

1982

Diane E. Kapetanov v. Small Claims Court of Ogden, Utah : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

W> Paul Wharton; Michael E. Bulson; Attorneys for Appellants;

Karma Grimm; Attorney for Respondent;

Recommended Citation

Brief of Appellant, *Kapetanov v. Small Claims Court of Ogden, Utah*, No. 18182 (Utah Supreme Court, 1982).
https://digitalcommons.law.byu.edu/uofu_sc2/2844

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 -) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

DIANE E. KAPETANOV, on)
behalf of herself and)
others similarly situated,)

Plaintiffs-)
Appellants,)

-vs-)

SMALL CLAIMS COURT OF)
OGDEN, UTAH,)

Defendant-)
Respondent.)

STATE OF UTAH, OFFICE OF)
RECOVERY SERVICES,)

Intervening)
Respondent.)

Case No. 18182

BRIEF OF APPELLANTS

Appeal from the Memorandum Decision by Judge
Ronald O. Hyde of the District Court for Weber County,
State of Utah.

W. PAUL WHARTON
Attorney for Appellants
UTAHNS AGAINST HUNGER
565 East 400 South
Salt Lake City, Utah 84102

MICHAEL E. BULSON
UTAH LEGAL SERVICES, INC.
Attorney for Appellants
385 - 24th Street, Suite 522
Ogden, Utah 84401

KARMA GRIMM
Deputy Weber County Attorney
Attorney for Intervening Respondent
First Floor, Municipal Building
Ogden, Utah 84401

FILED

MAR 15 1982

IN THE SUPREME COURT OF THE STATE OF UTAH

DIANE E. KAPETANOV, on)
behalf of herself and)
others similarly situated,)

Plaintiffs-)
Appellants,)

-vs-)

SMALL CLAIMS COURT OF)
OGDEN, UTAH,)

Defendant-)
Respondent.)

STATE OF UTAH, OFFICE OF)
RECOVERY SERVICES,)

Intervening)
Respondent.)

Case No. 18182

BRIEF OF APPELLANTS

Appeal from the Memorandum Decision by Judge
Ronald O. Hyde of the District Court for Weber County,
State of Utah.

W. PAUL WHARTON
Attorney for Appellants
UTAHNS AGAINST HUNGER
565 East 400 South
Salt Lake City, Utah 84102

MICHAEL E. BULSON
UTAH LEGAL SERVICES, INC.
Attorney for Appellants
385 - 24th Street, Suite 522
Ogden, Utah 84401

KARMA GRIMM
Deputy Weber County Attorney
Attorney for Intervening Respondent
First Floor, Municipal Building
Ogden, Utah 84401

TABLE OF CASES AND AUTHORITIES

<u>CASES CITED</u>	PAGE
<u>Aetna Life Insurance Co. of Hartford, Conn. v. Haworth</u> , 300 U.S. 227, 240 (1937)	10
<u>Gray v. Defa</u> , 135 P.2d 251, 255 (Utah 1943)	9
<u>Hansen v. Board of Education, etc.</u> , 116 P.2d 936 (Utah 1941)	11
<u>Perez v. Ledesma</u> , 401 U.S. 82, 124-27 (1971)	10
<u>Petition of Kariher</u> , 284 Pa. 455, 131 A. 265, 268	9
<u>Powell v. McCormack</u> , 395 U.S. 486, 499 (1969)	10
<u>Salt Lake County v. Salt Lake City</u> , 570 P.2d 119, 120 (Utah 1977)	11
<u>United States v. King</u> , 395, U.S. 1, 5 (1969)	12

STATUTES CITED

7 C.F.R. §§270 <u>et. seq.</u>	4
U.C.A. §78-33-1	11
U.C.A. §78-4-7	11
U.C.A. §78-6-1	11
U.C.A. §78-6-8	13
U.C.A. §78-6-4	19
U.S.C. §2015(b), Food Stamp Act of 1977	14

OTHER AUTHORITIES

43 Fed. Reg. 47856, 76-77 (Oct. 17, 1978)	18
---	----

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION OF THE LOWER COURT	2
RELIEF SOUGHT ON APPEAL	3
STATEMENT OF FACTS	3
ARGUMENT:	
POINT I. THE LOWER COURT'S MEMORANDUM DECISION SHOULD BE REVERSED SINCE A SMALL CLAIMS COURT DECLARATION OF FRAUD IS A DECLARATORY JUDGMENT OUTSIDE THE JURISDICTION OF A SMALL CLAIMS COURT	4
POINT II. THE LOWER COURT'S MEMORANDUM DECISION SHOULD BE REVERSED SINCE THE NOTICE PROVIDED IN SMALL CLAIMS COURT DOES NOT COMPLY WITH DUE PROCESS SAFEGUARDS OF THE FEDERAL FOOD STAMP REGULATIONS	16
CONCLUSION	21

IN THE SUPREME COURT OF THE STATE OF UTAH

DIANE E. KAPETANOV, on)
behalf of herself and)
others similarly situated,)

Plaintiffs-)
Appellants,)

-vs-)

SMALL CLAIMS COURT OF)
OGDEN, UTAH,)

Defendant-)
Respondent.)

STATE OF UTAH, OFFICE OF)
RECOVERY SERVICES,)

Intervening)
Respondent.)

Case No. 18182

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the Memorandum Decision dated November 24, 1981 by Judge Ronald O. Hyde of the District Court of Weber County, State of Utah. Specifically, appellant appeals the trial court's denial of a Motion for a Writ of Prohibition on the basis that the Small Claims Court is a court of appropriate jurisdiction for the determination of Food Stamp fraud cases.

DISPOSITION OF THE LOWER COURT

On September 15, 1981, a Petition for a Writ of Prohibition was filed in the Second Judicial District Court of Weber County on behalf of the petitioner, Diane E. Kapetanov, and others similarly situated. Petitioners sought the Writ to prohibit the bringing of fraud actions in the Small Claims Court of Ogden City against members of petitioners' class. Petitioners allege that such proceedings are in excess of the jurisdiction of the Small Claims Court. A Temporary Restraining Order was issued by the Honorable Ronald O. Hyde on September 15, 1981, ordering the Small Claims Court to refrain from exercising jurisdiction in proceedings wherein a determination that a defendant had committed Food Stamp fraud was required. A hearing on the Petition for a Writ of Prohibition was heard before the Honorable Ronald O. Hyde on October 2, 1981 with oral argument presented by counsel for petitioners and counsel for Intervening Respondent. On that same date, a stipulation was entered into dissolving the September 15 Temporary Restraining Order and providing that the Intervening Respondent would voluntarily refrain from filing Food Stamp fraud cases in Ogden City Small Claims Court pending the outcome of the hearing. On November 24, 1981, the Court entered its Memorandum Decision denying the Petition for a Writ of Prohibition and this appeal followed.

RELIEF SOUGHT ON APPEAL

Appellants ask this Court to reverse the trial court's Memorandum Decision denying the Petition for a Writ of Prohibition.

STATEMENT OF FACTS

In November 1979, petitioner, Diane E. Kapetanov, resided in Weber County with her three children. Like many other low income persons, Mrs. Kapetanov was receiving a monthly Food Stamp allotment through the State of Utah, Department of Social Services. As Mrs. Kapetanov stated in her affidavit, discipline and communication problems prevented her from knowing that her oldest son had a job. Not knowing that, she did not report it on her November 28, 1979 review form. Upon learning in December of her son's employment, Mrs. Kapetanov immediately reported the fact to the Food Stamp office and submitted wage stubs from her son's employment. As a result of the reported information, it was determined that Mrs. Kapetanov had received a Food Stamp overpayment in the alleged amount of \$270.00.

On July 7, 1981, the State of Utah, Office of Recovery Services (ORS) claimed, by the Affidavit filed in Ogden City Small Claims Court, that Mrs. Kapetanov had knowingly and willfully withheld information relevant to her eligibility for Food Stamps. On the basis of an alleged fraud, ORS sought to recover \$270.00. Mrs. Kapetanov failed to appear at the Small Claims hearing

and a default judgment was entered against her on July 28, 1981.

The default judgment was subsequently set aside and at a hearing on August 25, 1981, Mrs. Kapetanov moved to dismiss the proceeding on the grounds that the finding of fraud required by the Food Stamp program regulations was a declaratory judgment and that the Ogden City Small Claims Court was not a court of competent jurisdiction to grant such a declaration. The Small Claims Court granted Mrs. Kapetanov leave to petition for a Writ of Prohibition, which she subsequently did on behalf of herself and others similarly situated. It is from the denial of this Petition that petitioners appeal.

ARGUMENT

POINT I.

THE LOWER COURT'S MEMORANDUM
DECISION SHOULD BE REVERSED SINCE
A SMALL CLAIMS COURT DECLARATION
OF FRAUD IS A DECLARATORY JUDGMENT
OUTSIDE THE JURISDICTION OF A
SMALL CLAIMS COURT.

The Food Stamp program is designed to promote the general welfare and to safeguard the health and well being of the nation's population by raising the levels of nutrition among low income households. Funding of program benefits is borne entirely by the United States Department of Agriculture; administrative costs and responsibility for implementation are shared with the States. Food Stamp program regulations, promulgated by the Secretary of Agriculture, are found at 7 C.F.R. §§270 et. seq. Included

are specific regulations governing the collection of overpayments to be discussed herein.

Because of the multiplicity of factors involved in calculating Food Stamp benefit levels, recipients at times are allotted more Food Stamps than they are entitled to. The procedures for dealing with excess Food Stamp allotments are contained in the regulations under "Claims against households" and are separated into "fraud" and "non-fraud" claims. 7 C.F.R. §273.18 The regulations list the following as some instances in which claims may arise:

(1) The household failed to provide the State agency with correct or complete information.

(2) The household failed to report to the State agency changes in its household circumstances.

....

(5) The State agency failed to take prompt action on a change reported by the household.

(6) The State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment.

....

(8) The household was found to be ineligible or eligible for fewer benefits than it received pending a fair hearing decision. 7 C.F.R. §273.18(a) (Provisions not applicable in Utah have been omitted)

The regulations further detail procedures for the establishment and collection of both fraud and non-fraud claims. Legal process for collection is available only after fraud is established and after other collection methods have been attempted. 7 C.F.R. §273.18(c). Non-fraud claims collections may be suspended and terminated under certain circumstances. 7 C.F.R. §273.18 (b) (3), (4). Since the State has characterized the claims involved herein as willful withholding of information, the following discussion will focus on "fraud claims".

The Food Stamp regulations at 7 C.F.R. §273.18(c) explicitly provide that a claim against a Food Stamp household may be handled as a fraud claim only if an administrative fraud hearing or a court of appropriate jurisdiction has found that the household committed fraud as defined in §273.16(b). That definition of fraud states:

[F]raud shall consist of any action by an individual to knowingly, willfully and with deceitful intent:

- (1) Make a false statement to the State agency, either orally or in writing, to obtain benefits to which the household is not entitled;
- (2) Conceal information to obtain benefits to which the household is not entitled;
- (3) Alter ATP's to obtain benefits to which the household is not entitled;

(4) Use coupons to buy expensive or conspicuous nonfood items such as alcohol or cartons of cigarettes;

(5) Use or possess improperly obtained coupons or ATPs; or

(6) Trade or sell coupons or ATP's.
7 C.F.R. §273.16(b)

The burden of proving fraud is on the State agency, 7 C.F.R. §273.16(d). Only after a declaration of fraud can the State agency proceed to collection. 7 C.F.R. §273.18(c) But even after fraud is determined, the procedure for collecting fraud claims is prescribed by the federal regulations which provide, in part:

If a household member is found to have committed fraud (through an administrative fraud hearing or by a court of appropriate jurisdiction) the State agency shall send the individual a written agreement letter for restitution as indicated in §273.16 (d) (9) (ii). In addition, a personal contact shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance as a result of nonfraud demand letters, the State agency has documentation which shows the household cannot be located, or the legal representative prosecuting a member of the household for fraud advises, in writing, that collection action will prejudice the case. In cases where a household member was found guilty of fraud by a court, the State agency shall request the matter of restitution be brought before the court. 7 C.F.R. §273.18(c) (2) (i).

The regulations also prescribe methods for compromising

the amount to be collected in certain instances:

State agencies shall collect payments for fraud claims in one of the following ways:

(i) Reduction in food stamp allotment. Prior to reduction, the State agency shall discuss with the household the amount of food stamps to be recovered each month. The amount of food stamps to be recovered each month shall be the lesser of 25 percent of the household's monthly allotment or the fraudulent individual's pro rata share of the entitlement. Recovery of less than these amounts shall be accepted only if it results in equal increments or if the full amount can be recovered within a year using a lesser percentage. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with §272.17.

(ii) Repayment in cash. If the household member found guilty of fraud agrees to a repayment in cash, and the individual is financially able to repay the claim in full, the State agency shall collect the payment in one lump sum. However, if the household has insufficient liquid resources or is otherwise unable to pay the claim in one lump sum, payments shall be accepted in regular installments. The household shall not be required to liquidate all of its resources to make this repayment. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the individual to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with §273.17. 7 C.F.R. §273.18(e)(2).

The "collection" contemplated by the Food Stamp regulations differs substantially from the collection afforded by a Small Claims Court whose judgment may be executed upon immediately by the sheriff. Because the Food Stamp regulations require exhaustion of mandated procedures and prohibit immediate coercive relief, ORS does not seek to invoke the coercive consequences of a Small Claims Court finding of fraud. Rather, ORS asks the court to declare that the recipient has committed fraud. Such a finding is a declaratory judgment outside the power of the Small Claims Court.

A generally accepted definition of a "declaratory judgment" is:

One which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. Its distinctive characteristics are that no executory process follows as of course, nor is it necessary that an actual wrong, giving rise to action for damages should have been done, or be immediately threatened. Black's Law Dictionary, citing Petition of Kariher, 284 Pa. 455, 131 A. 265, 268.

The distinction between a mere declaration of rights and coercive decree is illuminated by BORCHARD, DECLARATORY JUDGMENTS, 443, as cited in Gray v. Defa, 135 P.2d 251, 255 (Utah 1943):

The coercive decree looks only to some immediate need, whereas the declaration of rights, by clarifying the legal relations, has prospective value in stabilizing the legal position.

The United States Supreme Court spoke unequivocally of the absence of coercion in declaratory judgments:

[E]ven though a federal declaratory judgment has 'the force and effect of a final judgment', 28 U.S.C. §2201 [28 U.S.C.A. §2201], it is a much milder form of relief than an injunction. Though it may be persuasive, it is not ultimately coercive; non-compliance with it may be inappropriate, but it is not contempt. Steffel v. Thompson, 415 U.S. 452, 471 (1974), quoting Perez v. Ledesma, 401 U.S. 82, 124-27 (1971).

In upholding the constitutionality of the Federal Declaratory Judgment Act, now codified at 28 U.S.C. §2201, Chief Justice Hughes wrote:

[T]he judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. (Citations omitted) And it is not essential to the exercise of the judicial power that an injunction be sought; allegations that irreparable injury is threatened are not required. Aetna Life Insurance Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240 (1937).

Further indication of the non-coercive nature of a declaratory judgment can be found in Powell v. McCormack, 395 U.S. 486, 499 (1969):

A court may grant declaratory relief even though it chooses not to issue an injunction or mandamus, and a declaratory judgment can then be used as a predicate to further relief, including an injunction.

The Utah Supreme Court has spoken recently of the distinction:

The purpose of the creation of the declaratory judgment procedure was to avoid the difficulties of the common-law rule that rights would not be adjudicated by a court unless there had been a violation for which relief could be granted.... Salt Lake County v. Salt Lake City, 570 P.2d 119, 120 (Utah 1977).

Because fraud determinations in the Food Stamp program are declaratory judgments, the Small Claims Court is not the "court of appropriate jurisdiction" under 7 C.F.R. §273.18(c). Pursuant to U.C.A. §78-33-1, only a District Court can issue a declaratory judgment. Section 78-6-1 creates Small Claims Courts as a department of the Circuit Courts, whose own powers are specifically enumerated at U.C.A. §78-4-7. Nowhere in the statute's detailed listing of the Circuit Court's civil jurisdiction is there provision for the granting of declaratory judgments. This Court has held:

It is a well established rule of construction that where a statute grants a power or right the powers not mentioned in the enumeration are intended to be excluded. Suth St. Const. Sec. 325. Hansen v. Board of Education, etc., 116 P.2d 936 (Utah 1941). See also In re Hubbard, 396 P.2d 809 (Cal. 1964).

Since declaratory judgments are not listed as one of the powers of the Circuit Court, the conclusion follows that the Circuit Court does not have the power to grant declaratory judgments.

Further, U.C.A. §78-6-1 provides that the

Small Claims Court "shall have jurisdiction...for the recovery of money only..." By the same rule of construction supra, this language implies that the Court is not empowered to grant other types of relief, e.g., declaratory judgments. The actions brought by the Intervening Respondent are not for the recovery of money, since federal regulations forestall any coercive collection efforts by ORS. Rather, the actions brought seek declaratory judgments and are outside the jurisdiction of Small Claims Court.

In a similar context, the United States Supreme Court held that the U.S. Court of Claims was without jurisdiction under the Federal Declaratory Judgment Act, supra, to issue declaratory judgments. Noting that it had held in 1868 that "the only judgments which the Court of Claims [is] authorized to render...are judgments for money found due," a unanimous Supreme Court held:

There is not a single indication in the Declaratory Judgment Act or its history that Congress, in passing that Act, intended to give the Court of Claims an expanded jurisdiction that had been denied to it for nearly a century. In the absence of an express grant of jurisdiction from Congress, we decline to assume that the Court of Claims has been given the authority to issue declaratory judgments. United States v. King, 395 U.S. 1, 5 (1969).

Careful consideration of the federal Food Stamp regulations and the statutory authority of the Small Claims Court supports the conclusion that the actions brought by the Intervening Respondent, State of Utah

Office of Recovery Services, result in improper declaratory judgments. The Intervening Respondent must follow procedures prescribed by federal regulation, to collect on a fraud claim. After fraud is determined, ORS must send a demand letter, make a personal visit, reduce any current Food Stamp allotment, and accept payment in installments if warranted; ORS is prohibited from liquidating resources if the recipient is unable to pay. 7 C.F.R. §273.18(c)(2), (e)(2) None of the federally established safeguards protect a defendant subject to execution upon a judgment issuing from a Small Claims Court. Small Claims Court judgments allow the full range of execution devices:

Attachment, garnishment and execution may issue after judgment in the manner prescribed by law upon the payment of the fees allowed by law for such services. U.C.A. §78-6-8

As a general statement, the District Court's decision is correct in holding that a Small Claims Court can find that money is due and owing based on its finding that fraud was committed without running afoul of that Court's incapacity to render declaratory judgments. But the character of the relief sought must determine the relief to be afforded. Intervening Respondent ORS can, under its federal regulatory constraints, request only that the court determine whether fraud was committed. Its next steps are that series of collection activities noted above that may culminate in coercive process issued by a court of appropriate jurisdiction. Hence, the Small

Claims Court is asked to render a determination of fraud, not to direct any further coercive action; to ask for more would contravene federal regulations. Such declaratory judgments are beyond the statutory powers of the Small Claims Courts of Utah and should be prohibited.

Additional evidence that the bringing of fraud claims in Small Claims Court is inappropriate can be found in the disqualification provisions of the federal Food Stamp law and regulations. The Food Stamp Act of 1977, 7 U.S.C. §2015(b) speaks of "a court of appropriate jurisdiction" in the context of a penalty to be imposed as the consequence of a fraud determination:

No individual who is a member of a household otherwise eligible to participate in the food stamp program shall be eligible to participate for ... (2) a period of not less than six and not more than twenty-four months, as determined by the court, after such individual has been found by a court of appropriate jurisdiction... to have been criminally or civilly fraudulent in the use, presentation, transfer, acquisition, receipt, possession, or alteration of coupons...

The regulations elaborate:

A court of appropriate jurisdiction, with either the State, a political subdivision of the State, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than 6 months and not more than 24 months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the State agency to disqualify the individual through an administrative fraud hearing.
7 C.F.R. §273.16(e) (1)

As noted previously, the Small Claims Court's jurisdiction is limited to "the recovery of money only...". In mandating disqualification, Congress did not address its concern to dollar amounts, but rather to the power of the particular Court to issue a punitive order. Thus, the appropriateness of the Court must be viewed not only in terms of the power of a court to make a declaratory judgment, but also in terms of its authority to order the sanction. Ordering such a disqualification is patently in excess of the jurisdiction of a Small Claims Court, compelling the conclusion that Small Claims is not the "court of appropriate jurisdiction" intended by Congress.

Further indication that Small Claims is not the court intended by Congress for the bringing of fraud claims lies in 7 C.F.R. §273.16(e)(2). The regulation provides:

State agencies are encouraged to refer for prosecution under State or local fraud statutes those individuals suspected of committing fraud, particularly if large amounts of food stamps are suspected of being fraudulently obtained or the individual is suspected of committing more than one fraudulent act. The State agency shall confer with its legal representatives to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal fraud penalties. (emphasis added)

By definition "large amounts of food stamps"

are not involved when the Intervening Respondent files its action in Small Claims Court. (Indeed, earlier Food Stamp program regulations provided:

The State agency may decline collection action to recover the value of the excess free coupons from the recipient household in any case in which such value is less than \$400... 7 C.F.R. §217.7(f) [1977].)

Food Stamp overpayments of the type experienced by Mrs. Kapetanov are not the type intended for prosecution in Small Claims Court. Only the fraudulent taking of Food Stamps of an amount warranting the initiation of a civil action should be handled outside the administrative hearing process. The Intervening Respondent, by bringing such actions in Small Claims Court, conveniently bypasses federal regulations and seeks judgments in excess of the jurisdiction of the Small Claims Court.

POINT II.

THE LOWER COURT'S MEMORANDUM DECISION SHOULD BE REVERSED SINCE THE NOTICE PROVIDED IN SMALL CLAIMS COURT DOES NOT COMPLY WITH DUE PROCESS SAFEGUARDS OF THE FEDERAL FOOD STAMP REGULATIONS.

Lack of jurisdiction in the Small Claims Court does not leave the State without recourse in the collection of fraud claims. The same federal regulatory scheme, discussed earlier, prescribes a detailed administrative hearing procedure to provide the State its recourse, while protecting the rights of those suspected of committing fraud. The

regulations provide:

The State agency shall provide written notice to the household member suspected of fraud at least 30 days in advance of the date a fraud hearing initiated by the State agency has been scheduled. The notice shall be mailed Certified Mail-Return Receipt Requested, and shall contain, at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the household member;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(E) A warning that a determination of fraud will result in a 3-month disqualification;

(F) A listing of the household member's rights as contained in §273.15(p);

(G) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for fraud in a civil or criminal court action, or from collecting the overissuance;

(H) A statement that the individual can call the food stamp office to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the food stamp office shall provide, when called, the phone number of a lawyer referral service of the local bar association.

7 C.F.R. §273.16(d)(3)(i)

The policy behind the detailed procedural safeguards is set forth in the Supplementary Information

provided when the regulations were published. The Department of Agriculture provided the safeguards because of the serious nature of fraud claims:

The Department [of Agriculture] carefully considered those [constitutional] due process requirements in establishing the fraud hearing standards. In addition, the term "fraud" is strictly defined in the regulations...

....

Under current procedures and the final regulations households are required to repay fraudulent overissuances. State agencies may file a civil court action to enforce repayment if the household does not voluntarily repay the fraudulent overissuance...

....

Where there are differences between the procedures for conducting fraud and fair hearings, those differences have primarily been adopted to afford more protection for the rights of the individual suspected of fraud. The consequences of a fraud determination are usually regarded as very serious; thus additional protections are provided as a matter of policy. For example, in cases where the State agency has initiated a fraud hearing, the Department believes the individual suspected of fraud should be provided 30 days advance notice... 43 Fed. Reg. 47846, 76-77 (Oct. 17, 1978).

The 30 days notice requirement is only one of the procedural devices mandated by the Department of Agriculture to preserve the due process rights of Food Stamp recipients. The regulation contains a host of other protections, including: a summary of the evidence, a warning of the possibility of disqualification and advice concerning the availability of free legal advice. None of these

procedure. In contrast to the 30 days notice required by federal regulations, the Small Claims Court procedure requires simply the execution of an affidavit and the signing of an order by the judge directing the defendant's appearance within 20 days:

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than twenty days nor less than five days from the date of said order...
U.C.A. §78-6-4.

Meeting the maximum 20-day notice of the Utah statute precludes ORS from meeting the minimum 30-day notice requirement of the federal regulation. If the Intervening Respondent complies with the 30-day federal standard, it cannot comply with the Small Claims statute, further depriving the Small Claims Court of jurisdiction. While it may be argued that in District Court a fraud claim case could be set for trial (or default) on the twenty-first day after filing a complaint, nothing in the Rules of Civil Procedure prevent the Intervening Respondent from delaying such a trial long enough to meet its 30-day federal notice requirement. It cannot, however, delay Small Claims Court proceedings.

By filing Food Stamp fraud claims in Small Claims Court, rather than pursuing them through the administrative hearing process, the Utah Department of Social Services and its Office of Recovery Services effectively circumvent the many procedural safeguards designed to protect the rights of those suspected of fraud. Although the State agency is permitted to pursue a fraud action in court,

the qualification that the court be one of appropriate jurisdiction coupled with the network of regulatory procedural safeguards dictates that the court be one that at least affords the same rights and protections available in the administrative fraud hearing setting. A careful review of the federal regulations demonstrates that Food Stamp overpayments of the type charged against Mrs. Kapetanov are to be handled through the administrative hearing process where the accused enjoys federal due process rights. Only serious overpayments involving large amounts of Food Stamps or involving two or more suspected violations should be brought in a court of appropriate jurisdiction, which appellants contend is the District Court.

If claims intended for civil prosecution are brought in District Court, the participant accused of fraud will be accorded those due process rights spelled out in the federal regulations. The defendant will be served with a summons and complaint which by law must state in detail the requisite elements of fraud. The defendant will be given proper notice and time to appear which complies with the federal regulations. These safeguards are lacking when ORS files an affidavit in Small Claims Court and orders the defendant's appearance in twenty days.

CONCLUSION

Intervening Respondent has at least three forums in which to determine whether fraud has been committed by a Food Stamp recipient--an administrative fraud hearing, a civil proceeding in a court of appropriate jurisdiction, and a criminal proceeding. Those choices are consecutive or cumulative and not alternative. While ORS is restricted from appealing from an administrative determination, that same restriction arises as well in Small Claims Court: thus nothing is gained by proceeding there. Indeed, it should be noted that the United State Department of Agriculture funds fully 75% of administrative costs incurred in the recovery of fraud overpayments. Every advantage lies in conducting an administrative hearing. Further, since its remedies are consecutive, ORS has recourse to the court of appropriate jurisdiction, the District Court, for a new determination, should it lose at an administrative hearing and should the case be of the type recommended for civil action.

Restrictions embodied in the federal regulations governing the Food Stamp Program guide ORS' actions in proceedings to recover fraud overpayment claims against households. If the Intervening Respondent follows those regulations, the Small Claims Court is without jurisdiction: first, because the Intervening Respondent seeks a declaratory judgment that a Small Claims Court cannot issue; second, because Intervening Respondent must provide 30 days notice, which

precludes a Small Claims Court from acting; and third, because Intervening Respondent ultimately seeks not only the recovery of money but also a term of disqualification from further participation in the Food Stamp program-- a penalty that the Small Claims Court is powerless to impose.

DATED this 15th day of March, 1982.

Respectfully Submitted:



W. PAUL WHARTON
Attorney for Appellants
UTAHNS AGAINST HUNGER



MICHAEL E. BULSON
UTAH LEGAL SERVICES, INC.
Attorney for Appellants