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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

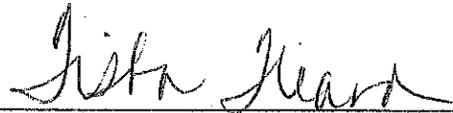
**Cynthia Sommer**

Claim No. G578539

**Notice of Decision**

On August 13, 2009, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: August 13, 2009



Tisha Heard  
Board Liaison  
Victim Compensation and  
Government Claims Board

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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
9 **OF THE STATE OF CALIFORNIA**  
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11 In the matter of the Application of:

12 **Cynthia Sommer**

13 Application No. G578539

**Proposed Decision**

**(Penal Code § 4900 et seq.)**

14 **Introduction**

15 On or about October 16, 2008, Cynthia Sommer filed a claim for compensation as an  
16 erroneously convicted felon, pursuant to Penal Code sections 4900 et seq., with the Victim  
17 Compensation and Government Claims Board. She is represented by attorney Robert Rosenthal.

18 The California Department of Justice, Office of the Attorney General is represented by Michael  
19 Farrell, Senior Assistant Attorney General.

20 **Issue**

21 Does the Board have the authority to consider Cynthia Sommer's claim for compensation?

22 **Summary of the Evidence**

23 On November 30, 2005, Cynthia Sommer was charged in San Diego with the murder of her  
24 husband. She refused to waive extradition from Florida, and remained in custody in Florida until  
25 March 2006. On March 10, 2006, she was arraigned in San Diego Superior Court after waiving  
26 extradition. Cynthia Sommer was held in the Las Colinas Women's Detention Facility.<sup>1</sup> Following a  
27 preliminary examination on July 10, 2006, she was held to answer for trial on the murder charge with  
28

<sup>1</sup> Las Colinas Women's Detention Center is San Diego County's only all-female jail.

1 special circumstances.<sup>2</sup> Cynthia Sommer's trial began on January 2, 2007, and on January 30, 2007,  
2 the jury returned a guilty verdict. However sentencing was continued several times pending a  
3 determination on Cynthia Sommer's motion for a new trial.<sup>3</sup> On November 30, 2007, Cynthia  
4 Sommer's motion for a new trial was granted. On April 17, 2008, the San Diego District Attorney's  
5 Office moved to dismiss the case without prejudice,<sup>4</sup> and Cynthia Sommer was released from  
6 custody. Cynthia Sommer's motion to dismiss the criminal case with prejudice<sup>5</sup> is scheduled for  
7 hearing in San Diego on August 29, 2009.

8 Upon receipt of her claim for compensation, the hearing officer notified Cynthia Sommer's  
9 attorney that it appeared that the Board did not have the authority to consider her claim for  
10 compensation because Cynthia Sommer had never been incarcerated in a state prison as a result of  
11 her murder conviction as is required by Penal Code section 4900. The claimant's attorney and the  
12 Office of the Attorney General were provided an opportunity to respond to the hearing officer's  
13 concern, and both provided written argument.<sup>6</sup>

14 The claimant's attorney argued that because Penal Code section 4903 uses the term  
15 "imprisonment" and not "prison," Cynthia Sommer deserves to be compensated for the time she spent  
16 in a San Diego County jail.

17 The Attorney General responded that the claim cannot be considered by the Board because  
18 the plain language of Penal Code section 4900 requires eligible claimants to be those persons who  
19 were erroneously convicted and imprisoned in a state prison, and the claimant has never been  
20 imprisoned in the state prison for that conviction.

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23 <sup>2</sup> Special circumstances were charged because Cynthia Sommer's husband was determined to have  
24 died as a result of ingesting arsenic.

25 <sup>3</sup> The motion for a new trial was based on subsequent testing of the decedent's blood that did not  
26 reveal the presence of arsenic, supporting the defendant's argument that her husband died of natural  
27 causes and not by poisoning.

28 <sup>4</sup> A dismissal without prejudice allows the district attorney to re-file criminal charges at a later date.

<sup>5</sup> A dismissal with prejudice prevents a district attorney from re-filing criminal charges at a later date.

<sup>6</sup> See Attachments.

1 **Findings**

2 A preponderance of the evidence supports the following findings:

- 3 1. Confinement in a state prison is a prerequisite for a Penal Code section 4900 claim.  
4 2. Cynthia Sommer was not sentenced and did not serve time in a state prison subsequent  
5 to her murder conviction.  
6 3. Confinement in a county jail is not synonymous with incarceration in a state prison for  
7 purposes of a claim pursuant to Penal Code sections 4900 et seq.

8 **Determination of Issues**

9 Penal Code section 4900 states that "any person who, having been convicted of any crime  
10 against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted  
11 a pardon by the Governor for the reason that the crime with which he or she was charged was either  
12 not committed at all or, if committed, was not committed by him or her, or who, being innocent of the  
13 crime with which he or she was charged for either of the foregoing reasons, shall have served the term  
14 or any part thereof for which he or she was imprisoned, may, under the conditions provided under this  
15 chapter, present a claim against the state to the California Victim Compensation and Government  
16 Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and  
17 imprisonment." (Emphasis added.)  
18

19 Penal Code section 4901 establishes the procedural elements required of claimants in the filing  
20 of a claim as an erroneously convicted felon. In order for the Board to consider a claim, the claimant  
21 must submit her claim, accompanied by a statement of the facts constituting the claim and verified in  
22 the manner provided for the verification of complaints in civil actions, to the California Victim  
23 Compensation and Government Claims Board within a period of six months after judgment of acquittal  
24 or discharge given, or after pardon granted, or after release from imprisonment, and at least four  
25 months prior to the next meeting of the Legislature and no claim not so presented shall be considered  
26 by the California Victim Compensation and Government Claims Board.  
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1 It is clear that the Board cannot consider a claim for compensation as an erroneously  
2 convicted felon unless the claimant has been incarcerated in a state prison subsequent to a felony  
3 conviction. While it is acknowledged that Cynthia Sommer's freedom was curtailed during the  
4 periods before and after her murder trial, Cynthia Sommer was never incarcerated in a state prison.  
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6 Cynthia Sommer's claim under Penal Code section 4900, et seq. is rejected.

7 Date: July 6, 2009



8 Kyle Hedum  
9 Hearing Officer  
10 Victim Compensation and  
11 Government Claims Board  
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PROOF OF SERVICE BY MAIL

Case Name: Cynthia Sommer

Case No: G578539

I, Benedicte Lewis, declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 400 R Street, Sacramento, California 95811.

On August 13, 2009, I served the following: **Proposed Decision and Notice** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail addressed as follows:

See attached Interested Party List

BY MAIL: I am readily familiar with my employer's practice for the collection and processing of correspondence/documents for mailing with the United States Postal Service. Under their practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after the date of deposit for mailing in this affidavit.

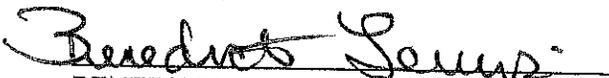
BY FACSIMILE: I personally sent the above-described documents via FAX to the addressee(s), with a confirming copy by First Class Mail.

BY PERSONAL SERVICE: I delivered such envelope(s) by hand to the offices of the addressee(s).

BY EXPRESS MAIL: I personally deposited such document in the Express Mail depository at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 13, 2009, at Sacramento, California.

  
BENEDICTE LEWIS