

**U.S. DEPARTMENT OF LABOR**

SECRETARY **OF** LABOR  
WASHINGTON, D.C.

DATE: November 24, **1992**  
CASE NO. **88-CTA-7**

IN THE MATTER OF  
HUDSON COUNTY, NEW JERSEY,  
COMPLAINANT,

v.

U.S. DEPARTMENT OF LABOR,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This **case** arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. **§§ 801-999** (Supp. V 1981) <sup>1/</sup> and the regulations promulgated at 20 C.F.R. Parts **675-680** (1990). The dispute involves the Grant Officer's disallowance of \$200,000 in legal fees and his assessment of interest thereon. The disallowed expenditures were incurred by Hudson County, New Jersey, to the Washington, D.C., law firm of Krivit & Krivit, **P.C.**, shortly before Hudson County's CETA funding was to terminate by the repeal of CETA and its replacement by the Job Training Partnership Act.

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<sup>1/</sup> CETA was repealed effective October 12, 1982. The replacement statute, the Job Training Partnership Act, 29 U.S.C. **§§ 1501-1791 (1988)**, provides that pending proceedings under CETA are not affected. 29 U.S.C. **§ 1591(e)**.

BACKGROUND

Hudson County was a Prime Sponsor for the receipt of CETA grant funds awarded by the Department of Labor. As CETA programs were terminating in 1982 because of statutory repeal, Hudson County received the last of its CETA funding from the Department in 1982. Hearing Transcript (T.) at 30; Admin. File, Tab 1, Exhibit A. The only funds available for CETA purposes thereafter were those placed in the Administrative Cost Pool (ACP), for which authorization to expend funds was extended until July 31, 1984.

As part of the CETA termination closeout process in connection with audits of Hudson County's program, the Grant Officer disallowed various expenditures from January 1, 1978, to September 30, 1981. The County appealed these disallowances to the Office of Administrative Law Judges and retained the Krivit law firm to provide legal services in connection with the resolution or defense of these disallowances. The County paid Krivit & Krivit a \$200,000 retainer on July 31, 1984 (the end of the County's Extended Administrative Cost Pool, precluding further expenditures of CETA funds). T. at 28-29, 106. The law firm deposited the funds in an escrow account and drew on them between August 23, 1984, and September 30, 1986, when the retainer was depleted and the disallowances resolved through settlement before any hearings were held. T. at 57, 127-29, G-16-17,19.

On September 9, 1988, the Grant Officer issued a notice of final determination (F.D.) to the Executive Director of the Hudson County Office of Employment and Training, which disallowed the legal expenditures at issue in this case. The F.D. cited twelve separate grounds, and demanded restitution of the \$200,000, plus interest. Admin. File, Tab 11.

On October 30, 1990, a hearing was held before an Administrative Law Judge (ALJ). On May 8, 1991, the ALJ issued a Decision and Order (D. and O.) affirming the \$200,000 disallowance on all of the Grant Officer's grounds except for the latter's finding that the expenditure also constituted an improper expenditure of funds to prosecute a claim against the Federal Government under 41 C.F.R. § 1-15.711-16. D. and O. at 5-8. Further, the ALJ held that interest could not be assessed because "CETA do[es] not contain any statutory authority for the assessment of interest ... where grant funds are misused or misspent. Thus, ... the provisions of the Debt Collection [Act] govern whether interest may be assessed .... Because the provisions ... are clear in restricting the assessment of interest against local governments, the Grant Officer's assessment ... is reversed." D. and O. at 17. Only the Grant Officer filed exceptions. On July 1, 1991, the Secretary asserted jurisdiction pursuant to 20 C.F.R. § 676.91(f) (1990).

#### DISCUSSION

The Grant Officer argues that the ALJ focused erroneously on the Krivit law firm's resolution of the disputed disallowances

through voluntary settlements, <sup>2/</sup> rather than through the administrative hearing process, D. and O. at 6, in finding that the disputed CETA funds were not spent to prosecute claims against the Federal Government in contravention of 41 C.F.R. § 15.711-16. Regardless of the Grant Officer's argument as a general matter, I decline to decide it because its resolution is not essential to any ruling at issue. See Matter of Martin, 963 F.2d 809, 815-16 (5th Cir. 1992); Sarnoff v. American Home Products Corporation, 798 F.2d 1075, 1084 (7th Cir. 1986); Burroushs v. Holiday Inn, 621 F.Supp. 351, 353 (D.C.N.Y. 1985). Not only are there eleven other bases to support the Grant Officer's disallowance in the D. and O., but, more significantly, Hudson County has not excepted to the disallowance finding, thus "waiv[ing]" any further attempts to justify its use of the CETA funds. 20 C.F.R. § 676.91(f). Therefore, ruling on whether use of the funds constituted the prosecution of claims against the Federal Government is unnecessary and would amount to mere dicta, since the question is joined to an issue (the lawfulness of the expenditures to Krivit & Krivit) which has become moot by virtue of the County's non-appeal on the disallowance itself. See In the Matter of Illinois Miarant Council, Inc. v. United States Department of Labor, Case No. 84-JTP-10, **Sec's** Fin. Dec. and Order, July 17, 1986, slip op. at 6-11.

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<sup>2/</sup> Compare Oakland County Board of Commissioners v. United States Department of Labor, 853 F.2d 439, 441, 443 (6th Cir. 1988), with Hamilton v. Northeast Kansas Health Systems Aaencv. Inc., 701 F.2d 860, 863 (10th Cir. 1983), and Grumman Aerospace Corporation v. United States, 579 F.2d 586, 591-97 (Ct. Cl. 1978).

The Grant Officer objects to the ALJ's denial of interest against Hudson County by reason of its status as a local government not subject to the payment of interest to the United States under the Debt Collection Act of 1982 (DCA), 31 U.S.C. §§ 3701(c), 3717 (1988), as interpreted by the ALJ in reliance on Commonwealth of Pennsylvania. Department of Public Welfare v. United States, 781 F.2d 334, 342 (3d Cir. 1986).<sup>3/</sup> D. and O. at 17. Further, the Grant Officer disputes the ALJ's holding that CETA itself contains no statutory authority to assess interest. Id.<sup>4/</sup>

The County contends that the Third Circuit's 1986 decision in Commonwealth of Pennsylvania is dispositive and controlling. But the court there did not address the applicability of the DCA to a "claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." 31 U.S.C. § 3717(g)(2). A year later, in West Virginia v. United States, 479 U.S. 305 (1987), the Supreme Court affirmed West Virginia's liability for prejudgment interest on a debt incurred before passage of the DCA and noted specifically that "this statute does not apply to claims arising under contracts entered into before October 25,

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<sup>3/</sup> But see Gallesos v. Lynq, 891 F.2d 788, 795-800 (10th Cir. 1989); County of St. Clair. Michigan v. United States Department of Labor, No. 83-3546, 1984 U.S. App. LEXIS, slip op. (6th Cir., Dec. 7, 1984).

<sup>4/</sup> The Grant Officer's brief to the Secretary at 16-19 urges that CETA at 29 U.S.C. § 816(d)(1) contains broad authority for the assessment of interest against state or local governments. See Consolidated Rail Corporation v. Certainteed Corporation, 835 F.2d 474, 478-79 (3d Cir. 1988).

1982, and therefore has no force **here.**" 479 U.S. 312 n.6. In Florida Department of Labor and Employment Security v. U.S. Dept of Labor, 893 F.2d 1319 (11th Cir. 1990), cert. denied, 111 S. ct. 49 (1990), the Eleventh Circuit examined the precise issue of a pre-DCA grant in the context of CETA. The court concluded that under the 31 U.S.C. § 3717(g)(2) and West Virginia "the provisions of the Debt Collection Act are inapplicable," 893 F.2d at 1324, and affirmed the Secretary's imposition of interest under federal common law. Thus, the ALJ erred in determining that the DCA was applicable to this case. As indicated supra, the challenged expenditures arose in the defense of Hudson County's grants from 1978 to September 1981 and were dispensed from the close-out Administrative Cost Pool, comprised of funds from the County's 1982 grant. T. at 29-30. Because the disallowed expenditures came from the ACP, they fall within the DCA's specified timeframe preceding application of the interest section of the Act at 31 U.S.C. § 3717. Hence, interest may be assessed under federal common law principles. Florida Department of Labor and Employment Security, 893 F.2d at 1322-24; Riles v. Bennett, 831 F.2d 875, 877-78 (9th Cir. 1987), cert. denied, 108 S.Ct. 1291 (1988); West Virginia, 479 U.S. at 308-12; Rodgers v. United States, 332 U.S. 371, 373 (1947).

Hudson County suggests that the Grant Officer waived the Department's right to collect prejudgment interest pending completion of the appeal process. The record reveals that interest was assessed prior to the date of appeal. The Grant

Officer's Final Determination stated: "[S]ince the Federal government has lost the use of these public funds for the period August 1984 - August 1988, ... interest has accrued against these excess funds at the then prevailing U.S. Treasury rate of 9%. Total interest to date: \$82,317." Admin. File, Tab 11. He stated further that if "a hearing is requested and granted, debt collection actions will be suspended and no interest or other sanctions will be charged or imposed while the disallowance is under appeal." Id. These statements do not constitute a waiver of the prejudgment interest already assessed or postjudgment interest that may accrue. Accordingly, Hudson County remains subject to all applicable interest.

ORDER

The **ALJ's** holding that the Department of Labor is not entitled to interest on the \$200,000 in disallowed expenditures is REVERSED. Hudson County, New Jersey, is directed to repay this \$200,000 disallowance (if it has not already done so) to the Department with interest payable and accruing in accordance with the Grant Officer's Final Determination until full payment is received. All payments shall be from non-Federal funds. Milwaukee County v. Wisconsin v. Donovan, 771 F.2d 983, 993 (7th Cir. 1985).

SO ORDERED.

  
Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of Hudson County, New Jersey v. U.S.  
Department of Labor

Case No. : 88-CTA-7

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following  
persons on NOV 24 1992.

*Kathleen Grant*

CERTIFIED MAIL

Mark E. Morchel  
Acting County Counsel  
Attn: Kathleen M. Grant  
Assistant County Counsel  
Assistant County Counsel  
County of Hudson, New Jersey  
Office of the County Counsel  
Department of Law  
Administration Building  
595 Newark Avenue  
Jersey City, NJ 07306

Edward M. Farrelly,  
Executive Director  
Hudson County Office of  
Employment & Training  
71 Adams Street  
**Hoboken, NJ 07030**

Patricia M. Rodenhausen  
Regional Solicitor  
Attn: Jane Snell Brunner, Esq.  
U.S. Department of Labor  
201 Varick Street  
Room 707  
New York, NY 10014

**Lovell** Sutherland  
Grant Officer  
U.S. Department of Labor/ETA  
201 Varick Street  
New York, NY 10014

HAND DELIVERED

Charles Raymond  
Associate Solicitor for  
Employment and Training  
Legal Services  
U.S. Department of Labor  
Room N-2101  
200 Constitution Ave., N.W.  
Washington, DC 20210

REGULAR MAIL

David O. Williams  
Office of Financial Administrative  
Management  
Charles Wood  
Chief, Division of Audit Resolution  
Linda Kontnier  
Office of Debt Management  
U.S. Department of Labor  
200 Constitution Ave., N.W.  
Room N-4671  
Washington, DC 20210

Hon. Nahum **Litt**  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
800 K Street, N.W., Suite 400  
Washington, DC 20001-8002

Hon. John M. Vittone  
Deputy Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Department of Labor  
800 K Street, N.W., Suite 400  
Washington, DC 20001-8002

Hon. Ainsworth H. Brown  
Administrative Law Judge  
Office of Administrative Law Judges  
2600 Mt. Ephraim Avenue  
Camden, NJ 08104

\* As of September 28, 1992 the telephone number for the Office of Administrative Appeals will be changed to (202) 219-4728.