dysfunction Syndrome and Candida Induced Immune and Endocrine Dysregulation. He found that her "symptoms are so severe that some days she is unable to perform physically and on other

⁴ This statement is confusing. On page 10 of the Record, the ALJ states that Gardner's alleged onset date was December 11, 1990. He then states that Dr. Soto's April 1990 diagnosis was "eight months prior to claimant's alleged onset date."

days it is important for her to minimize her physical duties." *Id. at 237*. Dr. Anderson also concluded on February 14, 1991 that Gardner met Listings 12.02 and 12.04.⁵ Wrote the doctor:

Shannon Gardner is completely disabled from any gainful employment at present, and this is based on multiple areas of disability. There are multiple organs and systems involved and multiple cognitive deficits, as well as emotionally related disabilities, including a depressive syndrome. *Id. at 234.*

The ALJ, noting that Dr. Anderson was an osteopath, discounted and/or ignored that evidence because it was not supported by other evidence in the record. "There are no credible laboratory or clinical facts and findings, diagnostic or otherwise to support the conclusions of Dr. Anderson", the ALJ wrote. *Id. at 11.*

Upon review, the Court finds that the ALJ's handling of the evidence submitted by Drs. Soto and Anderson violates the Circuit's "treating physician" rule. That rule requires the ALJ to give substantial weight to the claimant's treating physician(s) unless good cause dictates otherwise. If the treating physician's opinion is disregarded, specific and legitimate reasons must be set forth by the Secretary. *Byron v. Heckler*, 742 F.2d 1232, 1235 (10th Cir. 1984). In this case, the ALJ's reasons for discounting the reports were neither specific nor legitimate. Indeed, the very fact that two treating physicians arrived at similar diagnoses is all but ignored. The ALJ instead appeared to rely to a great extent on a March 25, 1991 examination by Dr. David Calenzani. Dr. Calenzani disagreed with the disability opinion of Dr. Anderson. *Id. at 223-224*. Dr. Calenzani is not, however, a "treating physician".

⁵ The Court is aware that a treating physician's statements as to the ultimate issue of disability are not controlling. *Nelson v. Sullivan*, 946 F.2d 1314, 1317 (8th Cir. 1991).

A further problem is the ALJ's **failure** to discuss a report by Dr. Cullen Mancuso. Dr. Mancuso, the Secretary's consulting **psychologist**, examined Ms. Gardner on April 6, 1992.⁶ He found that Ms. Gardner had **suffered** from an illness (presumably CFS) since early adolescence. Dr. Mancuso also wrote:

Whether Shannon is disabled in the future will depend on the degree to which she can be treated successfully, an issue not within my scope of professional competence. My reading of the literature, however, indicates that many individuals with CFS can be medically treated symptomatically and can improve to the extent that some semblance of normalcy can be restored to their lives, including capacity to work. I am not of the opinion that Shannon would work if she were able. She is not malingering. Her reports of impairment are genuine and credible. *Id. at 335.*

After reviewing the evidence, the court finds the ALJ's reasoning suspect. Chief among the evidence are (1) Ms. Gardner's testimony, (2) Dr. Soto's reports, (3) Dr. Anderson's reports, (4) Dr. David Calenzani's report and (5) Dr. Mancuso's report. The ALJ, without explaining why, found Ms. Gardner's testimony to be exaggerated. This is within his province, but some **explanation must** be made on why he found the testimony to be exaggerated. No explanation was given.

The ALJ also threw out the **opinions** of Drs. Soto and Anderson because he believed they were inconsistent with the other **evidence** in the record. Under the circumstances here, those reasons were neither **specific nor legitimate**, particularly given the similarity of findings by both doctors. Furthermore, **the ALJ did not discuss the report of Dr. Mancuso.** Each of these evidentiary items bolsters Ms. Gardner's disability claim.

⁶ This was some five months after the hearing before the ALJ, but before the ALJ's May 29, 1992 denial decision.

It appears the ALJ simply chose to rely on Dr. Calenzani's opinion. Dr. Calenzani examined Ms. Gardner only once.⁷ Therefore, the court finds that substantial evidence does not support the ALJ's decision that Ms. Gardner can return to her past relevant work.

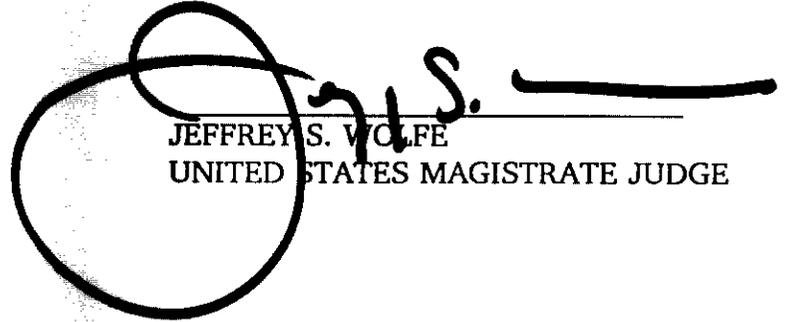
Another variable in this decision is the alleged disability: Chronic Fatigue Syndrome. The syndrome is apparently unique and evolving, and one article describes it as the "Modern Medical Mystery." The some 60 pages of information attached in the Record also indicates that CFS is difficult to diagnosis and treat. Furthermore, none of the doctors examining Ms. Gardner were noted to be specialists in this area. Even Dr. Mancuso, the Secretary's expert, said treatment of the syndrome was not within his bailiwick. Additionally, neither this court nor the ALJ are equipped to substitute their own diagnosis over that of the medical professionals. These facts do not mean that Ms. Gardner is disabled; they simply indicate that a more extensive review of her application must take place.

Therefore, the case is **REMANDED** under step four of 42 U.S.C. §405(g). Substantial evidence does not support the ALJ's decision that Ms. Gardner can return to her past relevant work at Step 4. On remand, the ALJ must proceed to step 5 to determine whether she can return to work elsewhere in the national economy. As a part of the remand, the ALJ must order an examination of Ms. Gardner by a consulting specialist in the area of Chronic Fatigue Syndrome. In addition, the ALJ must re-evaluate his examination of the evidence of Drs. Soto and Anderson in light of this opinion. The ALJ must also conduct a supplemental hearing where a Vocational Expert and the consulting

⁷ Nothing in the record indicates that Dr. Calenzani, an M.D., was a specialist in the impairments alleged by Ms. Gardner.

specialist can testify, considering the whole of the newly found medical evidence and testimony, above.

SO ORDERED THIS 17th day of Aug., 1994.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
DELORES J. PATTON; CITY OF)
GLENPOOL, Oklahoma; COUNTY)
TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.)

FILED

AUG 17 1994

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

CIVIL ACTION NO. 94-C 315E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day
of Aug, 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, **Delores J.
Patton and City of Glenpool, Oklahoma**, appear not, but make
default.

The Court being fully advised and having examined the
court file finds that the Defendant, **City of Glenpool, Oklahoma**,
acknowledged receipt of Summons and Complaint on or about April
8, 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.

ENTERED ON DOCKET

DATE 8-18-94

The Court further finds that the Defendant, **Delores J. Patton**, was served by publishing notice of this action in the **Tulsa Daily Commerce and Legal News**, a newspaper of general circulation in Tulsa County, **Oklahoma**, once a week for six (6) consecutive weeks beginning **May 25, 1994**, and continuing through **June 29, 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 Defendant, **Delores J. Patton**, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant 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 address of the Defendant, **Delores J. Patton**. 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 party served by publication with respect to her present or last known place of

residence and/or mailing address. 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 Defendant served by publication.

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, Delores J. Patton 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 Twelve (12), Block Four (4), GLENN RIDGE, an Addition to the City of Glenpool, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 10, 1987, the Defendant, Delores J. Patton, and Randall B. Tyler, both single persons, executed and delivered to FIRSTIER MORTGAGE CO. their mortgage note in the amount of \$56,950.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Delores J.

Patton, and Randall B. Tyler, both single persons, executed and delivered to FIRSTIER MORTGAGE CO. a mortgage dated November 10, 1987, covering the above-described property. Said mortgage was recorded on November 12, 1987, in Book 5063, Page 1057, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 6, 1988, FirstTier Mortgage Co., assigned the above-described mortgage note and mortgage to LEADER FEDERAL SAVINGS & LOAN ASSOCIATION. This Assignment of Mortgage was recorded on September 19, 1988, in Book 5128, Page 2932, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 15, 1990, LEADER FEDERAL BANK FOR SAVINGS formerly known as LEADER FEDERAL SAVINGS & LOAN ASSOCIATION 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 20, 1990, in Book 5237, Page 78, in the records of Tulsa County, Oklahoma, and was re-recorded on February 24, 1994, in Book 5598, Page 435, in the records of Tulsa county, Oklahoma, to reflect a name change.

The Court further finds that the Defendant, Delores J. Patton, currently holds the fee simple title to the property by virtue of a Quit Claim Deed dated January 30, 1990, and recorded on March 22, 1990, in Book 5242, Page 2173, in the records of Tulsa County, Oklahoma; the Defendant, Delores J. Patton, is the current assumpor of the subject indebtedness.

The Court further finds that on February 1, 1990, the Defendant, Delores J. 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.

The Court further finds that the Defendant, Delores J. 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 her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Delores J. Patton, is indebted to the Plaintiff in the principal sum of \$85,545.11, plus interest at the rate of 10 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 \$11.00 which became a lien on the property as of June 20, 1991; a lien in the amount of \$50.00 which became a lien on June 26, 1992; a lien in the amount of \$47.00 which became a lien on June 25, 1993; and a claim against the subject property in the amount of \$45.00 for the 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, **Delores J. Patton 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 Defendant, **Delores J. Patton**, in the principal sum of \$85,545.11, plus interest at the rate of 10 percent per annum from March 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.46 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 \$153.00 for personal property taxes for the years 1990-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Delores J. Patton, City of Glenpool, Oklahoma 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 Defendant, Delores J. Patton, 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 \$153.00, 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.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

J. O. Ellison
JAMES O. ELLISON

Neal B. Kirkpatrick
NEAL B. KIRKPATRICK
Assistant United States Attorney
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J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
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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 315E
NBK:lg

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEBORAH C. KENDALL,)
an individual, plaintiff,)
)
v.)
)
HAZEL R. O'LEARY,)
Secretary of the Department of)
Energy of the United States,)
with respect to the)
SOUTHWESTERN POWER)
ADMINISTRATION,)
an agency of the United States,)
defendant.)

Case No. 94-C-608-E. ✓

ORDER GRANTING
PLAINTIFF'S
MOTION TO DISMISS.

FILED

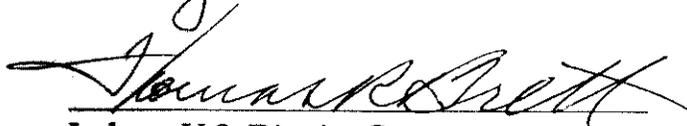
AUG 17 1994

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

ORDER GRANTING
PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE.

Pursuant to FCVP Rule 41(a)(1), plaintiff pro se, DEBORAH C. KENDALL, has made a motion to **dismiss** this action without prejudice. The Court having been fully advised, **finds good cause**, and hereby grants plaintiff pro se's motion to dismiss this **action** without prejudice. Such dismissal without prejudice shall be so entered **in the District Court records**. Each party to this action will bear its or her own **costs and fees**.

Dated this 17 day of Aug, 1994.



Judge, U.S. District Court.

For Judge Ellison

ENTERED ON DOCKET

DATE 8-18-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 17 1994

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF ROY W. PLATT a/k/a
ROY WILLIAM PLATT, SR.,
Deceased, et al.,

Defendants.) CIVIL ACTION NO. 93-C-224-E

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed with prejudice.

Dated this 17 day of Aug, 1994.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

for JAMES O. ELLISON

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PB/esf

ENTERED ON DOCKET

DATE 8-18-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDDIE ALMENDARES;
JONI JEAN ALMENDARES aka
Joni J. Almendares;
STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION;
CITY OF BROKEN ARROW, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 94-C-511-E

FILED

AUG 17 1994

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day
of Aug, 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 Defendant, STATE OF
OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D.
Ashley, Assistant General Counsel; the Defendant, CITY OF BROKEN
ARROW, Oklahoma, appears by Michael Vanderburg, City Attorney,
City of Broken Arrow, Oklahoma; and the Defendants, EDDIE
ALMENDARES and JONI JEAN ALMENDARES, appear not, but make
default.

ENTERED ON DOCKET

DATE 8-18-94

The Court being fully advised and having examined the court file finds that the Defendant, EDDIE ALMENDARES, Waived Service of Summons and Complaint on May 24, 1994; that the Defendant, JONI JEAN ALMENDARES, Waived Service of Summons and Complaint on May 24, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, was served of Summons and Complaint by Certified Mail on May 19, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, was served a Summons and Complaint by Certified Mail on May 29, 1994.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on May 27, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on June 7, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its answer on June 3, 1994; and that the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES, 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 Thirteen (13), Block Four (4),
SILVERTREE, 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 August 30, 1985, Mitchell E. Horton and Susan B. Horton, executed and delivered to Investors Federal Bank, F.S.B., their mortgage note in the amount of \$65,394.00, 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, Mitchell E. Horton and Susan B. Horton, husband and wife, executed and delivered to Investors Federal Bank, F.S.B., a mortgage dated August 30, 1985, covering the above-described property. Said mortgage was recorded on September 6, 1985, in Book 4890, Page 1950, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 12, 1985, Investors Federal Bank, F.S.B., assigned the above-described mortgage note and mortgage to Security Pacific Mortgage Corporation. This Assignment of Mortgage was recorded on February 12, 1986, in Book 4895, Page 1194, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 12, 1987, Security Pacific Mortgage Corporation, assigned the above-described mortgage note and mortgage to Fleet Real Estate Funding Corp. This Assignment of Mortgage was recorded on April 18, 1988, in Book 5093, Page 2395, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 17, 1990, Fleet Real Estate Funding Corp., 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 June 18, 1990, in Book 5254, Page 757, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 15, 1988, Mitchell E. Horton and Susan B. Horton, husband and wife, granted a general warranty deed to the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES. This deed was recorded with the Tulsa County Clerk on August 16, 1988, in Book 5121 at Page 2247 and The Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on may 1, 1990, the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES, 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 June 1, 1991, December 1, 1991, and June 1, 1992.

The Court further finds that the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES, 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, EDDIE ALMENDARES and JONI JEAN ALMENDARES, are indebted to the Plaintiff in the principal sum of \$89,900.29, plus interest at

the rate of Eleven and One-Half percent per annum from May 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has liens on the property which is the subject matter of this action by virtue of income taxes in the amount of \$2,033.62, plus accrued and accruing interest, which became a lien on the property as of February 23, 1993; and a lien in the amount of \$286.98, plus accrued and accruing interest, which became a lien on the property as of January 11, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF BROKEN ARROW, Oklahoma, claims no right title or interest in the subject real property, except insofar as is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further finds that the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim 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, EDDIE ALMENDARES and JONI JEAN ALMENDARES, in the principal sum of \$89,900.29, plus interest at the rate of Eleven and One-Half percent per annum from May 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.49 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover an In Rem judgment in the amount of \$2,320.60 for taxes plus accrued and accruing interest, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, EDDIE ALMENDARES and JONI JEAN ALMENDARES, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER 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, EDDIE ALMENDARES and JONI JEAN ALMENDARES, 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 appraisement 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:

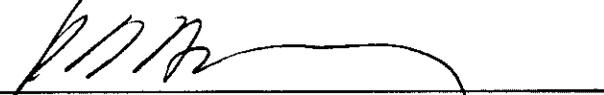
In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$2,320.60, plus accrued and accruing interest, for taxes which are currently due and owing.

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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



KIM D. ASHLEY
Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248

(405) 521-3141
Attorney for the Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission



MICHAEL R. VANDERBURG
City Attorney,
CITY OF BROKEN ARROW
P. O. Box 610
Broken Arrow, OK 74012
(918) 251-5311
Attorney for the Defendant,
City of Broken Arrow, Oklahoma



J. DENNIS SEMLER
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-511-E
NBK:flv

FILED

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

AUG 17 1994

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ONE 1989 TOYOTA 4 RUNNER,)
 VIN JT3VN66W6K0030598,)
)
 Defendant.)

CIVIL ACTION NO. 94-C-157-B

ENTERED ON DOCKET
DATE AUG 18 1994

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

This cause having come before this Court upon the plaintiff's Motion for Judgment of Forfeiture by Default and by Stipulation against the defendant vehicle and all entities and/or persons interested in the defendant vehicle, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 18th day of February 1994, alleging that the defendant vehicle was subject to forfeiture pursuant to 21 U.S.C. § 881, because it was used, or intended to be used, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana, in violation of Title 21 United States Code.

Warrant of Arrest and Notice In Rem was issued on the 18th day of February 1994, by the Clerk of this Court to the United States Marshal for the Northern District of Oklahoma for

NOTE:

PLEASE RETURN TO CLERK'S OFFICE
UPON RECEIPT.

the seizure and arrest of the defendant vehicle and for publication in the Northern District of Oklahoma.

On the 4th day of March 1994, the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem, the Warrant of Arrest and Notice In Rem, and the Order on the defendant vehicle.

Kyle William Leonard and Mildred Marx (Millie) Leonard, were determined to be the only potential claimants in this action with possible standing to file a claim to the defendant vehicle; no claim has been filed by Kyle William Leonard. Millie Leonard filed a Claim and has since entered into a Stipulation for Forfeiture of the defendant vehicle to the United States of America; and the plaintiff, the United States of America agrees to the payment to Claimant, Millie Leonard, of the sum of Three Thousand Dollars (\$3,000.00), and to return to Millie Leonard the cost and claim bond which she posted in the amount of One Thousand One Hundred Fifty Two Dollars (\$1,152.00), less costs and expenses incurred by the United States Marshals Service through July 31, 1994, in the amount of \$487.37, plus \$1.00 per day for storage of the vehicle for each day thereafter, until defendant vehicle is disposed of according to law.

USMS 285 reflecting the service upon the defendant vehicle and all known potential claimants are on file herein. On July 28, 1994, Claimant Mildred Marx (Millie) Leonard executed a

Stipulation for Forfeiture of the defendant vehicle. This Stipulation was filed on July 28, 1994.

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

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

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending and in which the defendant vehicle was located, on April 14, 21, and 28, 1994. Proof of Publication was filed May 23, 1994.

No other claims in respect to the defendant vehicle have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant vehicle, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, default

exists as to the defendant vehicle, and all persons and/or entities interested therein, except Mildred Marx (Millie) Leonard, who executed a Stipulation for Forfeiture of the defendant vehicle on July 28, 1994; filed July 28, 1994.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the following-described defendant vehicle:

**ONE 1989 TOYOTA 4 RUNNER,
VIN JT3VN66W6K0030598,**

be, and it hereby is, forfeited to the United States of America for disposition according to law.

IT IS FURTHER ORDERED by the Court that the sum of Three Thousand Dollars (\$3,000.00) be paid to Claimant Millie Leonard, by mailing to her attorney, Christopher L. Coyle, Riggs, Abney, Neal, Turpen, Orbison, & Lewis, Attorneys at Law, P.O. Box 1046, Tulsa, Oklahoma 74101.

IT IS FURTHER ORDERED by the Court that the Costs and expenses incurred by the United States Marshals Service, in the amount of \$487.37, plus storage at the rate of \$1.00 per day incurred for each day thereafter until defendant vehicle is disposed of according to law, be deducted from the cost and claim bond in the amount of One Thousand One Hundred Fifty-two Dollars (\$1,152.00) posted by Millie Leonard, and that the remaining balance be returned to Claimant Millie Leonard, by mailing to her attorney, Christopher L. Coyle, Riggs, Abney, Neal, Turpen,

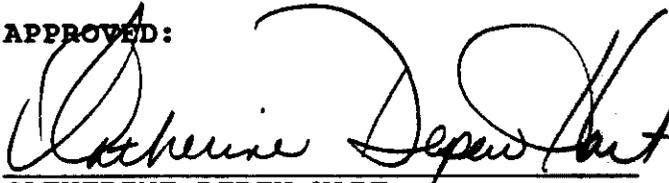
Orbison, & Lewis, Attorneys at Law, P. O. Box 1046, Tulsa,
Oklahoma 74101.

Entered this 17 day of August 1994.

S/ THOMAS R. BRETT

THOMAS R. BRETT,
United States District Judge

APPROVED:



CATHERINE DEPEW HART
Assistant United States Attorney

N:\UDD\CHOOK\FC\LEONARD1\04060

ENTERED ON DOCKET
DATE AUG 18 1994

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

FILED

AUG 15 1994

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

ROBERT C. TAFT, a Citizen of the
State of Washington,

Plaintiff,

vs.

BANK IV OKLAHOMA, a national banking
association, successor in interest
to Fourth National Bank of Tulsa, et al.,

Defendants.

Case No. 93-C-932-BU

**STIPULATION OF SETTLEMENT, SETTLEMENT AGREEMENT,
F.R.C.P.41(a)(1)(ii) STIPULATION OF DISMISSAL WITH
PREJUDICE AND F.R.C.P.41(a)(1)(i) NOTICE OF DISMISSAL**

IT IS STIPULATED AND AGREED, by the undersigned Plaintiff and Defendants (the undersigned Defendants, individually and collectively, shall be referred to as the "Settling Defendants") and their duly authorized counsel, that the above-captioned action (the "Taft Litigation" as hereinafter defined) and all claims which have been or could have been asserted therein with respect to the Settling Defendants shall be and are settled, compromised and dismissed with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure and without costs (the "Settlement"), upon and subject to the terms and conditions set forth below.

A. Definitions

1. As used in this Stipulation, the following terms shall have the meanings set forth below:

27

(a) "Taft Litigation" means Taft vs. Bank IV Oklahoma, et al., U. S. District Court, Northern District of Oklahoma, Case No. 93-C-932-BU ("Taft action").

(b) "Settling Defendants" means:

- (1) BANK IV Oklahoma, a national banking association, successor in interest to The Fourth National Bank of Tulsa;
- (2) Edward H. Brett, Individually.

(c) "Dismissed Defendants" means:

- (1) Northwestern Mutual Life Insurance Company, a Wisconsin corporation;
- (2) A Certain Sum of \$150,000 in the Custody of Northwestern Mutual Life Insurance Company;
- (3) Edward H. Brett, Personal Representative of the Estate of Mary Evelyn Brett, Deceased;
- (4) Image Publishing, Inc., an Oklahoma corporation.

(d) "Stipulation" means this Stipulation of Settlement.

(e) "Court" means (unless otherwise indicated) the United States District Court for the Northern District of Oklahoma.

(f) "Settlement Effective Date" means the date this Stipulation is approved by the Court.

B. General Provisions

2. This Stipulation shall in no event be construed or be deemed to be evidence of an admission or a concession on the part of the Settling Defendants of any fault or liability. Settling Defendants deny any and all wrongdoing of any kind whatsoever and deny any liability to the Plaintiff in the Taft Litigation.

3. Plaintiff's counsel have evaluated the expense and length of time necessary to prosecute the Taft Litigation against the Settling Defendants, taking into account the uncertainties of predicting the outcome of litigation such as this. They have concluded that further proceedings against Settling Defendants will be protracted, complex and expensive, and that the outcome of litigation such as this is uncertain. Based upon consideration of all these factors, the Plaintiff and his counsel have concluded that it is desirable and in the best interests of the Plaintiff to settle the Taft Litigation as to the Settling Defendants, and to release all of the Settling Defendants as set forth in this Stipulation.

4. Settling Defendants have considered the expense and length of further proceedings necessary to continue this action through trial and appeal and have taken into account the uncertain outcome in litigation such as this. Settling Defendants have concluded that it is desirable that the claims of the Plaintiff in the Taft Litigation be settled in the manner and the terms and conditions set forth here.

5. The settlement conference judge has conducted and presided over a good faith settlement conference to negotiate the Plaintiff's claims and the Settling Defendants' prospective liabilities and defenses.

C. The Settlement

6. The rights created and the obligations incurred pursuant to this Stipulation shall be in full and final disposition and settlement of all claims, demands, rights, causes of action, suits, debts, damages, judgments, decrees, controversies, agreements or other claims in law or equity whatsoever, whether arising under federal or state law, and whether or not now known, which have been, could have been or ever could be, now or in the future, asserted against any of the Settling Defendants, their respective affiliates, subsidiaries, predecessors, officers, directors or employees by Plaintiff, or his successors, assigns or heirs in connection with, arising out of, or in any way related to any acts, failures to act, omissions, misrepresentations, facts, events, transactions, occurrences or other matters alleged in or related to the complaint filed in the Taft Litigation or which could have been brought against any of the Settling Defendants.

7. In full and complete settlement of the claims which have been, or ever could be, asserted by the Plaintiff against the Settling Defendants in the Taft Litigation, and subject to the terms and conditions of this Stipulation, the amount of \$25,000 shall be paid to the Plaintiff as follows:

- a. Defendant BANK IV Oklahoma shall pay \$20,000; and
- b. Defendant Edward H. Brett shall pay \$5,000,

for the benefit of the Plaintiff in the Taft Litigation, payable to Robert C. Taft and his attorneys, Morrel, West, Saffa, Craige & Hicks, Inc., within five (5) days of notification of the Court's granting of approval of this Stipulation as set forth herein.

8. Plaintiff hereby releases any and all claims or demands to the life insurance policy proceeds on the life of Mary E. Brett, held by Northwestern, or any other person or entity.

9. Northwestern Mutual Life Insurance Company, as a defendant, and also as named custodian of a Certain Sum of \$150,000, states that it holds \$48,000+ for the benefit of Edward H. Brett and acknowledges that the Plaintiff and Settling Defendants authorize Northwestern to pay to Edward H. Brett the entire remaining proceeds from the life insurance on Mary Evelyn Brett, deceased, which had been deposited into a Northwestern money market account, said sums being released from any claim or demand of the Plaintiff.

10. Plaintiff has further dismissed with prejudice the named Defendant, Edward H. Brett, Personal Representative of the estate of Mary E. Brett, deceased.

11. Plaintiff does by this Stipulation and F.R.C.P. 41(a)(1)(i) Notice hereby dismiss with prejudice the named Defendant Image Publishing, Inc., an Oklahoma corporation.

12. Plaintiff does by this Stipulation and F.R.C.P. 41(a)(1)(ii) Stipulation hereby dismiss with prejudice the defendant BANK IV Oklahoma, N.A., and Edward H. Brett, individually.

D. Release

13. Upon the Settlement Effective Date, the Plaintiff, and his respective heirs, executors, administrators, representatives, agents, successors and assigns, shall release and forever discharge the Settling Defendants and the Dismissed Defendants of and from any and all manner of claims, actions, causes of actions, suits, obligations, debts, demands, agreements, promises, liabilities, controversies, costs, expenses and attorneys' fees whatsoever, whether based on any federal or state law or right of action, in law or in equity or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, which the

Plaintiff ever had, now has or can have, or shall or may hereafter have in connection with, arising out of, or which are in any way related to any acts, failures to act, omissions, misrepresentations, facts, events, transactions, occurrences or other matters set forth, alleged, embraced or otherwise referred to in the **Taft Litigation** or which could have been brought against Settling Defendants and the **Dismissed Defendants**.

E. Miscellaneous Provisions

14. This Stipulation may be amended or modified only by a written instrument signed by all parties or their successors-in-interest.

15. This Stipulation constitutes the entire agreement among the parties and no representations, warranties or inducements have been made to any party concerning this Stipulation other than the representations, warranties and covenants contained and memorialized in such documents.

16. The representatives and attorneys signing this Stipulation for each of the parties are authorized by the parties to sign this Stipulation.

17. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

18. This Stipulation shall be binding on, and inure to the benefit of, the successors and assigns of the parties.

19. This Stipulation shall be governed by and interpreted according to the laws of the State of Oklahoma, to the extent not otherwise governed by federal law.

20. The Court shall retain jurisdiction with respect to implementing and enforcing the terms of this Stipulation. All parties agree to be bound by the determinations of the Court and United States Magistrate Judge Jeffrey S. Wolfe with respect to interpretation of this Stipulation and will comply promptly with such determinations.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation of Settlement to be executed by their duly authorized representatives and attorneys, as of the day and year first above written.

DATED: _____, 1994.

Robert C. Taft

BANK IV OKLAHOMA, N.A.

By: _____

Title: _____

Edward H. Brett, Individually and as
Personal Representative of the Estate of
Mary Evelyn Brett

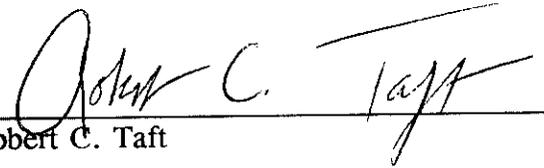
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20. The Court shall retain jurisdiction with respect to implementing and enforcing the terms of the Stipulation. All parties agree to be bound by the determinations of the Court and United States Magistrate Judge Jeffrey S. Wolfe with respect to interpretation of this Stipulation and will comply promptly with such determinations.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation of Settlement to be executed by their duly authorized representatives and attorneys, as of the day and year first above written.

DATED: July 18^o, 1994.


Robert C. Taft

BANK IV OKLAHOMA, N.A.
By: _____
Title: _____

Edward H. Brett, Individually and as
Personal Representative of the Estate of
Mary Evelyn Brett

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20. The Court shall retain jurisdiction with respect to implementing and enforcing the terms of this Stipulation. All parties agree to be bound by the determinations of the Court and United States Magistrate Judge Jeffrey S. Wolfe with respect to interpretation of this Stipulation and will comply promptly with such determinations.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation of Settlement to be executed by their duly authorized representatives and attorneys, as of the day and year first above written.

DATED: _____, 1994.

Robert C. Taft

BANK IV OKLAHOMA, N.A.

By: _____

Title: Vice President / General Counsel

Edward H. Brett, Individually and as
Personal Representative of the Estate of
Mary Evelyn Brett

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IN WITNESS WHEREOF, the parties hereto have caused this Stipulation of Settlement to be executed by their duly authorized representatives and attorneys, as of the day and year first above written.

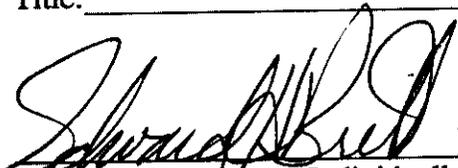
DATED: _____, 1994.

Robert C. Taft

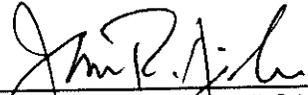
BANK IV OKLAHOMA, N.A.

By: _____

Title: _____


7/22/94
Edward H. Brett, Individually and as
Personal Representative of the Estate of
Mary Evelyn Brett

MORREL, WEST, SAFFA, CRAIGE &
HICKS, INC.

By 

Steven E. Smith, OBA # 8410
James R. Hicks, OBA # 11345
9th Floor, City Plaza West
5310 East 31st Street
Tulsa, Oklahoma 74135
(918) 664-0800
Attorneys for Plaintiff

GABLE & GOTWALS

By: _____
Richard D. Koljack, Jr.
2000 Bank IV Center
15 West Sixth Street
Tulsa, Oklahoma 74119-5430
**Attorneys for Defendant BANK IV
Oklahoma**

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By _____
Kevin M. Abel
William A. Caldwell
900 Oneok Plaza
Tulsa, OK 74103
**Attorneys for Defendant Edward H. Brett,
Individually**

MORREL, WEST, SAFFA, CRAIGE &
HICKS, INC.

By _____
Steven E. Smith, OBA # 8410
James R. Hicks, OBA # 11345
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5310 East 31st Street
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Attorneys for Plaintiff

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By: Richard D. Koljack, Jr.
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2000 Bank IV Center
15 West Sixth Street
Tulsa, Oklahoma 74119-5430
**Attorneys for Defendant BANK IV
Oklahoma**

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By _____
Kevin M. Abel
William A. Caldwell
900 Oneok Plaza
Tulsa, OK 74103
**Attorneys for Defendant Edward H. Brett,
Individually**

MORREL, WEST, SAFFA, CRAIGE &
HICKS, INC.

By _____

Steven E. Smith, OBA # 8410
James R. Hicks, OBA # 11345
9th Floor, City Plaza West
5310 East 31st Street
Tulsa, Oklahoma 74135
(918) 664-0800
Attorneys for Plaintiff

GABLE & GOTWALS

By _____

Richard D. Koljack, Jr.
2000 Bank IV Center
15 West Sixth Street
Tulsa, Oklahoma 74119-5430
**Attorneys for Defendant BANK IV
Oklahoma**

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

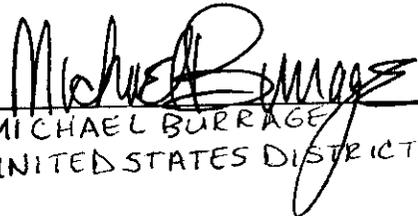
By _____

Kevin M. Abel
William A. Caldwell
900 Oneok Plaza
Tulsa, OK 74103
**Attorneys for Defendant Edward H. Brett,
Individually**

APPROVAL OF THE COURT

The undersigned Judge, having ~~considered~~ the terms and conditions of the Plaintiff and Defendants in this action, finds said Settlement to be fair and equitable, and hereby approves of the same.

ENTERED this 15 day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE AUG 18 1994

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

FILED

AUG 17 1994

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

JAMES MICHAEL MAGNESS

Plaintiff,

V.

PUBLIC SERVICE COMPANY
OF OKLAHOMA,

Defendant.

CASE NO. 94-C-647-B ✓

ORDER

This matter comes on for consideration of Defendant Public Service Company of Oklahoma's (Public Service) Motion to Dismiss (docket entry # 3).

This is a removed case from Tulsa County District Court. In his Petition Plaintiff alleged Public Service discriminated against him because of his sexual preference (homosexuality) and ultimately terminated him, all in violation of Title VII of the Civil Rights Act of 1964, and also in violation of the public policy of the State of Oklahoma (a Burk tort) constituting a wrongful discharge. Plaintiff seeks back pay, front pay, lost benefits, costs of the prosecution of this action, and punitive damages.

Public Service filed on July 1, 1994, a Motion to Dismiss, alleging that there exists no cause of action under either Title VII or the Burk tort theory. Plaintiff has failed to respond to the motion and has sought no extension to respond.

At a Case Management conference held July 28, 1994,

1

Plaintiff's counsel indicated he may voluntarily dismiss this action. This Court directed Plaintiff's counsel to either file his response to Defendant's motion or dismiss this matter by August 3, 1994. Plaintiff, as of this date, has done neither.

Therefore the Court concludes Defendant's Motion should be and the same is hereby GRANTED. This action is dismissed without prejudice.

IT IS SO ORDERED this 17th day of August, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BARBARA WOOD,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF HEALTH & HUMAN)
 SERVICES,)
)
 Defendant.)

FILED

AUG 16 1994

93-C-0220-B ✓ Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER

Now before the Court is Plaintiff Barbara Wood's appeal of a decision by the Secretary of Health and Human Services to deny her Social Security disability benefits.¹ On appeal, the overriding issue is whether substantial evidence supports the Secretary's decision. Ms. Wood also raises the following issues: (1) Did the Administrative Law Judge ("ALJ") err in deciding that Wood does not meet or equal Listings 12.04 and/or 12.08? (2) Did the ALJ properly follow the "treating physician" rule? (3) Did the ALJ properly question the vocational expert? and (4) Did Wood's work as a janitor qualify as past relevant work?

For the reasons discussed below, the Secretary's decision is affirmed.

I. Legal Analysis

At the time of the hearing before the ALJ, Ms. Wood was 48 years old. She has a 12th grade education and has attended junior college for a year. She formerly worked as a janitor, security guard and residential life staff aide. Ms. Wood claims she has been

¹ On October 29, 1990, Plaintiff applied for Social Security disability benefits and Supplemental Security Income disability benefits. The Secretary denied the applications initially and on reconsideration. The ALJ then issued a denial decision on March 10, 1992. Plaintiff's request for review was subsequently denied and the instant appeal was filed.

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disabled since April 1, 1989 because of nervousness, crying spells, tenseness, inability to sleep and depression.

The ALJ, however, found that she could return to her past work as a janitor.² In reaching this conclusion, he concluded that Ms. Wood did not meet or equal 12.04 and/or 12.08. He also found that she had the residual functional capacity to perform medium exertional work as long as she was in a "low stress environment." *Record at 29-30.*

Plaintiff disagrees with the ALJ's findings for several reasons. First, she contends that she does meet Listings 12.04 and 12.08. Second, she asserts that the ALJ did not give substantial weight to evidence submitted by her treating physicians. Lastly, Ms. Wood claims that the ALJ did not properly question the Vocational Expert.

After examining the record, the court finds that (1) substantial evidence supports the ALJ's finding of no disability and (2) the ALJ did not err as a matter of law. Specifically, Ms. Wood did not meet Listings 12.04 and/or 12.08; the ALJ properly followed the "treating physician" rule and the ALJ's hypothetical question to the Vocational Expert was proper.

Substantial evidence is what "a reasonable mind might deem adequate to support a conclusion." *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987).³ A finding of "no

² Ms. Wood asserts that her job as a janitor in 1978 does not qualify as past relevant work. The court finds that to be without merit. The record indicates that Plaintiff earned \$5,511.49 in 1978 as a janitor -- average monthly earnings of \$459.29. According to 20 C.F.R. §404.1574(b)(2)(iv), work is deemed to be at the substantial gainful activity level if the earnings average more than \$260 a month in 1978. In addition, her work as a janitor met the duration and recency requirement. See *Jozefowicz v. Heckler*, 811 F.2d 1352, 1355 (10th Cir. 1987).

³ One treatise summarized what is considered evidence in a disability case: "Evidence may consist of, but is not limited to, objective medical evidence such as medical signs and laboratory findings; other medical evidence such as medical history, opinions, and statements concerning treatment received by the claimant; statements made by the claimant or others concerning the claimant's impairments, restrictions, daily activities, efforts to work, or any other relevant statements made to medical sources during the course of examination or treatment, or to the SSA [Secretary] during interviews, on applications, in letters or in testimony; medical evidence from other sources; decisions by any agency, governmental or otherwise, about whether the claimant is disabled or blind; and, at the administrative law judge and Appeals Council level of determination, findings made by nonexamining medical or psychological consultants or nonexamining physicians or psychologists. In addition,

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).

In this case, substantial evidence supports the ALJ's decision. Dr. Minor Gordon, a consulting psychologist, testified that he believed Ms. Wood could return to work. The vocational expert testified, in response to the ALJ's question, that Ms. Wood could return to work as a janitor. Plaintiff's testimony concerning her daily activities also supported the ALJ's decision, although the ALJ found parts of her testimony to be not credible. ⁴

Plaintiff, however, points to three evidentiary items which, she contends, supports her disability argument -- evidence discounted by the ALJ. The first two items come from "treating physicians" at the Associated Center for Therapy.

In a July 2, 1991 mental status report, Dr. Dan Corley, Ms. Wood's "treating" counselor, writes that she is "not currently capable of dealing with the stress and expectations of the work environment and supervisors." *Id. at 193*. Also, Dr. John Karns - - an M.D. and Ms. Wood's treating psychiatrist -- in a February 3, 1992 letter, writes: "If Barbara continues to comply with her treatment plan she should be able to return to work in the future. At the present time, however, returning to work would only exacerbate her symptoms. I believe Barbara's potential to return to work is evident here, but, presently, an unrealistic goal." *Id. at 355*.

the SSA may consider opinions expressed by medical experts based on their review of the claimant's case record. Social Security Law and Practice, §37.1 (1993).

⁴ Wood testified that she suffers from depression and anxiety. She testified that she goes to the store 1 to 2 times a week. She testified that she cooks the meals for her family and does the cleaning. She testified that she drives and has attend courses from time-to-time at Tulsa Junior College.

As a matter of law, the ALJ must give substantial weight to Ms. Wood's treating psychiatrist and counselor unless good cause dictates otherwise. If the opinions of the treating psychiatrist are disregarded, the ALJ must give specific and legitimate reasons for doing so. *Byron v. Heckler*, 742 F.2d 1232, 1235 (10th Cir. 1984).

In this case, the ALJ discounted the opinions of Drs. Corley and Karns and gave more weight to the testimony of Dr. Gordon, a reviewing psychologist. That raises two questions in regards to the "treating physician" rule: (1) Were the reasons given by the ALJ specific and legitimate? and (2) Was the ALJ's reliance on Dr. Gordon, a psychologist who did not examine Wood, proper? The court answers both questions in the affirmative.

The progress notes indicate that Plaintiff was a patient at the Associated Centers for Therapy from March 1, 1989 to July 2, 1991. During that time both Drs. Corley and Karns examined her, although it is unclear as to the frequency of such examinations. Drs. Corley and Karns opined that Ms. Wood was unable to work. The ALJ discounted those opinions because they were not "substantiated" and "contrary to the findings of the other examiners." *Id. at 20*. He further found the opinions to be "brief, conclusionary, internally inconsistent, and contrary to the weight of evidence." *Id. at 20*.

Upon review, the court finds the ALJ's analysis to be specific and adequate, for the following reasons: First, Neither doctor offered any explanation or any objective evidence to support their opinions. Second, the "treatment notes" from the Associated Center do not support their conclusions. In fact, the treatment notes are inconsistent.⁵ Last, with the

⁵ For example, on page 202 of the Record, Dr. Karns, on November 27, 1990, indicates that Wood is making progress and would respond to appropriate supervision and co-workers. That is contra to his February, 1992, letter and inconsistent with Dr. Corley's July 2, 1991 finding. In addition, at several places in the treatment notes, either the therapist and/or the doctor notes that she is progressing.

exception of a 1989 comment by Psychological Assistant Jan Dean, the record is void of any medical evidence supporting the opinions of Drs. Karns and Corley. As a result, the ALJ did not violate the "treating physician" rule.

The second question concerning the ALJ's handling of the medical evidence involves Dr. Gordon's testimony. Dr. Gordon, a psychiatrist, testified after he reviewed the medical evidence of record. He did not examine Wood. As a general rule, the testimony of a reviewing physician is accorded less weight than that of an examining physician. *Sorenson v. Bowen*, 888 F.2d 706, 711 (10th Cir. 1989). However, the testimony of a non-examining physician may be relied upon to support a denial for disability where, as here, the testimony is consistent with the record. *Hutchison v. Bowen*, 697 F.Supp. 1401, 1408 (E.D. 1988).

The ALJ listed the reasons why he accorded the greater weight to Dr. Gordon's testimony. He found the testimony to be both more recent than the other doctors' evidence, and more consistent with the record than either that of Dr. Karns or Dr. Corley. Given those circumstances (and the fact the opinions of the treating physicians were properly discounted), the court finds that the ALJ did not err, as a matter of law, in weighing the objective evidence.

A third issue raised by Ms. Wood is the Vocational Expert's testimony. 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). When questioned by the ALJ, the Vocational Expert testified that she could return to work as a janitor. *Id. at 79*. However, when Ms. Wood's attorney asked

a different hypothetical question (one that included Ms. Wood's "crying spells" and took all of Ms. Wood's testimony as true), the Vocational Expert said that Plaintiff could not work. *Id. at 80.*

Upon review, the court finds the ALJ's hypothetical question was sufficiently precise as given. Ms. Wood contends that the ALJ improperly ignored the Vocational Expert's responses to his questions, especially concerning the "crying spells." The ALJ, however, is required to set forth only those physical and mental impairments in the hypothetical which he accepts as true -- he does not have to accept answers to hypothetical questions that take all of the claimant's testimony as true. Here, substantial evidence does not support Plaintiff's testimony of her frequent "crying spells". Therefore, the ALJ was not required to include that in his hypothetical question.

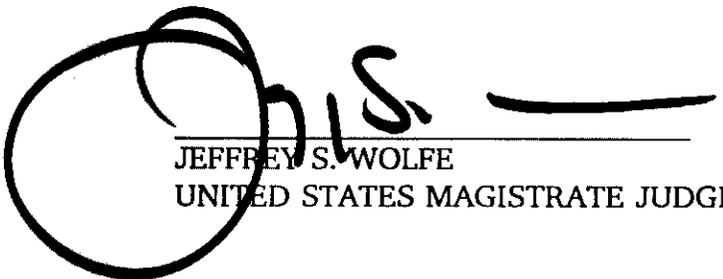
Since the ALJ gave specific, legitimate reasons for discounting Ms. Wood's treating physicians, and, since the hypothetical question was proper, the Court finds that the ALJ did not err as a matter of law on those issues. Furthermore, substantial evidence supports the ALJ's decision that, Plaintiff could return to work as a janitor.⁶ Part of the evidence supports Ms. Wood's disability claim, but that, in itself, does not justify overturning the ALJ's decision.⁷ *See, generally, Tillery v. Schweiker*, 713 F.2d 601 (10th Cir. 1983) (Court acknowledged that "the evidence is such as to permit varying inferences...[but] the ALJ came to grips with the problem, and, on such state of the record, for us to disturb his finding would simply put us into the fact-finding business. This we should not do.")

⁶ A more extensive summary of the evidence supporting the ALJ's decision appears in the Secretary's Brief (docket # 10).

⁷ The Court also has examined the evidence of Psychological Assistance Jan Dean. Record at 275-276.

Since substantial evidence supports the ALJ's decision, Ms. Wood's argument that she meets or equals Listings 12.04 and 12.08 is without merit. To meet either listing, Plaintiff had to meet parts A and B. The ALJ, relying on Dr. Gordon's testimony, found that she satisfied part A on both listings. But, the ALJ concluded that she did not satisfy Part B of either listing, noting that she had "slight" daily living restrictions, "moderate" difficulties in maintaining social functioning, "often" had deficiencies of concentration and had only had one or two episodes of deterioration. *Record at 32-34.* Substantial evidence supports that finding. Therefore, the court **AFFIRMS** the Secretary's decision.

SO ORDERED THIS 16th day of Aug., 1994.



JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 16 1994

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

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

vs.)

JAMES T. RATHBONE; LEADER FEDERAL)
BANK FOR SAVINGS; CITY OF BROKEN)
ARROW, OKLAHOMA; STATE OF)
OKLAHOMA, ex rel., DEPARTMENT OF)
HUMAN SERVICES; COUNTY TREASURER,)
Tulsa County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)

ENTERED ON DOCKET

DATE 8-16-94

Defendants.) CIVIL ACTION NO. 94-C 187B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of Aug., 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 Defendant, **City of Broken**
Arrow, Oklahoma appears by Michael R. Vanderburg, City Attorney;
the Defendant, **State of Oklahoma ex rel Department of Human**
Services appears by M. Karen Dale, its Attorney; the Defendant,
Leader Federal Bank for Savings appears not, having previously
filed its disclaimer; and the Defendant, **James T. Rathbone,**
appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, **Leader Federal Bank for Savings**, acknowledged receipt of Summons and Complaint on March 17, 1994; that the Defendant, **City of Broken Arrow, Oklahoma**, acknowledged receipt of Summons and Complaint on March 3, 1994; that the Defendant, **State of Oklahoma ex rel Department of Human Services**, acknowledged receipt of Summons and Complaint on April 11, 1994; that Defendant, **County Treasurer, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 3, 1994; and that Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 2, 1994.

The Court further finds that the Defendant, **James T. Rathbone**, was served by publishing notice of this action in the **Tulsa Daily Commerce and Legal News**, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 28, 1994, and continuing through June 2, 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 Defendant, **James T. Rathbone**, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant 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 address of the Defendant, **James T. Rathbone**. 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 party served by publication with respect to his present or last known place of residence and/or mailing address. 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 Defendant served by publication.

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; that the Defendant, **Leader Federal Bank for Savings**, filed its Disclaimer on March 22, 1994, and filed a second Disclaimer on April 4, 1994; that the Defendant, **City of Broken Arrow, Oklahoma**, filed its Answer on March 11, 1994, and filed a second Answer on May 12, 1994; that the Defendant, **State of Oklahoma ex rel Department of Human Services**, filed its Answer on June 30, 1994; and that

the Defendant, **James T. Rathbone**, has failed to answer and his 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 Nine (9), Block One (1), The Amended Plat of GREENTREE, 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 July 29, 1983, the Trevor L. Grizzle and Beryl B. Grizzle, husband and wife, executed and delivered to Realbanc, Inc., their mortgage note in the amount of \$48,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Trevor L. Grizzle and Beryl B. Grizzle husband and wife, executed and delivered to Realbanc, Inc., a mortgage dated July 29, 1983, covering the above-described property. Said mortgage was recorded on August 8, 1983, in Book 4714, Page 2032, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 6, 1988, FirstTier Mortgage Co., fka Realbanc, Inc. assigned the above-described mortgage note and mortgage to **Leader Federal Savings & Loan Association**. This Assignment of Mortgage was recorded on

September 19, 1988, in Book 5128, Page 2556, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 17, 1989, Leader Federal Bank for Savings 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 May 17, 1989, in Book 5183, Page 2308, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 9, 1988, Trevor L. Grizzle and Beryl B. Grizzle, husband and wife, granted a General Warranty Deed to the Defendant, James T. Rathbone, a single person. This deed was recorded with the Tulsa County Clerk on February 16, 1988, in Book 5080, Page 1899, and the Defendant, James T. Rathbone, a single person, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on May 1, 1989, the Defendant, James T. Rathbone, 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 June 1, 1991.

The Court further finds that the Defendant, James T. Rathbone, 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, **James T. Rathbone**, is indebted to the Plaintiff in the principal sum of \$87,811.63, plus interest at the rate of 12.5 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 \$26.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$27.00, which became a lien as of June 25, 1993; and a claim against the subject property in the amount of \$26.00, for taxes for the 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, **State of Oklahoma ex rel Department of Human Services**, has a lien on the property which is the subject matter of this action by virtue of a Judgment, Case #FD-88-2467, in the amount of \$10,731.40, recorded on February 24, 1994, in Book 5598, Page 319, in the records Tulsa County, Oklahoma. Said Judgment 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**, claim no right, title or interest in the subject real property

The Court further finds that the Defendant, **James T. Rathbone**, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, **Leader Federal Bank for Savings**, disclaims any right, title or interest in the subject property.

The Court further finds that the Defendant, **City of Broken Arrow, Oklahoma**, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

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, **James T. Rathbone**, in the principal sum of \$87,811.63, plus interest at the rate of 12.5 percent per annum from March 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, Tulsa County, Oklahoma**, have and

recover judgment in the amount of \$79.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel Department of Human Services, have and recover judgment in the amount of \$10,731.40, plus penalties and interest, for a Judgment filed February 24, 1994, in the record of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Leader Federal Bank for Savings, James T. Rathbone 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 the Defendant, City of Broken Arrow, Oklahoma, has no right, title, or interest in the subject real property except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, James T. Rathbone, 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 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 \$79.00, personal property taxes which are currently due and owing.

Fourth:

In payment of Defendant, State of Oklahoma ex rel Department of Human Services, in the amount of \$10,731.40 for a judgment filed February 24, 1994.

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:

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United States Attorney



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Judgment of Foreclosure
Civil Action No. 94-C 187B

NBK:lg

OBA #6731
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 15 1994

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

SINGER BROADCASTING GROUP., INC.)
and THE HERMAN A. SINGER INTER)
VIVOS REVOCABLE TRUST,)
)
Plaintiffs,)
)
vs.)
)
CITY OF JENKS, OKLAHOMA, a)
Municipal Corporation, MIKE)
TINKER, VIC VREELAND, RUBY)
MCGONIGAL, GARY MEDLIN, PAUL EADS,)
JACK MCKENZIE, and MARTHA RONGEY,)
)
Defendants.)

Case No. 93-C-581-B ✓

AGREED JOURNAL ENTRY
OF JUDGEMENT

NOW on this 4th day of August, 1994, the above captioned matter comes on for trial pursuant to regular setting. Whereupon, the parties hereto announced they had stipulated to the terms of a judgement resolving the issues herein.

The Court, having reviewed the terms of said stipulations, finds that the same is fair and proper and enters judgement accordingly.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Plaintiffs, SINGER BROADCASTING GROUP., INC. and THE HERMAN A. SINGER INTER VIVOS REVOCABLE TRUST, are hereby granted judgement in the total sum of One-Hundred Ten Thousand Dollars (\$110,000.00), inclusive of all

ENTERED ON DOCKET

DATE 8-16-94

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damages, fees and costs, against the Defendant, the CITY OF JENKS, OKLAHOMA, only. That said judgement is based upon the unique factual basis of this case and is to compensate the Plaintiffs for any and all damages incurred.

2. That the basis of the Plaintiffs' claims is a wrongful taking due to zoning regulations of the City of Jenks. As such, it was based upon an action under 42 U.S.C. Section 1983 and not contract. Additionally, there is a dispute between the City of Jenks and its insurance carrier, ITT Hartford, as to coverage for this claim under its insurance policy. By agreement, ITT Hartford will contribute \$25,000 of said judgement amount with the City of Jenks responsible for the balance of \$85,000.

3. That to each of the individual City of Jenks Council members named as Defendants herein, to-wit: MIKE TINKER, VIC VREELAND, RUBY MCGONIGAL, GARY MEDLIN, PAUL EADS, JACK MCKENZIE, and MARTHA RONGEY, no judgement is entered against them and the said Council members waive any claims they may have against the Plaintiffs herein.

4. That neither of the Plaintiffs, or their officers, directors, trustees, or successors, will make application for a Specific Use Permit with the City of Jenks in the future for construction of a transmitting tower at the site in Jenks which was the subject of this litigation. However, in the event the Federal Government in the future preempts this area and prohibits State or local governments from regulating placement of transmitting towers through zoning laws

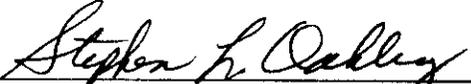
or requirements of Specific Use Permits, then in such event, the Plaintiffs, their officers, directors, trustees, or successors could utilize the subject site assuming conformance with applicable laws or regulations that were not preempted.


UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM & CONTENT:

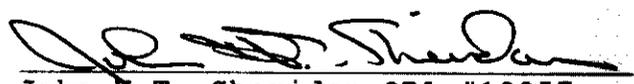
UNGERMAN & IOLA,

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-and-

BEST, SHARP, HOLDEN, SHERIDAN,
BEST & SULLIVAN


John H. T. Sheridan OBA #10957
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Attorneys for Defendants

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

FILED

AUG 16 1994

ADAM MENDEZ,

Plaintiff,

vs.

KIMBALL'S PRODUCE, INC.,
an Oklahoma Corporation,

Defendant.

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

Case No. 94-C-492-B

ENTERED ON DOCKET

DATE 8-16-94

ORDER OF DISMISSAL WITH PREJUDICE
AND
ORDER OF CONFIDENTIALITY

Now on this 15TH day of August, 1994, the above styled and numbered matter comes on before this Court pursuant to Stipulation for Order of Dismissal filed herein by the parties hereto. Upon consideration of such Joint Stipulation for Dismissal the Court finds that the above styled and numbered matter should be dismissed with prejudice to the refiling of same. Further, the Court, based upon such Joint Stipulation of Dismissal finds that an Order of Confidentiality should be entered whereby both parties to this proceeding when referring to the resolution of this proceeding shall state only "the matter has been resolved".

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the foregoing findings be and same hereby are made Orders of this Court as if fully set forth hereinafter.

S/ THOMAS R. BRETT

The Honorable Thomas Brett
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN ROY MERZ aka STEPHEN RAY)
 MERZ aka STEPHEN R. MERZ; PAMELA)
 JEAN MERZ aka PAMELA J. MERZ;)
 ASSOCIATES FINANCIAL SERVICES)
 COMPANY OF OKLAHOMA, INC.;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

AUG 16 1994

Richard W. Crowder, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 8-16-94

CIVIL ACTION NO. 94-C 435B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of August, 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, **Stephen Roy**
Merz aka Stephen Ray Merz aka Stephen R. Merz, Pamela Jean Merz
aka Pamela J. Merz, and Associates Financial Services Company of
Oklahoma, Inc., appear not, but make default.

The Court finds that the Defendant, **Stephen Roy Merz**
aka Stephen Ray Merz aka Stephen R. Merz, will hereinafter be
referred to as ("**Stephen Roy Merz**"); and the Defendant, **Pamela**
Jean Merz aka Pamela J. Merz, will hereinafter be referred to as

("Pamela Jean Merz"); and that the Defendants, Stephen Roy Merz and Pamela Jean Merz, are husband and wife.

The Court being fully advised and having examined the court file further finds that the Defendants, Stephen Roy Merz and Pamela Jean Merz, waived service of Summons on June 25, 1994, which was filed on June 30, 1994; and that the Defendant, Associates Financial Services Company of Oklahoma, Inc., acknowledged receipt of Summons and Complaint via certified mail on June 21, 1994.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on May 19, 1994; and that the Defendants, Stephen Roy Merz, Pamela Jean Merz, and Associates Financial Services Company of Oklahoma, Inc., 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 Eight (8), Block Twenty (20), TOMMY-LEE, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 15, 1979, R. Marshall Bennett and Colleen G. Bennett, executed and delivered to COMMERCIAL NATIONAL MORTGAGE CO., their mortgage note in the

amount of \$32,500.00, 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, R. Marshall Bennett and Colleen G. Bennett, husband and wife, executed and delivered to COMMERCIAL NATIONAL MORTGAGE CO., a mortgage dated March 15, 1979, covering the above-described property. Said mortgage was recorded on March 16, 1979, in Book 4387, Page 928, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 29, 1979, Commercial National Mortgage Co. assigned the above-described mortgage note and mortgage to Federal National Mortgage Association. This Assignment of Mortgage was recorded on April 2, 1979, in Book 4390, Page 159, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 7, 1988, First Commercial Mortgage Co. by Power of Attorney for Federal National Mortgage Association 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 June 22, 1988, in Book 5109, Page 22, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Stephen Roy Merz and Pamela Jean Merz, currently hold the fee simple title to the property by virtue of a General Warranty Deed dated September 30, 1983, and recorded on October 4, 1983 in Book 4733,

Page 745, in the records of Tulsa County, Oklahoma; and the Defendants, Stephen Roy Merz and Pamela Jean Merz, are the current assumptors of the subject indebtedness.

The Court further finds that on July 1, 1988, the Defendants, Stephen Roy Merz and Pamela Jean Merz, 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 September 1, 1989, September 1, 1990, and May 1, 1991.

The Court further finds that the Defendant Stephen Roy Merz and Pamela Jean Merz, filed their Chapter 7 Bankruptcy, Case Number 86-1479, in United States Bankruptcy Court for the Northern District of Oklahoma on June 19, 1986, and were discharged on October 7, 1986, and the case was closed on January 1, 1987; and the Defendants, Stephen Roy Merz and Pamela Jean Merz, signed a reaffirmation agreement, which was filed on October 7, 1986, and recorded on October 10, 1986 in Book 4975, Page 1532, in the records of Tulsa County, Oklahoma.

The court further finds that the Internal Revenue Service has liens upon the subject property by virtue of Federal Tax Lien No. 60565 in the sum of \$5,797.55, filed of record on March 3, 1986, and corrected by Federal Tax Lien No. 739122231, for the same amount, filed on August 5, 1991; Federal Tax Lien No. 60749 in the sum of \$469.66, filed on March 3, 1986, and corrected by Federal Tax Lien No. 739114706, for the same amount, filed on June 5, 1991; and Federal Tax Lien No. 109614, in the

amount of \$2,938.36, filed on December 19, 1988; and Federal Tax Lien No. 738905303 in the amount of \$4,295.99 filed on June 20, 1989; and inasmuch as government policy prohibits the joining of another federal agency as party defendant, the Internal Revenue Service is not made a party hereto; however, the lien will be released at the time of sale should the property fail to yield an amount in the excess of the debt to the Plaintiff.

The Court further finds that the Defendants, Stephen Roy Merz and Pamela Jean Merz, 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, Stephen Roy Merz and Pamela Jean Merz, are indebted to the Plaintiff in the principal sum of \$49,692.00, plus interest at the rate of 9.5 percent per annum from April 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 \$30.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$26.00 which became a lien on June 25, 1993; and a claim against the subject property in the amount of \$26.00 for the 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**, claim no right, title or interest in the subject real property

The Court further finds that the Defendants, **Stephen Roy Merz, Pamela Jean Merz, and Associates Financial Services Company of Oklahoma, Inc.**, 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 in rem against the Defendants, **Stephen Roy Merz and Pamela Jean Merz**, in the principal sum of \$49,692.00, plus interest at the rate of 9.5 percent per annum from April 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, Tulsa County, Oklahoma**, have and

recover judgment in the amount of \$82.00 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, **Stephen Roy Merz, Pamela Jean Merz, Associates Financial Services Company of Oklahoma, Inc. 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, **Stephen Roy Merz and Pamela Jean Merz,** 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, County Treasurer, Tulsa County, Oklahoma, in the amount of

\$82.00, 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.

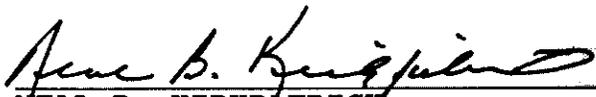
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

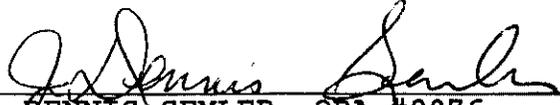
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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


J. DENNIS SEMLER, OBA #8076
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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 4359E

NBK:lg

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 16 1994

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs.-)
)
 MARK K. BROWN;)
 JANETTE HUFFMAN;)
 CITY OF TULSA, OKLAHOMA;)
 COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma;)
)
 Defendants.)

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

CASE NO. 94-C-204-B

ENTERED ON DOCKET

DATE 8-16-94

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day of August, 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 Defendant, City of Tulsa, Oklahoma, appears not, having previously claimed no right, title or interest in the subject property; the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, appears not, having previously claimed no right, title or interest in the subject property; the Defendant, County Treasurer, Tulsa County, Oklahoma, appears by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Mark K. Brown and Janette Huffman, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, City of Tulsa, Oklahoma, acknowledged receipt of Summons and Complaint on March 10, 1994; that the 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 11, 1994.

The Court further finds that the Defendants, Mark K. Brown and Janette Huffman, was 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 May 19, 1994, and continuing to June 23, 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, Mark K. Brown and Janette Huffman, 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, Mark K. Brown and Janette Huffman. 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 on behalf of the Secretary of Veterans

Affairs, 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 Defendant, City of Tulsa, Oklahoma, filed its Answer on March 14, 1994, claiming no right, title or interest in the subject property; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on March 23, 1994; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on March 23, 1994, claiming no right, title or interest in the subject property; and that the Defendants, Mark K. Brown and Janette Huffman, 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 (20), Block Twelve (12), FEDERAL HEIGHTS SECOND ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on September 22, 1978, Danny E. Shouse and Regenia D. Shouse, husband and wife, executed and delivered to Mager Mortgage Company, a mortgage note in the amount of \$24,750.00, 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, Danny E. Shouse and Regenia D. Shouse, executed and delivered to Mager Mortgage Company, a mortgage dated September 22, 1978, covering the above-described property. Said mortgage was recorded on September 26, 1978, in Book 4355, Page 368, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 3, 1991, Brumbaugh & Fulton Company formerly Mager Mortgage Company assigned the mortgage note and the mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns by an instrument recorded with the Tulsa County Clerk on June 5, 1991, in Book 5325, Page 2487.

The Court further finds that on May 29, 1990, Randy E. Shouse and Dee Anne Shouse, then the owners of fee simple title to the subject property, granted a general warranty deed to the Defendant, Mark K. Brown, a single man. This deed was recorded with the Tulsa County Clerk on July 27, 1990, in Book 5267, Page 684, and the Defendant, Mark K. Brown, assumed thereafter payment

of the amount due pursuant to the note and mortgage described above.

The Court further finds that on June 1, 1991, the Defendants, Mark K. Brown and Janette Huffman, entered into an agreement with the Plaintiff, lowering the amount of the monthly installments due in exchange for the Plaintiff's forbearance of its right to foreclose due to such Defendants' default in paying the installments.

The Court further finds that the Defendants, Mark K. Brown and Janette Huffman, 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, Mark K. Brown and Janette Huffman, are indebted to the Plaintiff in the principal sum of \$29,080.84, which represents \$21,528.63 in unpaid principle, \$6,737.67 in accrued but unpaid interest, \$814.54 in penalties and service charges, plus interest at the rate of 9.5 percent per annum from December 16, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$237.60 for publication fees.

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 \$15.00 for 1993; \$15.00 for 1992; \$27.00 for 1991; and \$5.00 for 1990, plus costs and interest. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Board of County Commissioners, Tulsa County, Oklahoma; and City of Tulsa, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Mark K. Brown and Janette Huffman, 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, Mark K. Brown and Janette Huffman, in the principal sum of \$29,080.84, which represents \$21,528.63 in unpaid principle, \$6,737.67 in accrued but unpaid interest, \$814.54 in penalties and service charges, plus interest at the rate of 9.5 percent per annum from December 16, 1993 until judgment, plus interest thereafter at the current legal rate of _____ until fully paid, and the costs of this action in the amount of \$237.60 for publication fees, 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 \$62.00 plus interest for personal property taxes for the years 1990 through 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Mark K. Brown; Janette Huffman; Board of County

Commissioners, Tulsa County, Oklahoma; and City of Tulsa, 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, Mark K. Brown and Janette Huffman, 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 \$62.00, plus interest and costs for 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 R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer,
Tulsa County, Oklahoma

Judgment of Foreclosure
USA v. Mark K. Brown, et al.
Civil Action No. 94-C-204-B

NBK/esf

ENTERED ON DOCKET
AUG 15 1994

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

YAN PUI CHUNG; MUK TUNG WONG;
PATRICK MAN TAI DO;
and SIMON MAN HO DO)

Plaintiffs,)

vs.)

A.V.I. INC. and
MAIN TURBO SYSTEMS, INC.)

Defendants.)

Case No. 94-CV-597 K ✓

MAIN TURBO SYSTEMS, INC.,)

Crossclaimant,)

vs.)

A.V.I. INC.,)

Crossdefendant.)

FILED

AUG 15 1994

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

MAIN TURBO SYSTEMS, INC.,)

Third-Party Plaintiff,)

vs.)

SOUTHWEST AEROSERVICE, INC., et al.)

Third-Party Defendant.)

STIPULATION TO DISMISS WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their respective counsel, that the above-styled action of Third-Party Plaintiff Main Turbo Systems, Inc. against Third-Party Defendant Southwest Aeroservice, Inc. should be dismissed with prejudice, with each party to bear its own costs.

DATED this 11th day of August, 1994.

By: Carl J. Kanowsky

Carl J. Kanowsky, Esq.

William V. O'Connor, Esq.

KERN AND WOOLEY

10920 Wilshire Boulevard, Suite 1500
Los Angeles, California 90024

ATTORNEYS FOR THIRD-PARTY PLAINTIFF
MAIN TURBO SYSTEMS, INC.

By: Kenneth E. Crump, Jr.

Jack S. Dawson, OBA #2235

Kenneth E. Crump, Jr., OBA #11803

MILLER, DOLLARHIDE, DAWSON & SHAW

320 South Boston Avenue, Suite 1605
Tulsa, Oklahoma 74103-4705

ATTORNEYS FOR THIRD-PARTY DEFENDANT
SOUTHWEST AEROSERVICE, INC.

ENTERED ON DOCKET
AUG 16 1994

DATE
FILED

AUG 15 1994 *ML*

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

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

POLLY DOTSON,

Plaintiff,

vs.

CHOUTEAU-MAZIE INDEPENDENT
SCHOOL DISTRICT; and
NOEL ORCUTT, individually
and in his capacity as
President of the Board of
Education,

Defendants.

Case No. 93-C-866-BU

ORDER

This matter comes before the Court upon the Motion for Summary Judgment filed by the defendants, Chouteau-Mazie Independent School District and Noel Orcutt, individually and in his capacity as President of the Board of Education. The plaintiff, Polly Dotson, has responded and the defendants have replied thereto. Based upon the parties' submissions, the Court sets forth the following undisputed facts and makes its determination.

1. The defendant, Chouteau-Mazie Independent School District ("School District"), is a public school district established for the purpose of providing a free school education to eligible children residing within the School District.

2. The defendant, Noel Orcutt ("Orcutt"), is a former member of the Board of Education of the School District. Orcutt served at all times relevant to this action as President of the Board of Education.

3. The plaintiff, Polly Dotson ("Dotson"), has been employed

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with the School District since October 1988 as an elementary teacher.

4. On March 2, 1992, the Board of Education accepted the resignation of Pamela Rehl, an elementary principal of the School District. The resignation was effective June 30, 1992.

5. On April 6, 1992, Dotson submitted her application to Orcutt for the principal vacancy. At that time, Dotson did not possess any previous educational administrative experience. She had obtained a Master's Degree in School Administration and had passed the certification examination for principal in May of 1991.

6. After the deadline had expired for accepting applications, two persons in addition to Dotson had applied for the principal position. The Board of Education reopened the application process for the principal position. Thereafter, approximately fifteen applications were received.

7. A committee was formed to interview candidates for the principal position. The committee included the president of the Chouteau-Mazie Education Association, Dick Holland, the acting superintendent, Harvey Dooley, two elementary teachers, Melba Schencks and Earl Anderson, and two School District principals, Joe Straw and Dennis Stutzman.

8. The committee interviewed five of the candidates for the principal vacancy. After the interviews, the committee ranked the candidates. The committee unanimously ranked two males, Billy Martin and Steven Boone, as its number one and number two choices for the principal vacancy. Dotson was ranked third.

9. The committee then recommended Mr. Martin and Mr. Boone to the Board of Education for the principal position. Mr. Martin withdrew his name from consideration because the salary for the position was unacceptable. The Board of Education then interviewed and hired the remaining male, Mr. Boone, as elementary principal. Mr. Boone had been an assistant principal for Glenpool Public Schools for four years.

Dotson brings this action against the School District and Orcutt alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. Dotson claims that she was denied a promotion as elementary principal for the School District based upon gender. Dotson alleges that the process for selecting the elementary principal position was discriminatory in nature and prevented her from being hired as principal. The School District and Orcutt deny that they have discriminated against Dotson in any manner. They argue that the decision to hire Mr. Boone was based on non-discriminatory reasons including possessing an administrator's certificate and having past administrative experience.

At the outset, the Court finds that summary judgment is appropriate as to Dotson's Title VII claim against Orcutt, in his individual capacity. In Sauers v. Salt Lake County, 1 F.3d 1122 (10th Cir. 1993), the Tenth Circuit held that "suits against individuals under Title VII must proceed in their official capacities; individual suits are inappropriate. 'The relief granted under Title VII is against the employer, not individual

employees whose actions would constitute a violation of the Act. . . . Id. at 1125, (quoting Busby v. City of Orlando, 931 F.2d 764, 772 (11th Cir. 1991)(emphasis in original). Although the alleged conduct in Sauers occurred prior to the effective date of the Civil Rights Act of 1991, which permits compensatory and punitive damages for intentional discrimination, the Court concludes that the decision of Tenth Circuit in Sauers would stand. In drafting 42 U.S.C. § 1981a, Congress limited the damages available depending upon the size of the employer. The Court agrees with the Ninth Circuit in Miller v. Maxwell's International, Inc., 991 F.2d 583 (9th Cir. 1993), that had Congress envisioned individual liability under Title VII for compensatory and punitive damages, it would have included individuals in the litany of limitations and would have discontinued the exemption for small employers. Id. at 587-588, n. 2. Also, the Court concludes that the reference to 42 U.S.C. § 2000e-5(g) in § 1981a evinces Congress' intent to provide damages against the same categories of persons under § 1981a as under § 2000e-5(g). The Court thus concludes that Dotson is not entitled to any relief under Title VII against Orcutt, individually.¹

Although Dotson may pursue a Title VII claim against the School District, the School District, in its motion, specifically argues that the evidence fails to establish that the School District discriminated against Dotson based upon her gender. The

¹Dotson may proceed against Orcutt in his official capacity as it operates as a suit against the School District itself. Kentucky v. Graham, 473 U.S. 159, 165 (1985).

School District contends that there are no facts to support Dotson's allegations that she was denied the principal position because she was female.

Title VII makes it unlawful to discriminate against any individual on the basis of sex with respect to a promotion or hiring. 42 U.S.C. § 2000e-2(a)(1). Dotson has the initial burden of establishing a prima facie case of sex discrimination. In order to make out a prima facie case, Dotson must show that (1) she belongs to a protected class; (2) she applied for and was qualified for the position of principal; (3) despite her qualifications, she was rejected for the position; and (4) the position was ultimately filled by another who was not a member of the protected class. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 & n. 13 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). The prima facie case raises a rebuttable presumption of discrimination. Id.

If Dotson establishes a prima facie case, the burden shifts to the School District to articulate a legitimate, non-discriminatory reason for its rejection. McDonnell Douglas, 411 U.S. at 802. If the School District sustains its burden of production, the presumption of discrimination is rebutted. Dotson must then demonstrate that the articulated reasons are a mere pretext. McDonnell Douglas, 411 U.S. at 803. "A plaintiff may prove pretext by showing that the employer more likely than not, was motivated by a discriminatory reason or that the employer's explanation is not credible." Trujillo v. Grand Junction Regional Center, 928 F.2d

973, 977 (10th Cir. 1991). The ultimate burden of persuasion remains on Dotson to prove that the School District intentionally discriminated against her. Burdine, 450 U.S. at 253.

In its motion, the School Board contends that Dotson cannot satisfy her ultimate burden of persuasion that the School Board intentionally discriminated against her. The School District argues that the undisputed evidence establishes that Dotson was not promoted to principal because she lacked administrative experience. According to the School Board, the committee's chief criteria in reviewing and recommending candidates was administrative experience. Both male candidates recommended to the Board of Education by the selection committee possessed such experience. In addition, the School Board argues that the evidence establishes that the selection process was not discriminatory against Dotson. The School District contends that the evidence shows that the Board of Education provided no guidelines to the committee as to how the committee was to evaluate the candidates. It also reveals that the Board of Education gave no instructions to the committee to treat male candidates more favorably than female candidates. Furthermore, the School Board argues that the evidence of alleged statements made by Board members Orcutt and Wayne Fields that they did want a female principal is inadmissible hearsay and cannot be relied upon to defeat summary judgment.

Dotson, in response, contends that the School District violated Title VII because sex was a substantial and motivating factor in the process of screening applicants for the principal

position. Dotson contends that Orcutt told Marvin Rehl, former superintendent of the School District, that he did not want a woman for the job and that Board member Wayne Fields told Marvin Rehl that Dotson would not be hired because she did not have the right body parts. Dotson additionally contends that Orcutt declined to allow the Board of Education to review her application during the emergency board meeting and that Board of Education reopened applications instead of considering her for the position. In addition, Dotson contends that guidelines for the committee were imposed in a subtle way because only two experienced applicants were submitted to the committee and the other three were inexperienced. According to Dotson experienced females did not survive the pre-screening process. Dotson further argues that the committee knew what was expected of them because Joe Straw, a committee member, told Joe McKee, a School District teacher, that they did not want a woman for the job and Dotson would not have a chance since she was female. Finally, Dotson argues that the committee was not used to select the superintendent that was chosen during that same time period and that the School District hired someone without experience.

When Dotson originally filed her response to the summary judgment on May 9, 1994, she submitted an unsigned affidavit of Marvin Rehl providing the statements allegedly made to him by Orcutt and Wayne Fields. Dotson indicated that she would provide the signed affidavit upon receipt of the affidavit from Mr. Rehl. In the pretrial conference held in this matter on July 28, 1994,

counsel for Dotson indicated to the Court that Mr. Rehl would not provide a signed affidavit. The Court gave Dotson's counsel additional time to acquire the affidavit and to submit a new response. In her new response, Dotson has not provided the signed affidavit. Instead, she has attached the statement of Mr. Rehl taken by her investigator which was allegedly signed by Mr. Rehl. The Court concludes that such statement may not be considered for purposes of the summary judgment motion. The statement by Mr. Rehl was unsworn and had no declaration that it was made under the penalty of perjury. An affidavit which is used to controvert allegations of fact in a motion for summary judgment must be sworn, made upon personal knowledge and relate facts which would be admissible in evidence. Rule 56(e), Fed. R. Civ. P. The requirements of Rule 56(e), Fed. R. Civ. P., are not satisfied by the use of unsworn documents, hearsay statements in notes and hearsay evidence in affidavits and depositions. Ritchie Enterprises v. Honeywell Bull, Inc., 730 F. Supp. 1041, 1043 (D. Kan. 1990).

Dotson has also submitted deposition testimony of Pat Grossman, a Board member, which states that Mr. Rehl told Mr. Grossman of the alleged statements made by Orcutt and Mr. Fields. Dotson contends that such statements are admissible under Fed. R. Evid. 804(2)(d)(2). The Court notes, however, that Rule 804(2)(d)(2) does not exist. Dotson appears to be arguing that the statements are not hearsay pursuant to Rule 801(d)(2) and therefore are admissible. Dotson states that the statements were made to Mr.

Grossman while Mr. Rehl was serving as superintendent and that the statements were made to Mr. Rehl by Orcutt and Mr. Fields, Board members. The Court, however, notes that Dotson has not provided any evidence to establish when the statements were made by Mr. Rehl to Mr. Grossman and if they were made while Mr. Rehl was acting as superintendent. There is evidence in the record which indicates that Mr. Rehl resigned his position as superintendent and that Mr. Harvey Dooley was acting as superintendent during some portion of the selection process for principal. Because Dotson has failed to establish that the statements would be admissible in evidence, the Court declines to consider the statements for the purposes of summary judgment.

Having reviewed the evidence which satisfies the Federal Rules of Civil Procedure, the Court concludes that summary judgment is appropriate. Dotson has failed to show that the Board of Education's decision not to hire Dotson was based upon gender. Even if the statements of Orcutt and Mr. Fields were admissible, there is no evidence to establish that the comments were made to other Board members or that Orcutt and Mr. Fields influenced any other Board member. The decision to appoint Mr. Boone was made by a majority of the Board of Education. There is no evidence that the alleged comments were a basis for the Board of Education's employment decision.

The Court also finds that Dotson has failed to show that the selection process was motivated by gender. Even assuming Orcutt failed to show Dotson's application to Mr. Grossman during the

emergency Board of Education meeting, there is no evidence which establishes that the Board of Education reopened applications because it did not want a female as principal. The evidence shows that at the time the applications were reopened, Dotson's application was not the only application before the Board of Education. The Board of Education also had an application from a male. Although Dotson has presented an affidavit of Joe McKee, wherein he states that Joe Straw, a committee member, stated that "they did not want a woman considered for the job and Polly Dotson would not be given serious consideration for that reason," the affidavit fails to state who "they" are. Moreover, there is no evidence to show that Joe Straw influenced the committee members in their decision to rank Polly Dotson third or to recommend the two males for the principal position.

Dotson has also claimed that the selection process was discriminatory as a result of the manner in which the applicants were preselected for interviews. From the evidence, it appears that Mr. Harvey Dooley selected the applicants to be interviewed. Dotson has not presented any evidence that shows that Mr. Dooley was bias against women or that he made his selections based upon gender. Dotson's contention that other females mysteriously did not make the interview list is purely speculation and not supported by evidence.

Dotson has not disputed that she did not have any educational administrative experience and that the two males recommended to the Board of Education had more experience than her. Indeed, Mr. Boone

had four years of administrative experience at the time he was appointed as principal. The Court concludes that Dotson has failed to present sufficient evidence to raise a genuine issue of fact for trial as to whether the Board of Education's decision not to hire Dotson as principal was based upon gender. The Court furthermore concludes that Dotson has failed to present evidence to raise a genuine issue of fact as to whether the selection process was discriminatory against Dotson.

Based upon the foregoing, the defendants' Motion for Summary Judgment (Docket No. 14) is GRANTED. Judgment shall issue forthwith.

ENTERED this 15 day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED

AUG 15 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

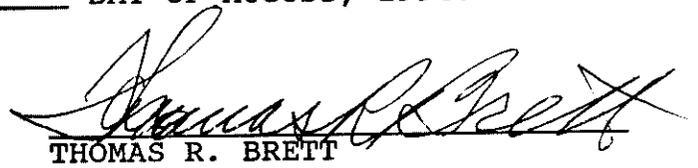
HEZEL MARIE HENRY and)
FREDA MAE LUNSFORD,)
)
Plaintiffs,)
)
vs.)
)
CLARENDON NATIONAL INSURANCE,)
a foreign corporation, POWER)
EXPRESS, INC., a foreign)
corporation, and BOB GENE GRISSOM,)
an individual,)
)
Defendants.)

Case No. 93-C-1072-B ✓

ORDER

Upon Plaintiff's request, and in light of the settlement reached between the parties, this matter is hereby DISMISSED with prejudice.

IT IS SO ORDERED THIS 15th DAY OF AUGUST, 1994.


THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE 8-16-94

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AUG 16 1994

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES W. HOLLIS;)
 RACHEL A. HOLLIS;)
 STATE OF OKLAHOMA, ex rel.)
 OKLAHOMA TAX COMMISSION;)
 CITY OF BROKEN ARROW, Oklahoma)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

ENTERED ON DOCKET
DATE 8-16-94

CIVIL ACTION NO. 94-C-514-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of Aug, 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 Defendant, STATE OF
OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D.
Ashley, Assistant General Counsel; the Defendant, CITY OF BROKEN
ARROW, Oklahoma, appears by Michael Vanderburg, City Attorney,
City of Broken Arrow, Oklahoma; and the Defendants, CHARLES W.
HOLLIS and RACHEL A. HOLLIS, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, CHARLES W. HOLLIS, Waived
Service of Summons and Complaint on May 27, 1994; that the

Defendant, RACHEL A. HOLLIS, Waived Service of Summons and Complaint on May 27, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, was served a copy of Summons and Complaint on May 19, 1994 by Certified Mail; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, was served a copy of Summons and Complaint on May 20, 1994 by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on May 27, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on June 7, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on June 3, 1994; and that the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, 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 Ten (10), Block Three (3), SILVERTREE, 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 March 2, 1989, the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, executed and delivered to Central Mortgage Corporation their mortgage note in the amount of \$68,404.00, payable in monthly installments, with

interest thereon at the rate of Ten and One-Half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, executed and delivered to Central Mortgage Corporation, a mortgage dated March 2, 1989, covering the above-described property. Said mortgage was recorded on March 8, 1989, in Book 5170, Page 1967, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 2, 1989, Central Mortgage Corporation, assigned the above-described mortgage note and mortgage to Trust America Mortgage, Inc. This Assignment of Mortgage was recorded on March 8, 1989, in Book 5170, Page 1972, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 8, 1989, Trust Mortgage Corporation, assigned the above-described mortgage note and mortgage to The Florida Group, Inc. This Assignment of Mortgage was recorded on April 14, 1989, in Book 5177, Page 1930, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 23, 1989, The Florida Group, Inc., assigned the above-described mortgage note and mortgage to SCG Mortgage Corporation. This Assignment of Mortgage was recorded on March 23, 1989, in Book 5182, Page 655, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 5, 1990, SCG 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 november 14, 1990, in Book 5288, Page 1158, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 1, 1990, the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, 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, CHARLES W. HOLLIS and RACHEL A. HOLLIS, 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, CHARLES W. HOLLIS and RACHEL A. HOLLIS, are indebted to the Plaintiff in the principal sum of \$97,233.30, plus interest at the rate of Ten and One-Half percent per annum from May 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 \$28.00 which became a lien on the property as of June 25, 1993; and a claim in the amount of \$33.00 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, 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 taxes in the amount of \$235.11 which became a lien on the property as of September 25, 1992; and a lien in the amount of \$192.80 which became a lien on the property as of December 20, 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF BROKEN ARROW, Oklahoma, claims no right title or interest in the subject real property, except insofar as is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further finds that the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim 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, CHARLES W. HOLLIS and RACHEL A.

HOLLIS, in the principal sum of \$97,233.30, plus interest at the rate of Ten and One-Half percent per annum from May 1, 1994 until judgment, plus interest thereafter at the current legal rate of _____ 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover In Rem judgment in the amount of \$235.11, plus accrued and accruing interest, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$28.00 for personal property taxes for the year 1992, 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 In Rem judgment in the amount of \$192.80, plus accrued and accruing interest, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$33.00 for personal property taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is

the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, have no right, title or interest in the subject property.

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 Defendants, CHARLES W. HOLLIS and RACHEL A. HOLLIS, 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the

amount of \$235.11, plus accrued and accruing interest, for taxes, which are currently due and owing.

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$28.00, personal property taxes which are currently due and owing.

Fifth:

In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$192.80, plus accrued and accruing interest, for taxes which are currently due and owing.

Sixth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$33.00, 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

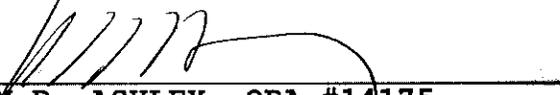
UNITED STATES DISTRICT JUDGE

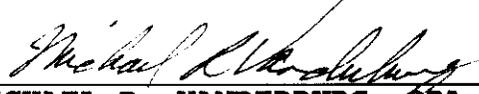
APPROVED:

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Attorney for the Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-514-B

NBK:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

AUG 16 1994

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER A. DYE; MARTY J. HYE;)
 JERRI L. HYE; HILLCREST MEDICAL)
 CENTER; THE STATE OF)
 OKLAHOMA, ex rel. OKLAHOMA TAX)
 COMMISSION; CITY OF BROKEN ARROW,)
 OKLAHOMA; COUNTY TREASURER,)
 Tulsa County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

ENTERED ON DOCKET
DATE 8-16-94

CIVIL ACTION NO. 94-C-141-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of Aug., 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 Defendant, HILLCREST
MEDICAL CENTER, appears by Daniel M. Webb; The Defendant, CITY OF
BROKEN ARROW, Oklahoma, appears by Michael Vanderburg, City
Attorney, Broken Arrow, Oklahoma; the Defendant, STATE OF
OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears not having
previously filed a Disclaimer; and the Defendants, ROGER A. DYE;
MARTY J. HYE; and JERRI L. HYE, appear not, but make default.

The Court being fully advised and having examined the

court file finds that the Defendant, MARTY J. HYE, acknowledged receipt of Summons and Complaint on March 6, 1994; that the Defendant, JERRI L. HYE, acknowledged receipt of Summons and Complaint on March 4, 1994; that the Defendant, HILLCREST MEDICAL CENTER, acknowledged receipt of Summons and Complaint on February 17, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and Complaint on February 22, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint on February 21, 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.

The Court further finds that the Defendant, ROGER A. DYE, was 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 April 28, 1994, and continuing through June 2, 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 Defendant, ROGER A. DYE, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant 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 address of the Defendant, ROGER A. DYE. 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 of Washington, D.C., his successors and assigns, 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 party served by publication with respect to his present or last known place of residence and/or mailing address. 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 Defendant served by publication.

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 Defendant, HILLCREST MEDICAL CENTER, filed its Answer on February 25, 1994; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on March 4, 1994; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Disclaimer on March 11, 1994; and that the Defendants, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, 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 Fourteen (14), Block Six (6), SILVERTREE, 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 September 4, 1987, the Defendants, ROGER A. DYE, and MARTY J. HYE and JERRI L. HYE, husband and wife, executed and delivered to Commonwealth Mortgage Company of America, L.P., a mortgage note in the amount of \$72,556.00, 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, ROGER A. DYE, a single person, MARTY J. HYE and JERRI L. HYE, husband and wife, executed and delivered to Commonwealth Mortgage Company of America, L.P., a mortgage dated September 4, 1987, covering the above-described property. Said mortgage was recorded on September 9, 1987, in Book 5050, Page 1329, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 9, 1987, Commonwealth Mortgage Company of America, L.P., Limited Partnership, 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 4, 1988, in Book 5132, Page 837, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 19, 1990, the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns, acting by and through the Federal Housing Commissioner, assigned the above-described mortgage note and mortgage to R.F. Norman Corporation dba Mortgage Default Services Company. This Assignment of Mortgage was recorded on January 4, 1991, in Book 5297, Page 942, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 18, 1991, R.F. Norman Corporation, dba Mortgage Default Services Company, assigned the Mortgage note and mortgage securing the note to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This assignment was recorded on April 30, 1991, in Book 5318, at Page 884, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 1, 1988, the Defendants, ROGER A. DYE, MARTY J. HYE and JERRI L. HYE, 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 November 1, 1988, July 1, 1989, and March 1, 1991.

The Court further finds that the Defendants, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, 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, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, are indebted to the Plaintiff in the principal sum of \$112,107.49, plus interest at the rate of Nine 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 \$57.00 which became a lien on the property as of June 25, 1993; and a claim in the amount of 62.00 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, HILLCREST MEDICAL CENTER, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$5,613.37, which became a lien on the property as of December 9, 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF BROKEN ARROW, Oklahoma, claims no right title or interest in the subject real property, except insofar as is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further finds that the Defendants, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, BOARD OF

COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, claim 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, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, in the principal sum of \$112,107.49, plus interest at the rate of Nine percent per annum from February 1, 1994 until judgment, plus interest thereafter at the current legal rate of _____ 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, HILLCREST MEDICAL CENTER, have and recover judgment in the amount of \$5,613.37, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$119.00 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, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, 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, ROGER A. DYE; MARTY J. HYE; and JERRI L. HYE, 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, HILLCREST MEDICAL CENTER,
in the amount of 5,613.37.

Fourth:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of
\$119.00, 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:

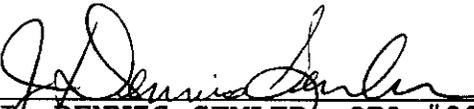
STEPHEN C. LEWIS
United States Attorney



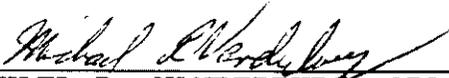
NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
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County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



MICHAEL R. VANDERBURG, OBA #9180
City Attorney,
CITY OF BROKEN ARROW
P.O. Box 610
Broken Arrow, OK 74012
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Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-141-B
NBK:flv

DATE AUG 16 1994

FILED

AUG 15 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

POLLY DOTSON,
Plaintiff,

vs.

CHOUTEAU-MAZIE INDEPENDENT
SCHOOL DISTRICT; and
NOEL ORCUTT, individually
and in his capacity as
President of the Board of
Education,

Defendants.

Case No. 93-C-866-BU

JUDGMENT

This matter came before the Court upon the Motion for Summary Judgment filed by the defendants, Chouteau-Mazie Independent School District and Noel Orcutt, individually and in his capacity as President of the Board of Education, and the issues having been duly considered and a decision having been duly rendered,

It is ORDERED and ADJUDGED that judgment is entered in favor of the defendants, Chouteau-Mazie Independent School District and Noel Orcutt, individually and in his capacity as President of the Board of Education, and against the plaintiff, Polly Dotson, and that the defendants, Chouteau-Mazie Independent School District and Noel Orcutt, individually and in his capacity as President of the Board of Education, recover their costs of action against the plaintiff, Polly Dotson.

DATED at Oklahoma City, Oklahoma, this 15 day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 15 1994

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

CLARENCE GODDARD and
MARTIN WHISENHUNT,

Plaintiffs,

vs.

Case No. 93-C-1153-BU

UNIT RIG & EQUIPMENT CO.,
and INTERNATIONAL ASSOCIATION
OF MACHINISTS,

Defendants.

O R D E R

This Court entered an order docketed on August 2, 1994 dismissing Defendant, International Association of Machinists, from this action. On August 2, 1994, this Court entered a minute order directing Plaintiffs to show cause in writing by August 10, 1994 why the action against Defendant, Unit Rig & Equipment Company, should not be dismissed for failure to effect service. To date, Plaintiffs have not responded to the Court's minute order.

The complaint in this matter was filed on December 30, 1993 by Plaintiffs. Plaintiffs have taken no action as to Defendant, Unit Rig & Equipment Company, since the filing of the complaint.

Every court has the inherent power in the exercise of sound discretion to dismiss a cause for want of prosecution. Stanley v. Continental Oil Company, 536 F.2d 914, 917 (10th Cir. 1976); e.g., Link v. Wabash Railroad, 370 U.S. 626 (1962) (inherent power vested in courts to manage own affairs so as to achieve orderly and expeditious disposition of cases). The propriety of such a decision depends on the procedural history of the particular case

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involved. Petty v. Manpower, Inc., 591 F.2d 615, 617 (10th Cir. 1979).

The procedural history of **this** case indicates that Plaintiffs' failure to perfect service upon Defendant, Unit Rig & Equipment Company, has barred resolution of this case on the merits. The case has been pending for over seven months and the Court finds that this litigation cannot be prolonged indefinitely by Plaintiffs' inaction. Because Plaintiffs have failed to show good cause for their failure to effect service and the Court has inherent power to clear its calendar of a case that has remained dormant because of lack of prosecution, the Court hereby DISMISSES Plaintiffs' complaint against Defendant, Unit Rig & Equipment Company, without prejudice.

ENTERED this 15th day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
AUG 16 1994
FILED

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

AUG 16 1994

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

LEE TIMOTHY DUHART,)
)
 Plaintiff,)
)
 vs.)
)
 MARRIOTT MANAGEMENT)
 SERVICES CORP.,)
)
 Defendant.)

Case No. 94-C-12-K

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The Plaintiff, Lee Timothy Duhart, and the Defendant, Marriott Management Services Corp., jointly stipulate and agree that this case be dismissed with prejudice, each party to bear his or its own costs, expenses and attorneys' fees.


Attorney for Plaintiff

Steven W. Vincent, OBA # 9237
3314 East 51st Street
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Tulsa, OK 74135


Attorneys for Defendant

David E. Strecker, OBA # 8687
Leslie C. Rinn, OBA # 12160

Shipley, Inhofe & Strecker
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Tulsa, OK 74103
(918) 582-1720

ENTERED ON DOCKET
DATE AUG 16 1994

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

FILED

AUG 15 1994

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

AMERICAN BUILDERS & CONTRACTORS)
SUPPLY CO., INC., d/b/a ABC)
SUPPLY CO., INC.,)

Plaintiff,)

vs.)

Case No. 93-C-939-BU

CHARLES BURNS a/k/a CHARLES O.)
BURNS d/b/a A-1 ROOFING, d/b/a)
POLY-FLEX SYSTEMS INT., d/b/a)
MESSINA-REED ROOFING II, d/b/a)
POLY-FLEX ROOFING and d/b/a)
TROTTER ROOFING, CHARLES THOMAS)
BURNS, and LINDA BURNS,)

Defendants.)

ORDER

As it appears that the parties have reached a settlement and compromise of this matter, it is hereby 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 or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within 30 days of the date of this Order for the purpose of obtaining a final determination, the plaintiff's action shall be deemed dismissed with prejudice.

ENTERED this 15th day of August, 1994.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED

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

AUG 16 1994

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

JENNIFER FEIGEL and DONALD FEIGEL,

Plaintiffs,

vs.

ALLSTATE INSURANCE COMPANY, a foreign
corporation,

Defendant.

Case No. 93-C-823-B

ENTERED ON DOCKET

DATE 8-16-94

ORDER

It appearing to the Court that the above entitled action has been fully settled, adjusted and compromised, and based on Stipulation; Therefore,

IT IS ORDERED AND ADJUDGED that the above entitled action be, and it is hereby dismissed, including the allegations of insurance bad faith heretofore abandoned by the Plaintiff, without cost to either party and with prejudice to the Plaintiff

DATED this 15th day of Aug., 1994.

S/ THOMAS R. BRETT

Thomas R. Brett
U.S. District Judge

Joseph F. Clark, Jr. OBA # 1706
406 South Boulder, Suite 600
Tulsa, Oklahoma 74103
(918) 584-6404

DATE AUG 15 1994

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

FILED

AUG 12 1994

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

COASTAL REFINING & MARKETING,)
INC.,)
)
Appellant,)
)
vs.)
)
LMS HOLDING CO., et al.,)
)
Appellees,)

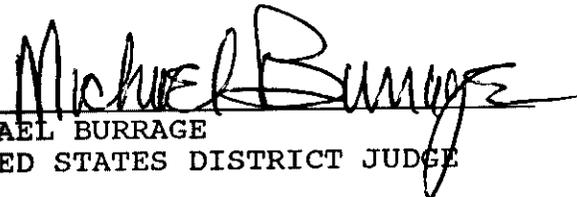
Case No. 93-C-1118-BU
(Consolidated with
Case No. 93-C-1039-BU)

ORDER

This matter comes before the Court upon Appellant's Dismissal of Appeal filed in Case No. 93-C-1118-BU. Appellees have not filed any objection to Appellant's Dismissal of Appeal and Appellant has advised the Court in a Status Report that the dismissal of Case No. 93-C-1118-BU also disposes of the consolidated appeal in Case No. 93-C-1039-BU.

In light of Appellant's Dismissal of Appeal and Appellant's Status Report, the Court hereby DISMISSES WITH PREJUDICE the appeals in Case No. 93-C-1039-BU and Case No. 93-C-1118-BU.

ENTERED this 12 day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED

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

AUG 12 1994

LINDA McPHERSON,

Plaintiff,

vs.

AMOCO CORPORATION, a
foreign corporation,

Defendant.

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

Case No. 94-C-247-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff and defendant stipulate that this action is dismissed with prejudice, with each party bearing its own attorney's fees and costs.

By Jessie V. Pilgrim
Jessie V. Pilgrim, OBA #11152
LESTER BRYANT PILGRIM GANZ & BEECH
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401 South Boston
Tulsa, Oklahoma 74103
(918) 592-1900

ATTORNEYS FOR PLAINTIFF

By Mona S. Lambird
Mona S. Lambird, OBA #5184
ANDREWS DAVIS LEGG BIXLER
MILSTEN & PRICE
500 W. Main
Oklahoma City, Oklahoma 73102
(405) 272-9241

ATTORNEYS FOR DEFENDANT

ENTERED ON DOCKET
DATE 8-15-94

DATE AUG 15 1994

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

FILED

AUG 12 1994

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

COASTAL REFINING & MARKETING,)
INC.,)
)
Appellant,)
)
vs.)
)
LMS HOLDING CO., et al.,)
)
Appellees,)

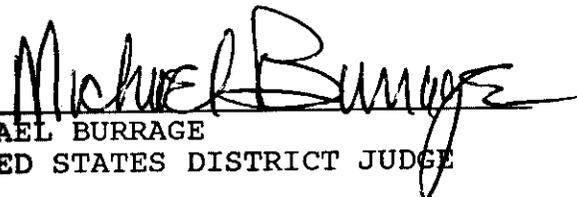
Case No. 93-C-1118-BU
(Consolidated with
Case No. 93-C-1039-BU)

O R D E R

This matter comes before the Court upon Appellant's Dismissal of Appeal filed in Case No. 93-C-1118-BU. Appellees have not filed any objection to Appellant's Dismissal of Appeal and Appellant has advised the Court in a Status Report that the dismissal of Case No. 93-C-1118-BU also disposes of the consolidated appeal in Case No. 93-C-1039-BU.

In light of Appellant's Dismissal of Appeal and Appellant's Status Report, the Court hereby DISMISSES WITH PREJUDICE the appeals in Case No. 93-C-1039-BU and Case No. 93-C-1118-BU.

ENTERED this 12 day of August, 1994.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 11 1994

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

JULIE WARDEN,

Plaintiff,

vs.

STEVE TOLIVER,

Defendant.

No. 94-C-613-E

FILED

AUG 11 1994

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

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, JULIE WARDEN, stipulates that this matter be
and is hereby dismissed with prejudice.

Respectfully submitted,



D. Gregory Bledsoe, Esq.
1717 South Cheyenne
Tulsa, OK 74119-4664

Attorney for Plaintiff

ENTERED ON DOCKET

DATE 8-11-94