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B-177836, Apr 24, 1973

Number: B-177836

Date: 1973-04-24

B-177836, APR 24, 1973

DECISION DISALLOWING CLAIM FOR VOLUNTARY SERVICES PERFORMED, REPRESENTING COSTS INCURRED FOR THE PURCHASE OF TOOLS AND TRAVEL PERFORMED, IN CONNECTION WITH CONTRACT TO CLEAR A TRACT OF LAND PURCHASED BY CLAIMANT.

TO MR. VERNON R. KRUSE:

YOUR LETTER OF JANUARY 12, 1973, REQUESTS RECONSIDERATION OF THE SETTLEMENT CERTIFICATE DATED DECEMBER 29, 1972, CLAIM NO. Z 2495294, WHICH DISALLOWED YOUR CLAIM FOR $328.70 REPRESENTING COSTS INCURRED BY YOU FOR THE PURCHASE OF TOOLS AND TRAVEL PERFORMED IN CONNECTION WITH YOUR EFFORTS TO CLEAR A TRACT OF LAND LOCATED IN MONROE COUNTY, ILLINOIS.

THE RECORD SHOWS THAT ON OCTOBER 12, 1959, THE DEPARTMENT OF THE ARMY ENTERED INTO CONTRACT NO. DA-11-932-ENG-7434 WITH MRS. MAYME SANDOR, THEN OWNER OF THE TRACT OF LAND INVOLVED, WHICH GRANTED TO THE UNITED STATES OF AMERICA A LINE-OF-SIGHT EASEMENT OVER SAID TRACT. AMONG OTHER THINGS, THE CONTRACT GRANTED TO THE UNITED STATES OF AMERICA A RIGHT AS FOLLOWS:

THE CONTINUING PERPETUAL RIGHT TO CUT TO GROUND LEVEL AND REMOVE TREES, BUSHES, SHRUBS, OR ANY OTHER PERENNIAL GROWTH OR UNDERGROWTH INFRINGING UPON OR EXTENDING INTO OR ABOVE THE LINE-OF-SIGHT CLEARANCE SURFACE AS DESCRIBED IN EXHIBIT "A", ATTACHED HERETO:

AT SOME DATE NOT SHOWN IN THE RECORD, THE GOVERNMENT, EXERCISING THIS RIGHT, REMOVED CERTAIN TREES AND SHRUBBERY FROM THE PROPERTY, BUT THE STUMPS OF THE SEVERED TREES WERE NOT REMOVED, NOR WAS THE PROPERTY LEVELED AT VARIOUS POINTS. WHILE THE RECORD DOES NOT SHOW THE EXACT DATE OF THIS ACTION, IT APPEARS FROM THE RECORD BEFORE US THAT THE CUTTING WAS PERFORMED PRIOR TO THE DATE (OCTOBER 31, 1970) YOU PURCHASED THE PROPERTY FROM MRS. SANDOR.

IN ANY EVENT YOU CONTACTED THE DEPARTMENT OF THE ARMY REGARDING THE RESTORATION OF THE PROPERTY BY THE REMOVAL OF THE STUMPS AND THE LEVELING OF THE LAND AT THE POINTS CITED. THE DEPARTMENT OF THE ARMY CONCURRED WITH YOUR REQUEST AND ENTERED INTO A CONTRACT FOR THE PERFORMANCE OF THE WORK. THE RECORD NOW CONTAINS A COPY OF A CERTIFICATION SIGNED BY YOU ON AUGUST 11, 1972, AS FOLLOWS:

THE WORK OF REMOVING DEAD TREES AND STUMPS AND LEVELING MOUNDS OF EARTH ON EASEMENT AT ARADCOM SITE, HECKER, ILLINOIS HAS BEEN SATISFACTORILY PERFORMED UNDER A CONTRACT BETWEEN WALTER E. WITTENANER AND THE U.S. ARMY INSTALLATION, GRANITE CITY, ILLINOIS.

HENCE, IT APPEARS THAT ANY DAMAGE OR INJURY INFLICTED UPON YOUR PROPERTY BY THE GOVERNMENT PURSUANT TO THE EASEMENT HAS BEEN CORRECTED BY THE GOVERNMENT.

YOUR CLAIM, THEREFORE, IS NOT FOR DAMAGES TO THE PROPERTY, WHICH DAMAGES HAVE ALREADY BEEN CORRECTED BY THE GOVERNMENT, BUT CONSISTS OF A REQUEST FOR REIMBURSEMENT FOR THE COST OF TOOLS PURCHASED BY YOU AND MILEAGE FOR TRIPS TO THE PROPERTY WHICH YOU MADE IN AN ATTEMPT TO REMEDY THE DAMAGES YOURSELF. SUCH ATTEMPT WAS PURELY VOLUNTARY UPON YOUR PART, AND WITHOUT THE KNOWLEDGE OR CONSENT OF THE GOVERNMENT. YOUR VOLUNTARY ACTION PLACED NO OBLIGATION UPON THE GOVERNMENT AND, INDEED, THE RENDERING OR ACCEPTANCE OF SUCH VOLUNTARY SERVICES IS IN DIRECT CONTRAVENTION OF THE PROVISION OF SECTION 3679, REVISED STATUTES, AS AMENDED, 31 U.S.C. 665(B), WHICH STATES THAT "NO OFFICER OR EMPLOYEE OF THE UNITED STATES SHALL ACCEPT VOLUNTARY SERVICE FOR THE UNITED STATES *** EXCEPT IN CASES OF EMERGENCY INVOLVING THE SAFETY OF HUMAN LIFE OR THE PROTECTION OF PROPERTY." VOLUNTARY SERVICES PERFORMED IN CONTRAVENTION OF SAID STATUTE CANNOT FORM THE BASIS OF A LEGAL CLAIM AGAINST THE UNITED STATES. SEE 10 COMP. GEN. 248 (1930); 7 ID. 167 (1927); 6 ID. 273 (1926). CF. 3 COMP. GEN. 979 (1924); 2 ID. 799 (1923). SINCE THIS CASE CLEARLY DOES NOT FALL WITHIN THE EXCEPTION STATED IN THE STATUTE, PAYMENT OF YOUR CLAIM IS PRECLUDED BY LAW.

ACCORDINGLY, THE PRIOR DISALLOWANCE OF YOUR CLAIM IS SUSTAINED.