UK 12-10-99

FILED

DEC 20 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL NO. 99CV0777B(M)
	)	
JOHN R. NASH, JR.,	)	ENTERED ON DOCKET
	)	
Defendant.	)	DATE DEC 20 1999

AGREED JUDGMENT

This matter comes on for consideration this 17th day of ~~November~~ Dec, 1999, the Plaintiff, United States of America, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, John R. Nash, Jr., appearing pro se.

The Court, being fully advised and having examined the court file, finds that the Defendant, John R. Nash, Jr., acknowledged receipt of Summons and Complaint on November 9, 1999. The Defendant has not filed an Answer but in lieu thereof has agreed that John R. Nash, Jr. is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against John R. Nash, Jr. in the principal amount of $2,860.15, plus administrative costs in the amount of $40.00, plus accrued interest in the amount of $1,844.99, plus interest thereafter at the rate of 8% per annum until judgment, plus filing fees in the amount of $150.00, plus interest thereafter at the current legal rate until paid, plus the costs of this action.

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IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the defendant in the principal amount of $2,860.15, plus administrative costs in the amount of $40.00, plus accrued interest in the amount of $1,844.99, plus interest thereafter at the rate of 8% per annum until judgment, plus filing fees in the amount of $150.00, plus interest thereafter at the current legal rate of 5.670% until paid, plus the costs of this action.

UNITED STATES DISTRICT JUDGE

APPROVED;

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

PHIL PINNELL
Assistant United States Attorney

JOHN R. NASH, JR.

PEP/llf

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	No. 99CV641B(J)
WILLIAM E. STUARD,	)	
Defendant.	)	

ENTERED ON DOCKET

DATE DEC 20 1999

DEFAULT JUDGMENT

This matter comes on for consideration this 17th day of Dec., 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, William E. Stuard, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, William E. Stuard, was served with Summons and Complaint on November 5, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, William E. Stuard, for the principal amounts of $2,838.51 and $1,407.04, plus accrued interest of $2,153.28 and $1,025.81 respectively, plus interest thereafter at the rates of 9.13 percent and 8.41 percent

per annum respectively until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.670 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/dlo

FILED
DEC 17 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

MARY R. EDELMAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 98-CV-250-B
	)	
COMMUNICATION GRAPHICS, INC., an Oklahoma corporation,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 20 1999

AMENDED ORDER AND JUDGMENT

Before the Court are the motion and supplemental motion for attorney's fees filed by plaintiff Mary R. Edelman ("Edelman") (Docket Nos. 25 and 33). Edelman seeks attorney's fees pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), in the total amount of $8632.50 based on 57.55 hours of service. Edelman's FLSA claim, was tried to the Court, sitting without a jury, on September 1, 1999 and judgment was entered on September 7, 1999 in her favor and against defendant Communication Graphics, Inc., ("CGI") on her claim for unpaid wages in the amount of $1,899.00. As a result, the Court awarded Edelman reasonable attorney's fees pursuant to 29 U.S.C. §216(b).

Based on its review of the applicable law, the affidavit of plaintiff's counsel and attached itemized statement of services, and CGI's objections, the Court concludes the requested fee is reasonable and awards attorney's fees in the amount of $8632.50 with interest at the rate of 5.670% per annum from the date hereon.

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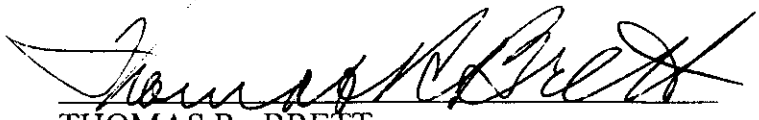
DATED this 17th day of December, 1999.



THOMAS R. BRETT
UNITED STATES SENIOR DISTRICT JUDGE

MT

FILED

DEC 16 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

STEPHANIE LEWIS,	)	
	)	
Plaintiff,	)	
	)	Case No. 99-CV-0104H(M)
vs.	)	
	)	ENTERED ON DOCKET
AETNA U.S. HEALTHCARE, INC.	)	DEC 17 1999

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff and Defendant Aetna Life Insurance Company, improperly pled as Aetna U.S. Healthcare, Inc. stipulate that the Complaint and the action may be dismissed with prejudice to the bringing of another action upon the same cause or causes for the reason that all issues existing in the action have been compromised and settled by agreement between the parties.

Joseph F. Clark, Jr.
1605 S. Denver
Tulsa, Oklahoma 74119
Attorney for Plaintiff

R. Casey Cooper, OBA #1897
Sheila M. Powers, OBA #013757
BOESCHE, McDERMOTT & ESKRIDGE, LLP
800 Oneok Plaza, 100 W. 5th St.
Tulsa, Oklahoma 74103
(918) 583-1777
ATTORNEYS FOR DEFENDANT

015

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

FILED
DEC 10 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

COPELAND MANUFACTURING CORPORATION, an Oklahoma Corporation,	)	
vs. Plaintiff,	)	ENTERED ON DOCKET DEC 17 1999
HERMLE USA, INC., HERMLE MACHINE COMPANY, MASCHINENFABRIK BERTHOLD HERMLE AG, TRAUB HERMLE CORPORATION and KEN MERK,	)	Case No. 98 CV 961H(M)
Defendants.	)	District Court of Tulsa County Case No. CJ 98-3795

STIPULATION AND ORDER FOR DISMISSAL

IT IS HEREBY STIPULATED by and between the Plaintiff, COPELAND MANUFACTURING CORPORATION, by counsel, John M. Thetford of the Stipe Law Firm, and the Defendants, HERMLE MACHINE COMPANY, MASCHINENFABRIK BERTHOLD, HERMLE AG and KEN MERK, by counsel, John F. Maloney of McNally, Maloney & Peterson, S.C. and local counsel, C. Michael Copeland of Jones, Givens, Gotcher & Bogan, P.C., that the above-captioned matter be dismissed as to any and all causes of action, claims and counterclaims including all named defendants, with prejudice and without costs to any of said parties and that an Order to that effect may be entered without further notice.

Dated: 11-11-99

By: _____
John M. Thetford, Esq.
State Bar No. 12892
Attorneys for Plaintiff,
COPELAND MANUFACTURING
CORPORATION

Dated: 11-18-99

By: _____
John F. Maloney, Esq.
State Bar No. 1015108
Attorneys for Defendants,
HERMLE MACHINE
COMPANY, MASCHINENFABRIK
BERTHOLD, HERMLE AG
and KEN MERK

FILED
DEC 16 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER FOR DISMISSAL

Upon all the files and proceedings had herein and more particularly upon the foregoing Stipulation,

IT IS HEREBY ORDERED that the above action be and hereby is dismissed as to all causes of action, claims and counterclaims, with prejudice and without costs to any of said parties.

Dated this 15TH day of DECEMBER, 1999.

BY THE COURT:

_____
Sven Erik Holmes
United States Judge

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

F I L E D

DEC 16 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JIMMY D. POTTER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 99-CV-781-BU (E)
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ENTERED ON DOCKET
DATE DEC 17 1999

ORDER

By Order dated September 21, 1999, the Court construed the original pleading submitted by Petitioner, a *pro se* inmate in federal custody at Beaumont, Texas, as a 28 U.S.C. § 2241 petition for writ of habeas corpus. In response to the October 15, 1999 show cause Order issued by the Court, Respondent filed a motion to dismiss for failure to exhaust state remedies (#11). On December 13, 1999, Petitioner filed his "motion to withdraw without prejudice," stating that because "he was not aware of the possibility of a Writ of Mandamus, Mr. Potter asks that you withdraw his Federal Writ without prejudice . . . ." (#13). Petitioner attaches to his motion a proposed "writ of mandamus to dismiss charges and remove detainer."[1]

Pursuant to Fed. R. Civ. P. 41(a)(2), the Court finds Petitioner's motion to withdraw his § 2241 petition without prejudice should be granted and this action should be dismissed without prejudice. As a result, Respondent's motion to dismiss has been rendered moot.

[1]Petitioner is reminded that his proposed "writ of mandamus to dismiss charges and remove detainer" must be filed in the District Court of Tulsa County, State of Oklahoma.

ACCORDINGLY, IT IS HEREBY ORDERED that:

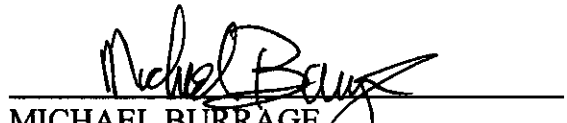
1. Petitioner's motion to withdraw without prejudice (#13) is **granted**.

2. This action is **dismissed without prejudice**.

3. Respondent's motion to dismiss for failure to exhaust state remedies (#11) is **moot**.

4. This Order constitutes a final order terminating this action.

SO ORDERED THIS 16th day of December, 1999.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 16 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DR. VAN HOWARD and MARY HOWARD,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No. 99 CV 0170H (J)**
	)	
THE HARTFORD INSURANCE COMPANY,	)	ENTERED ON DOCKET
	)	DATE DEC 17 1999
Defendant.	)	

ORDER OF DISMISSAL

NOW on this 15TH day of DECEMBER, this matter comes on for consideration before me, the undersigned Judge, upon Plaintiff's and Defendant's *Stipulation of Dismissal*. This Court, being fully advised, finds that said *Stipulation* should be granted.

IT IS THEREFORE ORDERED that the above matter is dismissed with prejudice.

Dated: 12/15/99

JUDGE SVEN ERIK HOLMES

Randolph P. Stainer, OBA #8537
SNEED LANG, P.C.
2300 Williams Center Tower II
Two West Second Street
Tulsa, OK 74103-3136
Telephone: (918) 583-3145
Telefax: (918) 582-0410

L:\4078.5\PLEADINGS\ORDERDISMISSAL.DOC

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

EDDY L. PATTERSON and JUDY R. PATTERSON, Plaintiffs, v. JAY BRYCE, REVENUE OFFICER and DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE Defendants.	))))))))))))	Case No. 99-CV-814-H(M)

ENTERED ON DOCKET
DEC 17 1999

FILED
DEC 16 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Plaintiffs' request for withdrawal, filed December 14, 1999. Plaintiffs request that their complaint be withdrawn without prejudice. The Court construes Plaintiff's request as a motion to dismiss without prejudice. Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff's motion is granted, and this action is hereby dismissed without prejudice.

IT IS SO ORDERED.

This 15TH day of December, 1999.

Sven Erik Holmes
United States District Judge

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

OZARK FINANCIAL SERVICES, INC.

Plaintiff,

v.

T.R. ELLIS, d/b/a
A LADY'S EXPRESS POT LUCK
TRUCKING CO.

Defendant.

ENTERED ON DOCKET
DATE DEC 17 1999

Case No. 99-CV-0310H (J)

FILED
DEC 16 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER GRANTING PLAINTIFF'S APPLICATION FOR ATTORNEYS FEES

This matter comes before the Court on Ozark Financial Services, Inc.'s ("OFS"), Application for Attorney Fees filed herein on September 21, 1999 (the "Application"). The Court FINDS that Defendant failed to timely respond to the Application. On November 18, 1999 the Court entered a minute order directing Defendant to respond to the Application by November 30, 1999. Defendant has again failed to respond to the Application. Failure to timely respond authorized the Court to deem the matter confessed pursuant to Local Rule 7.1C. Accordingly, the Application is hereby deemed confessed, and the Application is hereby GRANTED.

IT IS SO ORDERED.

This 15TH day of December, 1999.

Sven Erik Holmes
United States District Judge

2070-018/AppforcostsOrd

28

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE DEC 17 1999

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	No. 99CV0324BU(J)
WILLENE JEFFERSON,	)	
Defendant.	)	

FILED
DEC 16 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration this 16th day of December, 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Willene Jefferson, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Willene Jefferson, was served with Summons and Complaint on April 28, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Willene Jefferson, for the principal amount of $1,435.49, plus accrued

interest of $799.04, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.670 percent per annum until paid, plus costs of this action.

Michael Burage
United States District Judge

Submitted By:

Phil Pinnell

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/jmo

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

FILED
DEC 16 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

AUTO CONNECTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 99-CV-806-B
	)	
FRN OF TULSA, L.L.C., an Oklahoma Limited Liability Company, d/b/a TULSA AUTO COLLECTION,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 17 1999

ORDER

Before the Court is the Plaintiff's Motion to Remand (Docket # 8) and the Court finds the same should be granted.

Plaintiff brought this action in the District Court of Tulsa County alleging the use by Defendant of the name so similar to that used by Plaintiff has caused confusion and cost Plaintiff business and that demands upon Defendant to cease using the similar name have been ignored. These general allegations do not reference the law under which Plaintiff is proceeding and on the face of the Petition, a claim could arise under the Lanham Act as urged by Defendant. However, Plaintiff Petition also states a claim under Oklahoma's Uniform Trade Secrets Act, Okla. Stat. Ann. tit. 78., §21 et.al.

Under this scenario, the Court looks not only to the face of the Petition as urged by Defendant, citing *Ching v. Mitre Corp.*, 143 F.3d 11 (1st Cir. 1990), in which a direct reference

Parties Pleaded 40

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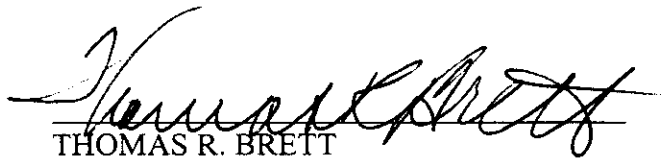
to federal law was obvious from the face of the pleadings. The Court must also determine whether the Petition states a claim which may only be brought within the exclusive jurisdiction of the federal court. *Cassel v. Webco Industries, Inc.*, 942 F. Supp. 1409 (N.D. Okla.1996); *Bacon v. Monsato Co.*, CIV-97-367-Bu., (E.D.Okla., Jan., 1998); *McElwain v. Terra Nitrogen, Inc., et al.*, CIV-97-1069-B., (N.D.Okla., April, 1999) If so, the case is properly removed. If not, it must be remanded.

In this case, the allegations of Plaintiff's Petition do not fall within the exclusive jurisdiction of the federal court. Remand is therefore appropriate.

IT IS THEREFORE ORDERED that the above styled action is hereby remanded to the District Court of Tulsa County, Oklahoma. The Clerk of Court is directed to take the necessary action to remand this case without delay.

DATED THIS 16th DAY OF DECEMBER, 1999, AT TULSA, OKLAHOMA.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 16 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,	)	
Plaintiff,	)	Case No. 99 CV 0707E(E)
vs.	)	
TRANSPORTATION ONE LLC. a Michigan Limited Liability Company, Fred P. Smith, Jr., an individual, and Mikhail G. Kheynson, an individual	)	
Defendants.	)	

ENTERED ON DOCKET

DATE ~~DEC 15 1999~~

NOTICE OF DISMISSAL WITHOUT PREJUDICE
AS TO ONE DEFENDANT

Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff Thrifty Rent-A-Car System, Inc. ("Thrifty") hereby dismisses without prejudice all claims asserted against Fred P. Smith, Jr. in the captioned case. Thrifty is not dismissing its claims as against the remaining defendants.

Respectfully submitted,

Michael J. Gibbens, OBA #3339
CROWE & DUNLEVY
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103
(918) 592-9800
(918) 592-9801 (Facsimile)

ATTORNEY FOR PLAINTIFF
Thrifty Rent-A-Car System, Inc.

2

CK

2

FILED

DEC 1 6 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

LORI ANN LITTLE,	)	
	)	
Plaintiff,	)	
vs.	)	**No. 98-C-238-B**
	)	
BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, OKLAHOMA; et al	)	
	)	
Defendants.	)	

ENTERED ON DOCKET
DATE DEC 17 1999

ORDER

Now on this 16th day of December, 1999, the joint stipulation of dismissal of the parties comes on for consideration. Based on the stipulation the finds that this action should be and is hererby dismissed, pursuant to Fed.R.Civ.P. 41(a)

Dated this 16th day of December, 1999.

Thomas R. Brett
Senior United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 15 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, on behalf of the Secretary of Veterans Affairs,	)	
Plaintiff,	)	
v.	)	
SHARON L. SALISBURY WASHINGTON aka Sharon Washington aka Sharon Salisbury aka Sharon L. Salisbury, a single person; DELORISE A. RENFRO; SPOUSE, IF ANY, OF DELORISE A. RENFRO; THE TULSA DEVELOPMENT AUTHORITY OF TULSA, OKLAHOMA; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,	)	
Defendants.	)	CIVIL ACTION NO. 98-CV-0455-K (J)

ENTERED ON DOCKET
DATE DEC 16 1999

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 15th day of December, 1999, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on September 13, 1999, pursuant to a Second Order of Sale dated August 4, 1999, of the following described property located in Tulsa County, Oklahoma:

> Lot Eight (8), Block One (1), YAHOLA HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Appearing for the United States of America is Cathryn D. McClanahan, Assistant United States Attorney. Notice was given the Defendants, Sharon L.

Salisbury Washington aka Sharon Washington aka Sharon Salisbury aka Sharon L. Salisbury, a single person; Delorise A. Renfro; Jim Renfro, Spouse of Delorise A. Renfro; The Tulsa Development Authority of Tulsa, Oklahoma, through its attorney Darven L. Brown; County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Second Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Veterans Affairs, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Second Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the

United States of America on behalf of the Secretary of Veterans Affairs, a good and sufficient deed for the property.

It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

c/ Claire V. Eagan

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

Report and Recommendation of United States Magistrate Judge
Case No. 98-CV-0455-K (J) (Salisbury Washington)

CDM:css

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 16th Day of December, 1999.

C. Padilla, Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 1 3 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

LARRY J. RICHARDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 98-CV-0834-BU (E)**
	)	
KENNETH S. APFEL,	)	
Commissioner of Social Security, et al.,	)	ENTERED ON DOCKET
	)	DATE 12/15/99
Defendant.	)	

REPORT AND RECOMMENDATION

Plaintiff, Larry J. Richards requests judicial review of the decision of the Commissioner of Social Security ("Commissioner") suspending and subsequently terminating plaintiff's Title XVI supplemental security income (SSI) payments. By minute order dated July 12, 1999, this case was referred to the undersigned for all further proceedings in accordance with her jurisdiction pursuant to the Federal Rules of Civil Procedure. On October 27, 1999, the Commissioner filed a motion to dismiss for lack of jurisdiction (Docket #18). By minute order dated October 29, 1999, the undersigned ordered plaintiff to respond no later than November 12, 1999.

Plaintiff failed to file any response to the Commissioner's motion. A failure to respond authorizes the court, in its discretion, to deem the matter confessed, and enter the relief requested. N.D. L.R. 7.1(C). The Court must consider three factors in deciding whether dismissal for the failure to file a responsive pleading is proper: "'1) the degree of actual prejudice to the defendant[s]; 2) the amount of interference with the judicial process; [and] 3) the culpability of the litigant.'" Murray v. Achambo, 132 F.3d 609, 610 (10th Cir. 1998) (quoting Hancock v. City of Oklahoma City, 857 F.2d 1394, 1396 (10th Cir. 1988)). "[O]nly when these aggravating factors outweigh[ ] the judicial system's strong predisposition to resolve cases on their merits is outright dismissal with prejudice an

appropriate sanction." Hancock, 857 F.2d at 1396 (citing Meade v. Grubbs, 841 F.2d 1512, 1521 n. 7 (10th Cir. 1988)).

Dismissal in this matter is warranted. Plaintiff initially filed this action with seven documents, including a Motion for Temporary Restraining Order and Application for an Emergency Ex Parte, Temporary Restraining Order, a Motion to Proceed Without Prepayment of Costs and Affidavit in Support Thereof, a Memorandum of Law in Support of the Plaintiff's application for an Emergency, Ex Parte, Temporary Restraining Order, a Motion for an Immediate Ex Parte Hearing, a Preliminary Statement of Facts, a Bond for Temporary Restraining Order, and a "Warning of A Fraud Committed Upon This Honourable [sic] District Court for the Northern District of Oklahoma." Plaintiff set forth some 29 causes of action for, *inter alia,* civil rights violations, purportedly arising from defendants' wrongful termination of the disability benefits he previously received pursuant to the Social Security Act and regulations. He sought both injunctive and monetary relief. The undersigned recommended, among other things, that plaintiff be permitted to proceed *in forma pauperis*. See Report and Recommendation (Docket # 8), filed October 28, 1998. Construing his *pro se* petition liberally, Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing Haines v. Kerner, 404 U.S. 519, 520 (1972)), the undersigned also recommended construction of plaintiff's complaint as asserting an appeal from an adverse decision of the Commissioner under 42 U.S.C. §§ 405(g) and 1383(c)(3).

Plaintiff thereafter filed additional pleadings, including objections to the Report and Recommendation and a motion for enlargement of time to file additional objections. The Court granted plaintiff until December 11, 1998, to file additional exceptions and objections to the Report and Recommendation. Plaintiff filed no additional objections, and, on July 12, 1999, the Court adopted the Report and Recommendation. The undersigned entered a Scheduling Order on August

2, 1999, setting the answer date and briefing schedule. When the Commissioner filed a motion to dismiss instead of an answer, the undersigned entered an order reminding plaintiff of his responsibility to file a response within fifteen days. See Minute Order (Docket # 19), filed October 29, 1999. The Court has patiently accommodated plaintiff's numerous, verbose pleadings and provided him with every opportunity to make his claim. He has not risen to the occasion, nor offered any explanation for his failure to do so. His claims have taken an inordinate amount of time and attention from the Court and the Commissioner. The culpability of this litigant is great, and he should not be permitted to further prejudice the Commissioner or interfere with the judicial process.

Indeed, plaintiff's previous failure to respond to a request by the Social Security Administration (SSA) appears to be the reason for the suspension of plaintiff's SSI benefits. When the SSA undertook a periodic redetermination of plaintiff's eligibility for SSI payments in 1997, the SSA requested that plaintiff provide unaltered records or sign an authorization form to allow the SSA to contact his financial institution for account information to verify his income and resources. He failed to do so, and he failed thereafter to comply with SSA regulations for reinstatement or to prevent termination.

The undersigned has examined the merits of the motion to dismiss and finds that the Commissioner's arguments are well-taken. The Court does not have jurisdiction to review the complaint for the reasons set forth in the Commissioner's brief. Plaintiff did not provide the necessary evidence required to establish his eligibility for SSI payments as requested by the Social Security Administration, and he did not request a hearing before an Administrative Law Judge. He has not exhausted his administrative remedies and there is no "final decision" for judicial review under 42 U.S.C. § 405(g).

For these reasons, the undersigned recommends that the District Court **GRANT** the Commissioner's motion (Docket #18) and **DISMISS** the complaint.

OBJECTIONS

The District Judge assigned to this case will conduct a *de novo* review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. As part of the *de novo* review, the District Judge will consider the parties' written objections to the Report and Recommendation. A party wishing to file objections must file them with the Clerk of the District Court within ten days after being served with a copy of the Report and Recommendation. See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). **The failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court.** See Thomas v. Arn, 474 U.S. 140 (1985); Haney v. Addison, 175 F.3d 1217 (10th Cir. 1999).

DATED this 13th day of December, 1999.

Claire V. Eagan

CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE

DSF/tsr

FILED

DEC 13 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE DISTRICT COURT IN FOR THE NORTHERN DISTRICT
STATE OF OKLAHOMA

GERALD GAENSLEN AND JUDY GAENSLEN, Individually and as Husband and Wife,	)	
Plaintiffs,	)	
vs.	)	99 CV 0673 E(M)
STATE FARM INSURANCE COMPANY, AND ALLSTATE INSURANCE COMPANY,	)	
Defendants.	)	

ENTERED ON DOCKET
DATE DEC 15 1999

ORDER OF REMAND

NOW on this 13TH day of December, 1999, pursuant to the representations made by Plaintiffs' counsel at the Status Conference held November 17, 1999, and the representations made by Plaintiffs and Plaintiffs' counsel in their Affidavit filed of record in this cause, the Court hereby enters its Order remanding this case to State Court for further proceeding.

JUDGE OF THE DISTRICT COURT

allstate/99037/order of remand

15

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 13 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99CV0657C(M)
	)	
WANDA J. NEAL,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DEC 15 1999
DATE _____

DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of December, 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Wanda J. Neal, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Wanda J. Neal, was served with Summons and Complaint on November 8, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Wanda J. Neal, for the principal amount of $3,112.74, plus accrued interest

of $52.87, plus interest thereafter at the rate of 8.5 percent per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.670 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

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

FILED
DEC 13 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

LORI ANN LITTLE,	)	
	)	
Plaintiff,	)	
vs.	)	No. 98-C-238-B
	)	
BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, OKLAHOMA; et al	)	
	)	
Defendants.	)	

ENTERED ON DOCKET
DATE ~~DEC 15 1999~~

JOINT STIPULATION FOR DISMISSAL

Pursuant to Fed.R.Civ.P. 41(a), the Plaintiff, by and through her attorneys, and the Defendants, by and through their attorneys, jointly stipulate that this action is dismissed.

Dated this 13th day of December, 1999.

By: _____
D. Gregory Bledsoe
Steven A. Novick
1717 S. Cheyenne Ave
Tulsa, OK 74119-4611
918-599-8123
Attorneys for Plaintiffs

TIM HARRIS
DISTRICT ATTORNEY

By: _____
Fred Morgan
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
918-596-4859
Attorneys for Defendants

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015

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

FILED
DEC 13 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

CLAY SADLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 98-CV-892 E (M)
	)	
THOMAS C. LANE, WILLIAM E. ERIKSON, O.G. THOMPSON, DANNY MELTON,	)	
	)	
Defendants.	)	

ENTERED ON DOCKET
DATE DEC 15 1999

JUDGMENT

Judgment is hereby entered against Plaintiff and in favor of Defendants, Tom C. Lane, Sr., William E. Erickson, O.G. Thompson and Danny Melton in the amount of $2,219.25.

IT IS SO ORDERED.

Dated this 10th day of December, 1999.

JAMES O. ELLISON
United States District Judge

24

MT

FILED

DEC 14 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 99CV984BU(E)
	)	
MICHELLE D. SMITH,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DEC 15 1999

NOTICE OF DISMISSAL

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

Dated this 14th day of December, 1999.

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of December, 1999, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Michelle D. Smith, 2435 E. 25th St., Tulsa, OK 74114.

Debra L. Overstreet

Debra L. Overstreet
Financial Litigation Agent

2

SAL

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 13 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 99CV0860K (E)**
	)	
ALAN D. NUCKOLLS,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET

DATE DEC 15 1999

NOTICE OF DISMISSAL

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

Dated this 13th day of December, 1999.

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of December, 1999, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Alan D. Nuckolls, 2203 Mohawk Blvd, Tulsa, OK 74110.

Ann L. Hankins

Ann L. Hankins
Financial Litigation Agent

2

C/J

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE DEC 15 1999

FILED
DEC 13 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99CV0854C(E)
	)	
VICTOR E. BENTLEY,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of Dec., 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Victor E. Bentley, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Victor E. Bentley, was served with Summons and Complaint on October 7, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Victor E. Bentley, for the principal amount of $4,027.18, plus accrued

interest of $4,439.66, plus administrative charges in the amount of $28.94, plus interest thereafter at the rate of 9.13 percent per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.670 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 13 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

SHARON F. COX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 97-CV-544-J
	)	
KENNETH S. APFEL, Commissioner of Social Security,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 14 1999

ORDER REMANDING CASE TO COMMISSIONER

Pursuant to the mandate of the United States Court of Appeals for the Tenth Circuit, the above-referenced matter is **REMANDED** to the Commissioner for further proceedings consistent with the Court of Appeals' Order and Judgment entered on October 14, 1999, and filed in this Court on December 9, 1999.

It is so ordered this 13th day of December 1999.

Sam A. Joyner
United States Magistrate Judge

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

F I L E D

DEC 1 0 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROSA GAYTON for ASHLEY N. MORALES, a minor, SSN: 442-86-6277 Plaintiff, v. KENNETH S. APFEL, Commissioner of the Social Security Administration, Defendant.	)))))))))))))	CASE NO. 98-CV-724-M ENTERED ON DOCKET DATE DEC 14 1999

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated this 13th day of Dec., 1999.

Frank H. McCarthy

FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D
DEC 1 3 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROSA GAYTON for ASHLEY N. MORALES, a minor, SSN: 442-86-6277,	)	
PLAINTIFF,	)	
vs.	)	CASE NO. 98-CV-724-M
KENNETH S. APFEL, Commissioner of the Social Security Administration,	)	
DEFENDANT.	)	

ENTERED ON DOCKET
DATE DEC 14 1999

ORDER

Plaintiff, Rosa Gayton, mother of Ashley N. Morales, a minor child, seeks judicial review of a decision of the Commissioner of the Social Security Administration denying Social Security disability benefits. In accordance with 28 U.S.C. § 636(c)(1) & (3) the parties have consented to proceed before a United States Magistrate Judge.

The role of the court in reviewing the decision of the Commissioner under 42 U.S.C. §405(g) is limited to determining whether the decision is supported by substantial evidence and whether the decision contains a sufficient basis to determine that the Commissioner has applied the correct legal standards. *Winfrey v. Chater*, 92 F.3d 1017 (10th Cir. 1996); *Castellano v. Secretary of Health & Human Servs.*, 26 F.3d 1027, 1028 (10th Cir. 1994). Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971) (quoting *Consolidated Edison Co.*

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v. NLRB, 305 U.S. 197, 229 (1938)). The Court may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Casias v. Secretary of Health & Human Servs.,* 933 F.2d 799, 800 (10th Cir. 1991). Even if the Court might have reached a different conclusion, if supported by substantial evidence, the Commissioner's decision stands. *Hamilton v. Secretary of Health & Human Services*, 961 F.2d 1495 (10th Cir. 1992).

Plaintiff filed an application for benefits based upon "emotional problems" on April 8, 1993 which was denied initially and upon reconsideration. [R. 114-125]. At Plaintiff's request, a hearing before an Administrative Law Judge (ALJ) was held September 13, 1994, after which the ALJ denied benefits on January 6, 1995. [R. 238-245]. The Appeals Council reviewed the decision of the ALJ under the substantial evidence provision of the regulations and remanded the claim to the ALJ for further development of the record. [R. 252-253]. The Appeals Council specifically directed the ALJ to obtain additional evidence concerning Plaintiff's mental status in light of the medical records which showed Plaintiff was still assessed as functioning in the seriously impaired range after her discharge from Children's Medical Center in January 1994. [R. 252]. Plaintiff was sent for a consultative examination by a DDU physician, [R. 255-262] and post 1994 medical records from the Tulsa Children's Health Care Center, Children's Medical Center were obtained, [R. 263, 267-278]. Records from Tulsa Public Schools dated October 21, 1993 were also obtained and made a part of the record. [R. 264-266]. Another hearing was held July 29, 1996. [R. 55-88]. After the change in the law affecting the method of determining a child's

entitlement to benefits, a supplemental hearing was held July 10, 1997. [R. 89-112]. By decision dated July 24, 1997, the ALJ entered the findings that are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ on July 17, 1998. The action of the Appeals Council represents the Commissioner's final decision for purposes of further appeal. 20 C.F.R. §§ 404.981, 416.1481.

Plaintiff, Ashley Morales, was born March 20, 1985 and was 12 years old when the decision was entered. [R. 114]. Plaintiff claims disability under Listing 112.04, 20 C.F.R.416.924(d)(2)(1997). The ALJ determined that Plaintiff has severe impairments consisting of dysthymic disorder and oppositional defiant disorder but concluded those impairments do not meet the severity requirements of the listings. [R. 22]. He determined, therefore, that Plaintiff is not disabled under the Social Security Act.

Plaintiff concedes that by April 1995 her condition had improved to the extent that she "probably did not meet or equal a Listing after that time." [Plaintiff's Brief, p. 4]. She claims, however, that prior to April 1995, specifically the time period between April 1993 and April 1995, her condition was so severe that she met both Criteria A and B of Listing 112.04. She contends the ALJ did not point to specific evidence in the record supporting his finding that her condition did not meet the listing prior to April 1995. She asserts the ALJ relied upon 1996 and 1997 evidence for his finding without the required discussion of the evidence as it related to her condition prior to April 1995.

The evidence cited in Defendant's brief as support of the Commissioner's denial of benefits is described as: "how the records showed improvement with the use of

Prozac"; "[f]ollowup notes show that Ashley was being more cooperative, isolated herself less, had a normal appetite and was sleeping well" and "medication was effective in decreasing Ashley's posturing and unusual behaviors, and Ashley reported no further auditory or visual hallucinations." [Defendant's Brief, p. 2-3]. The analysis in the Commissioner's brief attempting to link the ALJ's conclusion to the evidence was not done by the ALJ in his decision, leaving the court without specific findings to review. See *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996). Without any of the required findings, the Court cannot evaluate the factual and legal correctness of the ALJ's decision. See *Winfrey*, 92 F.3d at 1023. Furthermore, even in its brief, Defendant does not address Plaintiff's assertion that prior to and during two hospitalization periods from November 1993 through March 1994, when she was admitted for dysthymia, self-injurious behavior and runaway behaviors, she met the Listings. Nor does Defendant respond to Plaintiff's contention that the evidence supports her claim for disability during intensive outpatient treatment when Haldol[1] was prescribed in increasing dosages from October 1994 until March 1995.

Both the ALJ and Defendant's counsel recited the medical record and then described Plaintiff's condition at the time the decision was written, after her condition

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[1] Haldol is effective for the treatment of severe behavior problems in children of combative, explosive hyperexcitability (which cannot be accounted for by immediate provocation). Haldol is also effective in the short-term treatment of hyperactive children who show excessive motor activity with accompanying conduct disorders consisting of some or all of the following symptoms: impulsivity, difficulty sustaining attention, aggressivity, mood lability and poor frustration tolerance. Haldol should be reserved for these two groups of children only after failure to respond to psychotherapy or medications other than antipsychotics. *Physician's Desk Reference*, 49th Ed. 1995, p. 1466.

"improved."[2] Missing in both documents is a discussion of how the medical evidence relates to the conclusion that Plaintiff was not disabled during the specified time period and the rationale behind the determination that she was not disabled between 1993 and 1995. See *Cruse v. U.S. Dept of Health & Human Services*, 49 F.3d 614 (10th Cir. 1995). Specific findings regarding the evidence related to this time period is especially relevant in light of the Appeals Council's remand on January 23, 1996, with instructions to further develop the record and to reassess Plaintiff's condition because January 1994 hospital discharge records indicated Plaintiff was still "functioning in the seriously impaired range" at that time. [R. 252].

The court cannot say, therefore, that the record contains substantial evidence to support the determination of the ALJ that Plaintiff was not disabled for the time period between April 1993 to April 1995. Accordingly, the decision of the Commissioner finding Plaintiff not disabled is REVERSED and REMANDED to the Commissioner for the purpose of reevaluating the evidence in light of Plaintiff's claim for disability for the specific time period between April 1993 and April 1995 and for reconsideration of Plaintiff's claim based upon that reevaluation.

SO ORDERED this 13th day of Dec., 1999.

Frank H. McCarthy

FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

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[2] In his decision, the ALJ stated:"The evidence of record shows that the claimant has a marked limitation in personal functioning as evidenced by her self-injurious behavior, and a less than moderate limitation in concentration, persistence, and pace functioning." [R. 20]. If this finding is correct, it is reasonable to assume that Plaintiff's condition was more than markedly limited in personal functioning and at least moderately limited in concentration, persistence and pace functioning prior to the date the last hearing was held as the evidence that she had "improved" by that time is uncontroverted.

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

FILED
DEC 1 0 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DR. VAN HOWARD and MARY HOWARD,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No. 99 CV 0170H (J)**
	)	
THE HARTFORD INSURANCE COMPANY,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 14 1999

STIPULATION OF DISMISSAL

Plaintiffs and Defendant stipulate that the above matter may and should be dismissed with prejudice for the reason all issues were resolved in a settlement of this case.

Respectfully submitted,

SNEED LANG, P.C.

By: Randolph P. Stainer

G. Steven Stidham, OBA #8633
Randolph P. Stainer, OBA #8537
2300 Williams Center Tower II
Two West Second Street
Tulsa, OK 74103-3136
(918) 583-3145/ Fax: (918) 582-0410
and
Rex K. Travis, Esq.
Law Offices of Rex K. Travis
500 Colcord Drive
Oklahoma City, OK 73102-2279
(405) 236-5400 / Fax: (405) 236-5499
ATTORNEYS FOR PLAINTIFFS

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Signature Page to Stipulation of Dismissal

Earl R. Donaldson, OBA #2415
Law Offices of Earl R. Donaldson
One Corporate Plaza, Suite B-160
3525 Northwest 56th Street
Oklahoma City, Oklahoma 73112-4549
ATTORNEYS FOR DEFENDANT

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

FILED

DEC 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDY WILLIAMS,

Plaintiff,

THERESA ROBINSON,

Consolidated Plaintiff,

vs.

TERRENCE DURHAM, individually,
AUTO MARKETING NETWORK, INC.,
a Florida corporation; and
IMPERIAL CREDIT INDUSTRIES, INC.
a California corporation;

Defendants.

Case No. 98-CV-612 BU (J)
BASE FILE

ENTERED ON DOCKET
DATE DEC 14 1999

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Counsel for the Parties in the above-captioned case and dismiss the above titled actions with prejudice. Each party shall be responsible for their own attorneys' fees and costs.

APPROVED BY:

Bill V. Wilkinson, Esq.
Andrew P. DeCann, Esq.
WILKINSON LAW FIRM
7620 E. 51st Street, Suite 400
Tulsa, OK 74145

J. Patrick Cremin, Esq.
William D. Fisher, Esq.
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
320 South Boston Avenue, Suite 400
Tulsa, OK 74103

Charles E. Geister, III
Phillips G. Whaley, Esq.
HARTZOG CONGER & CASON
1600 Bank of Oklahoma Pl.
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102

F:\USERS\Secretary\WILLIAMS\Pleadings\Dismissal with Prejudice

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ORIGINAL

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

FILED

DEC 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

KATHLEEN DONICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 98-CV-0439H(M)
	)	
HEALTHSOUTH CORPORATION, a Delaware corporation,	)	
	)	
	)	
Defendant.	)	

ENTERED ON DOCKET

DATE DEC 14 1999

STIPULATION OF DISMISSAL OF OPT-IN PLAINTIFF TIMOTHY SHANE FULMER

Opt-In Plaintiff Timothy Shane Fulmer ("Fulmer") and Defendant HealthSouth Corporation ("HealthSouth"), pursuant to Fed.R.Civ.P. 41(a)(1)(*i*), hereby stipulate to the dismissal without prejudice of Fulmer's claims against HealthSouth in this matter, and Fulmer by this dismissal, effectively withdraws his name from the class in this case.

Respectfully submitted,

J. Ronald Petrikin, OBA No. 7092
David H. Herrold, OBA No. 17053
CONNER & WINTERS, P.C.
15 East Fifth Street, Ste. 3700
Tulsa, Oklahoma 74103-4344
(918) 586-5711; (918) 586-8547 *fax*
-and-
Donald E. Herrold, OBA No. 4140
Jack N. Herrold, OBA No. 4141
HERROLD, HERROLD, SUTTON & DAVIS, P.A.
2250 East 73rd Street, Ste. 600
Tulsa, Oklahoma 74136
(918) 491-9559; (918) 491-7337 *fax*

Attorneys for the Plaintiff,
KATHLEEN DONICA and those other present and former employees of HealthSouth Corporation who are similarly situated

Mail Copy to C/J

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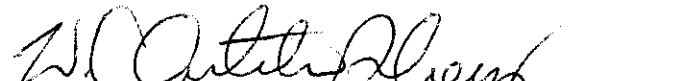
-AND-



L. Traywick Duffie, Admitted *Pro Hac Vice*
W. Christopher Arbery, Admitted *Pro Hac Vice*
HUNTON & WILLIAMS
4100 NationsBank Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308
(404) 888-4000; (404) 888-4190 *fax*

-and-

Sarah Jane McKinney, OBA No. 17099
HALL, ESTILL, HARDWICK, GABLE, GOLDEN
& NELSON, P.C.
320 South Boston Avenue, Suite 400
Tulsa, Oklahoma 74103
(918) 594-0439; (918) 594-0505 *fax*

Attorneys for the Defendant,
HEALTHSOUTH CORPORATION

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

FILED

DEC 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

BOBBY GENE GRIGG,

Plaintiff,

vs.

TIMOTHY GEORGE DAVIS; CATHERINE E. BUTLER; TRIANGLE MOVERS LTD; HUNT BUILDERS LTD; BREADNER TRAILER SALES REGINA LTD,

Defendant.

99 CV 0148 H (J)

ENTERED ON DOCKET

DATE DEC 14 1999

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Bobby Gene Grigg, and hereby dismiss the above-captioned case with prejudice as to Defendants, Timothy George Davis, Catherine E. Butler, Triangle Movers, Ltd., and Hunt Builders Ltd.

Dated this 30 day of Nov, 1999.

Bobby Grigg

BOBBY GENE GRIGG
PLAINTIFF

JOHN M. THETFORD
ATTORNEY FOR PLAINTIFF

I:\CLIENT.MAT\0077\0425\Pleading\Dismiss

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

ALEXANDRA FEDEROV, Administratix of the Estate of MICHELE C. FEDEROV, deceased,	)	ENTERED ON DOCKET DATE DEC 13 1999
Plaintiff,	)	
v.	)	**Case No. 99-CV-326-K (J)**
ARDEN WHITE and DARVIN WHITE, d/b/a ARDEN WHITE TRUCKING; ARDEN WHITE TRUCKING, INC.; and WILSHIRE INSURANCE COMPANY,	)	FILED IN OPEN COURT DEC 10 1999 Phil Lombardi, Clerk U.S. DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA
Defendants.	)	

ORDER

Before the Court is Plaintiff's unopposed motion to drop Arden White and Darvin White, d/b/a Arden White Trucking and Wilshire Insurance Company. This would leave Arden White Trucking, Inc., as the sole remaining defendant. As this motion is unopposed and for good cause shown,

IT IS THEREFORE ORDERED that Plaintiff's Unopposed Motion to Drop Parties (# 11) is GRANTED and the following parties are DROPPED: Arden White and Darvin White, d/b/a Arden White Trucking and Wilshire Insurance Company.

ORDERED THIS 10 DAY OF DECEMBER, 1999.

Terry C. Kern

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MELBA LEE,

Plaintiff,

vs.

MADDEN ENTERPRISES,

Defendant.

Case No. 98-CV-933-J

ENTERED ON DOCKET

DATE DEC 13 1999

ORDER

On November 23, 1999, the Court notified Plaintiff that it would dismiss this action unless Plaintiff filed a brief on or before December 6, 1999, responding to Defendant's motion to dismiss and establishing good cause for her failure to serve the Complaint within the time period provided for in Fed. R. Civ. P. 4(m).

To date, Plaintiff has not responded to either the Court's November 23, 1999 Order or Defendant's motion to dismiss.

Plaintiff's action is hereby dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) and 41(b).

IT IS SO ORDERED this 10 day of December 1999.

Sam A. Joyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE DEC 13 1999

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	No. 99-CV-709-H
NORMAN B. FRIERSON,	)	
Defendant.	)	

FILED
DEC 10 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration this 10TH day of DECEMBER, 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Norman B. Frierson, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Norman B. Frierson, was served with Summons and Complaint on August 25, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Norman B. Frierson, for the principal amount of $11,893.43, plus accrued interest of $3,441.31, plus interest thereafter at the rate of 9.13 percent per annum until judgment, plus filing fees in the amount of

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

ENTERED ON DOCKET
DEC 13 1999

DWAYNE GARRETT,	)	
Plaintiff,	)	No. 99-CV-742-K (E)
v.	)	
STATE OF OKLAHOMA, JERRY MADDOX, PAUL SIEGLER, DIANN YOUNG, SHELLY CLEMMONS, CURTIS DeLAPP, MARGARET SNOW, TOM JANER, and CITY OF BARTLESVILLE,	)	
Defendants.	)	

FILED
DEC 09 1999
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendants Diane Young (captioned as "Diann Young") and the City of Bartlesville's motion to dismiss under Fed. R. Civ. Pro. 12(b)(1) and (6) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

The Plaintiff in this case has failed to respond to the Defendant's motion to dismiss. Pursuant to N.D. LR 7.1(C), all claims asserted in a motion may be considered confessed when the opposing party has failed to respond. The Court has, nevertheless, reviewed the Defendants' motion to dismiss, and, through an independent inquiry, has determined that the Plaintiff has failed to state a claim for which relief can be granted.

For the reasons stated herein, Motion to Dismiss of Defendants Diane Young and City of Bartlesville (# 24) is GRANTED and all claims in the above-captioned action against Defendants Young and City of Bartlesville are DISMISSED.

ORDERED this 9 day of December, 1999.

Terry C. Kern

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 9 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99CV0724K(J)
	)	
ALLISON P. KELLY,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 13 1999

DEFAULT JUDGMENT

This matter comes on for consideration this 9 day of December, 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Allison P. Kelly, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Allison P. Kelly, was served with Summons and Complaint on November 1, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Allison P. Kelly, for the principal amounts of $4,595.72 and $500.00, plus

accrued interest of $1,298.65 and $131.66, plus interest thereafter at the rates of 8% and 5% per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.471 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE DEC 13 1999

FILED
DEC 10 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, on behalf of the Secretary of Veterans Affairs,	)	
Plaintiff,	)	
v.	)	
DRENDA L. JEFFERSON, a single person; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,	)	
Defendants.	)	CIVIL ACTION NO. 99-CV-0698-K (M)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day of December, 1999. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; that the Defendant, Drenda L. Jefferson, a single person, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, Drenda L. Jefferson, a single person, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on August 25, 1999.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on September 13, 1999; and that the Defendant, Drenda L. Jefferson, a single person, has failed to answer and her 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Four (4) Block Sixteen (16) VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 22, 1984, Defendant, Drenda L. Jefferson, a single person, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs now known as the Secretary of Veterans Affairs, her mortgage note in the amount of $26,000.00, payable in monthly installments, with interest thereon at the rate of 12.5 percent per annum.

The Court further find that as security for the payment of the above-described note, Defendant, Drenda L. Jefferson, a single person, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs now known as the Secretary of Veterans Affairs, a real estate mortgage dated March 22, 1984, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on March 22, 1984, in Book 4776, Page 2007, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Drenda L. Jefferson, a single person, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of $23,107.60, plus administrative charges in the amount of $214.15, plus penalty charges in the amount of $25.36, plus accrued interest in the amount of $3,891.23 as of March 12,1999, plus interest accruing thereafter at the rate of 12.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma and 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, Drenda L. Jefferson, a single person, is in default and therefore has no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment in rem against Defendant, Drenda L. Jefferson, a single person, in the principal sum of $23,107.60, plus administrative charges in the amount of $214.15, plus penalty charges in the amount of $25.36, plus accrued interest in the amount of $3,891.23 as of March 12,1999, plus interest accruing thereafter at the rate of 12.5 percent per annum until judgment, plus interest

thereafter at the current legal rate of 5.670 percent per annum until fully paid, plus the costs of this action in the amount of $8.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Drenda L. Jefferson, a single person; County Treasurer, Tulsa County, 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 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.

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.

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

DICK A. BLAKELEY, OBA #0852
Assistant District Attorney
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Attorney for County Treasurer and Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 99-CV-0698-K (M) (Jefferson)
CDM:css

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

F I L E D

DEC - 9 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PALACE EXPLORATION COMPANY,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	CASE NO. 98-CV-890-B
	)	
PETROLEUM DEVELOPMENT COMPANY,	)	
	)	
DEFENDANT.	)	

ENTERED ON DOCKET

DATE ~~DEC 13 1999~~

ORDER AND JUDGMENT

This case was tried to a jury, sitting in an advisory capacity, on Monday, Tuesday and Wednesday, December 6, 7, and 8, 1999. Counsel of record appeared and presented evidence. The case was tried pursuant to Okla. Stat. Ann. tit. 15, §233B., regarding Plaintiff, Palace Exploration Company's rescission claims for fraud in the inducement of the subject agreements between the parties for misrepresentation, nondisclosure and/or concealment, as well as rescission for failure of consideration.

The jury returned on the evening of Wednesday, December 8, 1999 with a unanimous verdict in favor of Defendant, Petroleum Development Company, and against Plaintiff, Palace Exploration Company, on its rescission claims of fraud in the inducement and failure of consideration.

Based upon the jury verdict, adopted and approved by the Court, judgment is hereby entered in favor of Defendant, Petroleum Development Company, and against Plaintiff, Palace Exploration Company, on Plaintiff's claims of fraud in the inducement

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and failure of consideration. As prevailing party, Defendant, Petroleum Development Company, is entitled to award of costs upon timely application pursuant to N. D. LR 54.1, and each party is to pay its respective attorneys' fees.

This concludes the first phase of this bifurcated proceeding. As the parties have previously advised, phase two is triggered by the last sentence of Okla. Stat. Ann. tit. 15, §233B., which provides:

> ". . . If the court determines that the contract may not be rescinded, it may grant damages or any other relief to which the party may be entitled, whether or not such relief is sought in the pleadings."

The parties are to advise the Court what issues remain as to liability and/or damages pursuant to the following schedule: Plaintiff, Palace Exploration Company, is to submit a brief analysis of the remaining contract issues on or before December 17, 1999. Defendant, Petroleum Development Company, is to file response brief on or before December 22, 1999, following which the Court will enter an appropriate Scheduling Order.

Based upon the remaining issues to be presented to the Court, this Order and Judgment shall not be considered final for purposes of appeal until resolution of all issues.

IT IS SO ORDERED this 8th day of December, 1999.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
DEC 1 0 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

FRANKLIN DAGGS, Plaintiff, vs. ALEXANDER & ALEXANDER, INC. (Oklahoma); ALEXANDER & ALEXANDER SERVICES, INC.; AON GROUP, INC.; ALEXANDER & ALEXANDER, INC.; AON RISK SERVICES, INC.; ALEXANDER & ALEXANDER PENSION PLAN; AON PENSION PLAN; ALEXANDER & ALEXANDER THRIFT PLAN; and AON SAVINGS PLAN, Defendants.	)	No. 96-C-967-B

ENTERED ON DOCKET
DATE DEC 13 1999

ORDER AND JUDGMENT

Before the Court are the applications for attorney's fees filed by plaintiff Franklin Daggs ("Daggs") on behalf of the firms of Leblang, Clay, Sobel & Ashbaugh ("LeBlang") (Docket No. 135) and of Sobel & Langholz ("Sobel") (Docket No. 139). Daggs seeks his attorney's fees on behalf of LeBlang in the amount of $67, 122.00 for 632.55 hours and on behalf of Sobel in the amount of $51,942.50 for 480.60 hours under Section 502(g)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132(g)(1), against defendants Alexander & Alexander, Inc. (Oklahoma), Alexander & Alexander Services, Inc., AON Group, Inc., Alexander & Alexander, Inc., Alexander & Alexander Pension Plan, AON Pension Plan, Alexander & Alexander Thrift Plan and AON Savings Plan (hereinafter collectively referred to

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as "A& A"). A&A stipulates (1) the entity responsible for any award of attorney fees and costs in this case is AON Corporation ("AON"); (2) AON will not contest any award of fees or costs against it on the basis it was not named as a party or is the incorrect entity;[1] (3) the hourly rates requested by Daggs' counsel are reasonable and (4) A&A does not contest the reasonableness of the amount of hours devoted by Daggs' counsel to the various tasks. A&A, however, contends Daggs should not recover any attorney fees as he was awarded no damages, and in any case, should not recover fees for time and expenses devoted to the prosecution of his unsuccessful claims.

In the Court's Findings of Fact and Conclusions of Law filed on August 16, 1999, the Court granted Daggs reasonable attorney's fees pursuant to 29 U.S.C. §1132(g)(1). In so doing the Court considered *inter alia* the following factors:

> 1) the degree of culpability or bad faith,
> 2) the ability of the party to satisfy the award,
> 3) whether an award of fees would deter others from acting under similar circumstances,
> 4) whether the party seeking fees sought to benefit all participants of the plan or resolved a significant legal question, and
> 5) the relative merit of the parties' positions.

Moothart v. Bell, 21 F.3d 1499, 1507 (10th Cir. 1994)("This is neither an exhaustive nor exclusive list."); *Gordon v. United States Steel Corp.*, 724 F.2d 106, 109 (10th Cir. 1983); *Eaves v. Penn.* 587 F.2d 453, 465 (10th Cir. 1978). These factors weigh in favor of granting Daggs reasonable attorney's fees.

As set forth in its Findings of Fact and Conclusions of Law, the Court concluded the

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[1]Based on defendants' stipulations in Defendants' Advice to Court on Party Question filed December 8, 1999 (Docket No. 155), the Court hereby orders AON Corporation to be named as an additional defendant party herein.

decision to deny Daggs Earnings Continuation benefits was "arbitrary and capricious on the merits and as a result of its failure to provide the procedural protections required under ERISA, 29 U.S.C. §1133(1) and 29 C.F.R. §2560.503-1(f)(1)-(4) and Article 8 of the Plan," and remanded the matter to the Plan Administrator "to receive the medical evidence necessary to determine how long Daggs was entitled to Earnings Continuation benefits and if and how long he was entitled to received LTD benefits." Accordingly, Daggs was the prevailing party on his claim for benefits and factor (5) weighs in favor of Daggs' application for attorney's fees.

The findings supporting the Court's decision also support an award of attorney's fees under factors 1, 3 and 4. The reason given Daggs for the denial of these benefits by Henry Kramer, Alexander & Alexander Services, Inc.'s ("A&A") Director of Benefit Programs, and later on appeal, by the United States Benefit Administration Committee ("Benefit Committee"), was that Daggs was "actively at work when [he was] terminated" and therefore "could not have been totally and permanently disabled." However, as the Court found, (1) A&A was aware Daggs suffered from continual health problems; (2) Daggs was not "active at work" from mid-April through May 3, 1995; (3) while still under doctor's care, he came into the office on May 3, 1995 solely at the request of his supervisor, who at that time gave Daggs notice of his termination; (4) May 17, 1995 was the date Daggs' employment was terminated; and (5) Daggs was hospitalized again from May 10 through May 17, 1995 and thus eligible for Earnings Continuation benefits when he requested them on May 15, 1995. Further, when Daggs brought this information to Kramer's attention, Kramer again denied benefits based on Daggs being "actively at work" on May 3, 1995, which he maintained was Daggs' date of termination, without any investigation into the matter. Finally, the Benefit Committee failed to provide Daggs a full

and fair review of the denial of benefits as required by Article 8 of the Plan and 29 U.S.C. §1133(2) and 29 C.F.R. §2560.503-1(f)(1)-(4) and (g)(1). These facts evidence neglect and/or bad faith on the part of defendants in the processing of Daggs' claim. Hopefully, an award of attorney's fees in this case will encourage defendants to insure proper investigation, evaluation, processing, and noticing of employees' disability claims, which will benefit all plan participants.

Finally, defendants have not disputed Daggs' representations regarding the successor company's or the Plan's ability to pay any attorney's fee award. Thus, the Court concludes factor (2) also weighs in favor of Daggs.

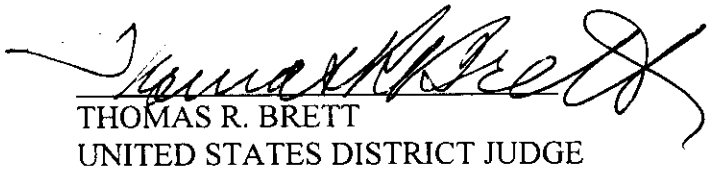
In determining the reasonableness of both applications, the Court has reviewed the affidavits and attached exhibits in support of the Leblang and Sobel applications. The applications attempt to cull out entries solely related to Daggs' abandoned Americans with Disabilities Act ("ADA"), Age Discrimination in Employment Act ("ADEA") and breach of contract claims (Exhibit B) from those "directly related" to Daggs' ERISA claim (Exhibit A). Daggs contends he is entitled to the fees listed for all the entries in Exhibit A to each application. Defendants, however, argue September 25, 1998 should be the cutoff date for any recovery of fees because that was the date the complaint was amended to state an ERISA claim. Daggs counters the ERISA claim was a viable option long before it was added and is mentioned in pre-September 25, 1998 itemized billings. Further, Daggs states that discovery of all issues led to the ERISA claim and therefore should be included.

Although Daggs has omitted some fees specific to the ADA, ADEA and breach of contract claims from his Sobel application, the Court finds his abandonment of these claims in this lawsuit warrants a proportional reduction in the fees incurred prior to the filing of the Third

Amended Complaint. Accordingly, the Court determines a reasonable attorney's fee pursuant to the Sobel application is $12,985.65, which is 25% of the amount requested. The Court concludes the 75% reduction is warranted as being relevant largely to said abandoned claims. (Docket No. 139). The Court awards Leblang attorney's fees in the amount of $67,122.00 as it determines the amount to be reasonable and the entries directly related to the ERISA claim. (Docket No. 135).

Thus, the Court hereby awards attorney's fees in the total amount of $80,107.65, with interest at the rate of 5.670% per annum from the date hereon.[2]

DATED, this 10th day of December, 1999.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[2] It is not the Court's intention that this matter awarding the attorney's fees judgment should be appealable at this time because the merits of the case have been remanded for further determination by the plan administrator. However, if either party concludes an interlocutory appeal is called for, application should be made pursuant to 28 U.S.C. §1292.

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

FILED
DEC - 9 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. DARRELL L. BOLTON; MAUREEN L. BOLTON; COMMERCIAL FEDERAL MORTGAGE CORPORATION, a Nebraska corporation; NATIONSBANK, a nationally chartered banking institution; and FORD MOTOR CREDIT COMPANY, a Delaware corporation, Defendants.	)	No. 98-C-351-B(M)

ENTERED ON DOCKET
DATE DEC 13 1999

ORDER

Before the Court is the motion for summary judgment filed by the plaintiff United States of America (Docket No. 23). Plaintiff United States asks the Court to determine as a matter of law (1) it is entitled to reduce the federal tax assessments made against defendant Darrell L. Bolton to judgment; (2) the federal tax liens against Mr. Bolton attach to certain real property; and (3) to order a foreclosure of the federal tax liens with the proceeds of the sale to be applied, after the claims of the prior lien claimants, to Mr. Bolton's tax liability for the 1987 through 1994 tax years.

Statement of Undisputed Facts

The following facts are undisputed. Plaintiff brought this action pursuant to 26 U.S.C. §7403(b) against defendants Darrell L. Bolton and his spouse Maureen L. Bolton,

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joint tenants with the right of survivorship of the residential real property (hereinafter referred to as the "subject real property"), as well as defendants who claimed or may claim an interest in the subject real property, *i.e.*, Commercial Federal Mortgage Corporation ("CFMC"), Nationsbank and Ford Motor Credit Company ("Ford"). On April 19, 1999, the Clerk of the Court entered default against Ford for failure to plead or otherwise defend; thus Ford claims no interest in the subject real property. CFMC and Nationsbank are owners and holders of notes and mortgages on the subject real property and do claim an interest in the property. CFMC's interest is entitled to first priority, Nationsbank's to second priority and the United States' interest is entitled to third priority.

By virtue of a deed dated April 5, 1977, Mr. and Ms. Bolton each own an undivided one-half interest in the subject real property as joint tenants with a right of survivorship. Based on actuarial computations, Mr. Bolton's interest in the subject real property is 48.886% and Ms. Bolton's interest is 51.114%. The subject real property was recently re-surveyed and appraised by the Tulsa County Assessor's office to have a value of $87,426.00. Mr. and Ms. Bolton reside in the subject home.

The Internal Revenue Service ("IRS") assessed Mr. Bolton a total amount of $59,940.86 in unpaid taxes, penalties and interest for tax years 1987 through 1994. Proper notice of the assessments and demand for payment were timely sent to Mr. Bolton. The assessments remain due and owing. On May 15, 1995, a notice of federal

tax lien securing the tax liabilities of Mr. Bolton for tax years 1987-1993 was filed with the County Clerk for Tulsa County, Oklahoma. On January 30, 1996, a notice of federal tax lien securing the tax liability of Mr. Bolton for the 1994 tax year was filed with the County Clerk for Tulsa County, Oklahoma.

As of the date of its answer, the principal amount owed CFMC on its lien was $17,068.67. As of August 25, 1998, the principal amount owed NationsBank on its lien was $14,930.65.

Ms. Bolton has no tax liability to the IRS and occupies the subject real property with her husband as their homestead. She is 50 years old and in good health. Ms. Bolton is employed by Progressive Supply Company in Tulsa, handling the company's accounts receivables, accounts payables and billings. Her gross annual income from her employment is approximately $33,000. Ms. Bolton has been contributing to her pension plan at work and plans to continue working at Progressive Supply Company until she retires at age 65. She owns two cars, a 1994 Mazda 626 and a 1997 Infinity.

Standard on Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Windon Third Oil & Gas v. FDIC*, 805 F.2d 342, 345 (10th Cir. 1986). In *Celotex,* the Supreme Court stated:

> [t]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

477 U.S. at 322.

A party opposing a properly supported motion for summary judgment must offer evidence, in admissible form, of specific facts sufficient to raise a "genuine issue of material fact." *Anderson*, 477 U.S. at 247-48.

> The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

Id. at 252. Thus, to defeat a summary judgment motion, the nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita v. Zenith*, 475 U.S. 574, 585 (1986).

In essence, the inquiry for the Court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 250. In its review, the Court must construe the evidence and inferences therefrom in a light most favorable to the nonmoving party. *Committee for the First Amendment v. Campbell*, 962 F.2d 1517, 1521 (10th Cir. 1992).

Analysis

Plaintiff United States first requests the Court enter summary judgment as to Mr. Bolton's tax liability for the 1987 through 1994 tax years and determine the federal tax liens against Mr. Bolton attach to the subject real property. As Mr. Bolton did not respond to the United States' summary judgment motion and therefore did not dispute the amount of the tax assessments or that proper notice of each assessment was timely received and tax liens securing his tax liabilities were filed with the Tulsa County Clerk, the Court hereby enters summary judgment in favor of the United States and against Darrell L. Bolton as follows: Mr. Bolton is liable to the United States for the unpaid balance of $59,940.86 in taxes and assessed penalties and interest for the tax years of 1987 through 1994 and the federal tax liens securing this liability attach to Mr. Bolton's property, including the subject real property. *Tillery v. Parks*, 630 F.2d 775, 776 (10th Cir. 1980)(holding federal tax liens arising solely through the tax liability of one spouse may attach to his interest in the homestead of both spouses in Oklahoma).

The only remaining issue is whether a foreclosure sale should be ordered to satisfy the government's tax lien under 26 U.S.C. §7403(c). Section 7403 states that "[t]he Court . . . in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States." As noted above, Mr. and Ms. Bolton

own the subject real property as joint tenants with a right of survivorship and occupy the property as their homestead. Under Oklahoma law, a homestead residence is "exempt from attachment or execution and every other species of forced sale for the payment of debts." 31 O.S. §1; Okla. Const. art. XII, §2. However, in *United States v. Rodgers*, 461 U.S. 677 (1983), the United States Supreme Court determined a state homestead exemption does not prevent a district court from forcing the sale of homestead property under §7403.

> If §7403 is intended, as we believe it is , to reach the entire property in which a delinquent taxpayer has or had any "right, title, or interest," then state-created exemptions against forced sale should be no more effective with regard to the entire property than with regard to the "right, title or interest" itself.

Id. at 701. Further, the *Rodgers* Court held that a district court may order the sale of both the delinquent taxpayer's interest and a third-party's interest in jointly held homestead property if the third-party receives a share of the proceeds commensurate with the value of his or her interest. *Id.* at 692-700. The Supreme Court, however, recognized the district court may exercise a degree of equitable discretion to balance "the Government's interest in prompt and certain collection of delinquent taxes and the possibility that innocent third parties will be unduly harmed by that effort." *Id.* at 709. However, the Court emphasized the "limited discretion accorded by §7403 should be exercised rigorously and sparingly." *Id.* at 711.

The *Rodgers* Court listed four factors to be considered by the district court in

exercising this discretion:

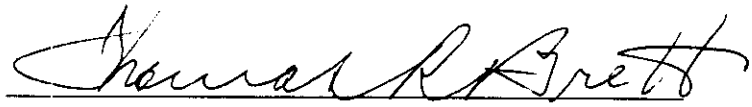
> (1) the extent to which the government's financial interests would be prejudiced if it were relegated to a forced sale of the partial interest actually liable for the delinquent taxes;
> (2) whether the third party with a non-liable separate interest in the property would, in the normal course of events, . . . have a legally recognized expectation that that the separate property would not be subject to forced sale by the delinquent taxpayer or his or her creditors ;
> (3) the likely prejudice to the third party, both in personal dislocation costs and in the [possibility of] undercompensation; and
> (4) the relative character and value of the non-liable and liable interests held in the property.

Id. at 710-11. This list, however, is not meant to be a "'mechanical checklist'" to the exclusion of common sense and consideration of special circumstances." *Id.* at 711.

The evidence before the Court on summary judgment is insufficient to allow the Court to determine whether the government is entitled to a forced sale of the subject real property. Therefore, the Court sets this matter for hearing on the above *Rodgers* factors as well as any "special circumstances" Mrs. Bolton intends to present.

In accordance with the above, the Court grants summary judgment in favor of the United States and against Darrell L. Bolton on his federal tax liabilities for 1987-94 and the attachment of federal tax liens securing this liability to Mr. Bolton's property, including the subject real property; but denies summary judgment on the government's request for a forced sale of the subject real property. (Docket No. 23). The issues relating to the government's request for a forced sale are set for an evidentiary hearing on the 17th day of December, 1999 at 3:15 o'clock p.m.

DATED this 8th day of December, 1999.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 1 0 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 99CV0658B(E)
	)	
CAROL A. GILLELAND,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET

DATE DEC 13 1999

DEFAULT JUDGMENT

This matter comes on for consideration this 10th day of Dec, 1999, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Carol A. Gilleland, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Carol A. Gilleland, was served with Summons and Complaint on November 5, 1999. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Carol A. Gilleland, for the principal amounts of $1,412.95 and $4,636.23,

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plus accrued interest of $1,098.72 and $4,364.73, plus administrative charges in the amount of $19.68, plus interest thereafter at the rates of 8% and 7.51% per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.670 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

FILED

DEC 1 0 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

MARY R. EDELMAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 98-CV-250-B
	)	
COMMUNICATION GRAPHICS, INC., an Oklahoma corporation,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE DEC 13 1999

ORDER AND JUDGMENT

Before the Court are the motion and supplemental motion for attorney's fees filed by plaintiff Mary R. Edelman ("Edelman") (Docket Nos. 25 and 33). Edelman seeks attorney's fees pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), in the total amount of $8232.50 based on 57.55 hours of service. Edelman's FLSA claim, was tried to the Court, sitting without a jury, on September 1, 1999 and judgment was entered on September 7, 1999 in her favor and against defendant Communication Graphics, Inc., ("CGI") on her claim for unpaid wages in the amount of $1,899.00. As a result, the Court awarded Edelman reasonable attorney's fees pursuant to 29 U.S.C. §216(b).

Based on its review of the applicable law, the affidavit of plaintiff's counsel and attached itemized statement of services, and CGI's objections, the Court concludes the requested fee is reasonable and awards attorney's fees in the amount of $8232.50 with interest at the rate of 5.670% per annum from the date hereon.

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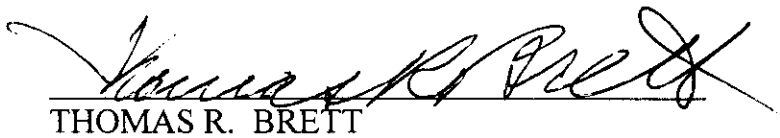
DATED this 10th day of December, 1999.



THOMAS R. BRETT
UNITED STATES SENIOR DISTRICT JUDGE

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

GALE PATRICK HENRY,	)	ENTERED ON DOCKET
	)	
Plaintiff,	)	DATE DEC 13 1999
	)	
v.	)	Case No. 97-CV-1062-K (J)
	)	
WILLBROS ENGINEERS, INC.,	)	F I L E D
	)	IN OPEN COURT
Defendant.	)	DEC 0 9 1999
		Phil Lombardi, Clerk U.S. DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This matter came before the Court for consideration of Defendant's Motion for Summary Judgment. Having considered the issues and rendered a decision in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is entered for Defendant, Willbros Engineers, Inc., and against Plaintiff, Gale Patrick Henry.

ORDERED THIS 9th DAY OF DECEMBER, 1999.

Terry C. Kern

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

GALE PATRICK HENRY,	)	ENTERED ON DOCKET DEC 13 1999 DATE
Plaintiff,	)	
v.	)	Case No. 97-CV-1062-K (J)
WILLBROS ENGINEERS, INC.,	)	
Defendant.	)	

FILED IN OPEN COURT DEC 09 1999 Phil Lombardi, Clerk U.S. DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendant's motion for summary judgment. Plaintiff requested and was granted an extension of time until November 29, 1999, in which to respond to this motion. Plaintiff has failed to respond. Pursuant to N.D. LR 7.1(C), all claims asserted in a motion may be considered confessed when the opposing party fails to respond. The Court has, nevertheless, reviewed Defendant's motion for summary judgment, and through an independent inquiry has determined that there is no genuine issue as to any material fact[1] and Defendant is entitled to judgment as a matter of law.

[1]As noted in N.D. LR 56.1(B), all material facts set forth in Defendant's "Undisputed Material Facts" will be deemed admitted for summary judgment purposes, unless Plaintiff specifically controverts them. Plaintiff, having filed no response to Defendant's motion, has not complied with this requirement and thus admits all facts contained therein.

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IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment (# 11) is GRANTED.

ORDERED THIS 9th DAY OF DECEMBER, 1999.

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE