

NEWS RELEASE



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For Immediate Release

JUDGE THROWS OUT LAWSUIT BY CYNTHIA SOMMERS; FINDS THE UNITED STATES WAS NOT NEGLIGENT IN INVESTIGATION OF HER HUSBAND'S SUSPICIOUS DEATH

NEWS RELEASE SUMMARY – December 5, 2013

SAN DIEGO, CA – A federal judge today dismissed a lawsuit against the federal government filed by Cynthia Sommer, widow of U.S. Marine Sgt. Todd Sommer, rejecting claims that Naval Criminal Investigative Service agents acted with negligence and malice in the investigation that eventually resulted in her conviction for his murder.

A jury in state court convicted Sommer of first-degree murder in 2007, but the trial judge overturned the verdict, ruling that prosecutors' description of her party "lifestyle" following her husband's death in 2002 was so inflammatory that it deprived Sommer of a fair trial. In preparation for a retrial, additional tissue samples were tested, and experts found no arsenic. The District Attorney ultimately dismissed the murder case without prejudice.

Sommer filed a lawsuit in federal court in 2009, alleging in part that NCIS agents intentionally inflicted emotional distress upon her and failed to conduct a proper investigation because they disapproved of her partying lifestyle. Sommer also claimed that agents improperly arrested her, withheld key evidence and failed to disclose relevant facts that could have benefitted Sommer's defense.

In a ruling issued today, U.S. District Judge Cathy Ann Bencivengo rejected all of Sommer's claims. "The evidence does not support plaintiff's theory that NCIS agents fabricated evidence or knowingly withheld evidence that they understood to be exculpatory," the judge wrote in her ruling.

The judge later added: "Plaintiff argues that NCIS agents investigated her because they wanted to punish her for her lifestyle choices. However, because...there is no evidence showing NCIS willfully acted in a wrongful manner (e.g., that it fabricated evidence), Plaintiff's abuse of process claim fails."

Judge Bencivengo noted in her ruling that the parties do not dispute the validity of results of the tests conducted by the Armed Forces Institute of Pathology lab (AFIP), which found evidence of arsenic; rather, the plaintiff argued that the federal lab should have performed additional testing to rule out contamination given the extremely high levels of arsenic found.

"The evidence shows they were valid," the judge wrote, later adding: "There is no actual evidence of contamination that the AFIP disregarded."

Judge Bencivengo said the scientists in the government lab were well qualified and had the knowledge and experience to test human tissue for trace elements of metals and metalloids, and they followed standard procedures and maintained the chain of custody.

"There is evidence before the Court showing that the AFIP met its standard of care for producing reliable test results...Based on the record before the Court, there is and was no evidence of contamination that the AFIP ignored."

NCIS agents were involved in the investigation because the death occurred in Navy housing at Marine Corps Air Station Miramar and Sommer was an active-duty Marine.