

**STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 16<sup>th</sup> JUDICIAL CIRCUIT  
MACOMB COUNTY**

STATE TREASURER,

Plaintiff,

Case No. 08-2750-CZ

v

Hon. Matthew Switalski

JOHN LOMNICKI, [REDACTED], JENNIE  
GARDNER, POA, and STATE OF  
MICHIGAN, OFFICE OF RETIREMENT  
SERVICES,

Defendants.

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MICHAEL A. COX  
Attorney General

VICTORIA A. REARDON (P41682)  
Assistant Attorney General  
Cadillac Place  
3030 W. Grand Blvd., Ste. 10-200  
Detroit, MI 48202  
(313) 456-0140  
(313) 456-0291-Fax  
Attorneys for Plaintiff

JENNIE GARDNER, POA  
24173 Karen Avenue  
Warren, MI 48091-3357  
Defendant

JOHN LOMNICKI, [REDACTED]  
Huron Valley Complex/Men's  
3201 Bemis Road  
Ypsilanti, MI 48197  
Defendant – In Pro Per

STATE OF MICHIGAN, OFFICE OF  
RETIREMENT SERVICES  
Larry Brya  
Assistant Attorney General  
State Operations  
G. Mennen Williams Building – Second  
Floor  
525 W. Ottawa, PO Box 30754  
Lansing, MI 48909  
(517) 373-1162  
(517) 373-2060-Fax  
Defendant

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**CONSENT FINAL ORDER**

**CONSENT FINAL ORDER**

At a session of said Court, held in the City  
of Mt. Clemens, Macomb County, MI on

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PRESENT: Hon. \_\_\_\_\_  
Circuit Court Judge

This matter has come before the Court upon this Court's *Show Cause Order*, entered on December 20, 2006, requiring Defendant John Lomnicki to show cause why his assets should not be awarded to the State for the cost of his care according to the *State Correctional Facility Reimbursement Act* (SCFRA), MCL 800.401, *et seq.*

The parties have agreed to settle this matter as evidenced by the signature of the parties and counsel appearing below.

The Court finds that Defendant John Lomnicki is indebted to the State for the cost of his care in the amount of \$387,950.00 through his earliest release date and in the amount of \$1,061,970.00 through his maximum release date, and the Court is otherwise fully advised of the facts in this case and finds entry of this order appropriate.

This Court finds that the Defendant John Lomnicki has the following assets that are subject to SCFRA:

1. Funds in the approximate amount of \$46,570.36 held in an account by Defendant Jennie Gardner and controlled by Mr. Douglas D. Gardner (POA for Gardner). These funds belong to Defendant John Lomnicki and represent, in part, the accumulated deposits from his public pension that was owed to the State pursuant to *State Treasurer v John Lomnicki, et al.*, Case No. 98-2029-CZ:
2. Future monthly public pension benefits due from the State of Michigan, Office of Retirement Services ("ORS"), in the amount of \$3,303.69 per month (SS No. XXX-XX-XXXX; dob: XXX-XX-XX).
3. Funds in Defendant John Lomnicki's prison account.

In order to settle this matter without further litigation the parties agree to the following distribution of the assets described above as partial payment toward Defendant John Lomnicki's cost of care:

**IT IS ORDERED** that within three weeks after receipt of a true copy of this Consent Final Order, Defendant Jennie Gardner, through her POA, Mr. Douglas D. Gardner, shall pay 90% of the funds held in the account described in sub-paragraph 1 above, currently valued in the total approximate amount of \$46,570.36, as follows:

- a. 90% of these account funds shall be paid to the State of Michigan by check made payable to the "**State of Michigan**" and mailed to: Victoria A. Reardon, Department of Attorney General, Prison Reimbursement Section, Cadillac Place, 3030 W. Grand Blvd., Ste. 10-200, Detroit, MI 48202.
- b. The remaining 10% shall remain in the accounts and shall be free of any further SCFRA claim by the State for the cost of Defendant John Lomnicki's care upon the current incarceration. Upon the 90% distribution to the State, the freeze placed on these accounts by previous Orders of this Court shall be terminated.

**IT IS FURTHER ORDERED** that within one month after receipt of a true copy of this Consent Final Order, ORS shall pay all pension benefits that are due Defendant John Lomnicki including benefits frozen by this Court's *Show Cause Order* and all future monthly pension benefits due Defendant John Lomnicki as follows:

- a. 80% of the net pension payment, after taxes based upon the current exemptions claimed by Defendant John Lomnicki and after Plan administrative costs, to the State by check made payable to "**State of Michigan**" and mailed to: Victoria A. Reardon, Department of Attorney General, Prison Reimbursement Section, Cadillac Place, 3030 W. Grand Blvd., Ste. 10-200, Detroit, MI 48202. This payment may also be made electronically according to any future agreement by the parties.
- b. The remaining 20% shall be paid according to the direction of Defendant John Lomnicki according to the usual procedures, rules or restriction in place by ORS for making such direction for payment and shall be free of any further SCFRA claim by the State for the cost of Defendant John Lomnicki's care upon the current incarceration. Upon the 80% distribution to the State, the freeze placed on these accounts by previous Orders of this Court shall be terminated.

**IT IS FURTHER ORDERED THAT:** The funds in Defendant John Lomnicki's prison account shall be released and no payment to the State shall be made from this account.

**IT IS FURTHER ORDER THAT:**

The 80% distribution from Defendant John Lomnicki's ORS monthly pension payment shall remain in effect only so long as Defendant John Lomnicki remains incarcerated. Upon his release from prison, the State shall have no claim to this pension benefit for SCFRA costs associated with his current sentence. However, if Defendant John Lomnicki commits a new offense for which he is re-incarcerated or is re-incarcerated upon a parole violation, the State shall be entitled to resume receipt of payments from ORS of his monthly pension benefit according to the terms of this Order for all costs of care associated with this re-incarceration or previous sentence.

**IT IS FURTHER ORDERED THAT IN THE EVENT OF DEFAULT** by Defendant John Lomnicki, or failure by Jennie Gardner or Douglas D. Gardner to make the 90% payment of the approximate \$46,570.36 of funds held in the account described above as required by this Order, the State may seek recovery of these future pension proceeds by any means permitted by the SCFRA or other state and federal law, including seizing these funds from third parties who have custody over them.

The State does not waive the balance of Defendant John Lomnicki's SCFRA debt, but agrees only to forego recovery of that debt from the assets that have been identified above and according to this Order.

Upon the above disbursement, this case shall be closed.

The Court retains jurisdiction to enforce this Order.

This Final Order resolves the last pending claim in this matter and closes this case.

Date: \_\_\_\_\_

MATTHEW S. SWITALSKI  
CIRCUIT JUDGE

AUG 29 2008

A TRUE COPY  
CARMELLA SABAUGH, COUNTY CLERK

BY: *Carmella Sabaugh* Court Clerk

Hon. Matthew Switalski  
Macomb County Circuit Court Judge

**APPROVED AS TO SUBSTANCE AND FORM:**

Date: \_\_\_\_\_

John Lomnicki  
John Lomnicki, [REDACTED]  
Defendant – In Pro Per

Date: \_\_\_\_\_

Jennie Gardner  
Jennie Gardner  
Defendant

Date: \_\_\_\_\_

Douglas D. Gardner  
Douglas D. Gardner, POA for  
Jennie Gardner

Date: \_\_\_\_\_

See attached page for signature  
Larry Brya (P26088)  
Assistant Attorney General  
Attorney for Defendant Office of Retirement  
Services

Date: 8.22.08

Victoria A. Reardon  
Victoria A. Reardon (P41682)  
Assistant Attorney General  
Attorney for Plaintiff State Treasurer

**APPROVED AS TO SUBSTANCE AND FORM:**

Date: \_\_\_\_\_

\_\_\_\_\_  
John Lomnicki, [REDACTED]  
Defendant – In Pro Per

Date: \_\_\_\_\_

\_\_\_\_\_  
Jennie Gardner  
Defendant

Date: \_\_\_\_\_

\_\_\_\_\_  
Douglas D. Gardner, POA for  
Jennie Gardner

Date: 8/25/08

\_\_\_\_\_  
*Larry Brya*  
Larry Brya (P26088)  
Assistant Attorney General  
Attorney for Defendant Office of Retirement  
Services

Date: \_\_\_\_\_

\_\_\_\_\_  
Victoria A. Reardon (P41682)  
Assistant Attorney General  
Attorney for Plaintiff State Treasurer