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B-187021, Jan 19, 1978

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B-187021, JAN 19, 1978

1. IMPREST FUND CASHIER WHO ALLEGEDLY USED $268 OF HER OWN MONEY TO REPLENISH SHORTAGE IN IMPREST FUND AND WHOSE REQUEST FOR RELIEF UNDER 31 U.S.C. 82A-1 WAS NOT CONSIDERED BY AGENCY BECAUSE OF LACK OF EVIDENCE THAT SUCH LOSS HAD OCCURRED MAY NOT BE REIMBURSED THE $268.

CLAIM FOR REIMBURSEMENT BY ACCOUNTABLE OFFICER:

MR. T. J. O'CONNOR, DIRECTOR, OFFICE OF FINANCE AND ACCOUNTING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD), HAS REQUESTED AN ADVANCE DECISION, PURSUANT TO 31 U.S.C. SECS. 82D (1970), ON WHETHER MS. BETTE STARR, AN EMPLOYEE OF HUD'S SAN FRANCISCO AREA OFFICE, IS ENTITLED TO REIMBURSEMENT FOR A VOLUNTARY REPLENISHMENT OF $268 MADE FROM HER PERSONAL FUNDS TO COVER AN IMPREST FUND SHORTAGE.

THE FACTS AS INDICATED IN A "LEGAL ANALYSIS" BY THE ASSOCIATE REGIONAL COUNSEL, WHICH INCLUDES A SUMMARY OF A FEDERAL BUREAU OF INVESTIGATION (FBI) REPORT AND MS. STARR'S STATEMENT, ARE AS FOLLOWS: ON FRIDAY, JULY 9, 1976, MS. STARR WAS THE IMPREST FUND CASHIER IN THE SAN FRANCISCO OFFICE. AT ABOUT 4:30 P.M., WHILE MAKING A CASH PAYMENT TO AN EMPLOYEE, SHE NOTICED THAT A PACKAGE OF $20 BILLS WAS MISSING FROM THE CASH BOX. MS. STARR DID NOT NOTIFY ANYONE OF THE MISSING FUNDS, WHICH SHE ESTIMATED TO BE $280. ON THE FOLLOWING MONDAY SHE WITHDREW $280 FROM HER PERSONAL SAVINGS ACCOUNT (ALL IN $20 BILLS) AND SUBSTITUTED THEM IN THE CASH BOX FOR THE MISSING MONEY.

UPON MAKING AN ACTUAL CASH COUNT ON TUESDAY, MS. STARR DISCOVERED THAT THERE WAS AN OVERAGE IN THE CASH BOX OF $12. SHE THEN REMOVED $12, MAKING THE NET CONTRIBUTION OF HER OWN FUNDS TOTAL $268. THAT AFTERNOON, MS. STARR MADE A $120 PAYMENT TO AN EMPLOYEE FROM THE $20 BILLS SHE HAD PLACED IN THE CASH BOX.

THE FOLLOWING AFTERNOON SHE DISCOVED THAT THE REST OF THE $20 BILLS WERE MISSING FROM THE CASH BOX. THEREUPON MS. STARR REPORTED THE SECOND SHORTAGE ($160) TO THE ACTING DIRECTOR OF THE ADMINISTRATIVE DIVISION. THE SUBSEQUENT INVESTIGATION BY THE FBI DISCLOSED THAT A SECRETARY IN THE OFFICE OF ADMINISTRATION HAD ACCESS TO EMERGENCY KEYS TO THE IMPREST FUND CASH DRAWER AND BOX. THE SECRETARY DENIED HAVING THE KEY WITH HER ON JULY 9, 1976, AND JULY 14, 1976, AND ALSO DENIED HAVING TAKEN THE MONEY.

IN A LETTER DATED JULY 28, 1976, THE IMPREST FUND SHORTAGE WAS REPORTED TO THE GENERAL ACCOUNTING OFFICER (GAO). AT THAT TIME HUD WAS ADVISED OF THE AUGUST 14, 1974, GAO DECISION, 54 COMP.GEN. 112, WHICH INCREASED THE LIMITATION ON ADMINISTRATIVE RESOLUTION OF IRREGULARITIES IN ACCOUNTABLE OFFICER ACCOUNTS TO

$500. ACCORDINGLY, THE RELEVANT DOCUMENTS WERE RETURNED TO HUD FOR AN ADMINISTRATIVE RESOLUTION OF THE MATTER.

THE RECORD BEFORE US INDICATES THAT THE DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION APPROVED A WRITE-OFF AND RESTITUTION OF THE SECOND IMPREST FUND SHORTAGE ($160), APPARENTLY ON THE BASIS THAT MS. STARR SHOULD BE RELIEVED OF LIABILITY FOR THIS SHORTAGE. HOWEVER, HE DISAPPROVED MS. STARR'S REQUEST THAT SHE BE REIMBURSED THE $268 ADVANCED FROM HER PERSONAL FUNDS FOR HER REPLENISHMENT OF THE FIRST SHORTAGE. MS. STARR HAS APPEALED THE DEPARTMENT'S REFUSAL TO REIMBURSE THE $268 BY LETTER DATED MAY 16, 1977, AND THAT LETTER WAS ENCLOSED WITH THE REQUEST FOR OUR DECISION.

THE SUBMISSION TO OUR OFFICE STATES THAT MS. STARR'S CLAIM FOR REIMBURSEMENT OF THE $268 WAS DENIED "BASED ON THE LACK OF EVIDENTIARY DATA THAT SUCH A LOSS (THE ORIGINAL SHORTAGE IN THE IMPREST FUND) DID OCCUR." A MEMORANDUM INCLUDED IN THE RECORD SUBMITTED TO US ADDS THAT "ALTHOUGH MS. STARR INDICATED THAT SHE PLACED $268 IN THE IMPREST FUND TO REPLENISH THE FIRST SHORTAGE, THERE WERE NO WITNESSES TO SUBSTANTIATE THIS

THE SPECIFIC QUESTION SUBMITTED TO US IS WHETHER MS. STARR'S CLAIM FOR REIMBURSEMENT OF $268 MAY BE ALLOWED.

ABSENT RELIEVING MS. STARR UNDER THE AUTHORITY OF 31 U.S.C. SECS. 82A 1, THERE WOULD BE NO LEGAL BASIS FOR ALLOWING HER CLAIM FOR REIMBURSEMENT OF THE $268. AS TO RELIEF OF AN ACCOUNTABLE OFFICER, 31 U.S.C. SECS. 82A-1 (1970), PROVIDES IN PART:

"THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED, AFTER CONSIDERATION OF THE PERTINENT FINDINGS AND IF IN CONCURRENCE WITH THE DETERMINATIONS AND RECOMMENDATION OF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT CONCERNED TO RELIEVE ANY DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OR FORMER DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OF ANY SUCH DEPARTMENT OR INDEPENDENT ESTABLISHMENT OF THE GOVERNMENT CHARGED WITH RESPONSIBILITY ON ACCOUNT OF PHYSICAL LOSS OR DEFICIENCY OF GOVERNMENT FUNDS, VOUCHERS, RECORDS, CHECKS, SECURITIES, OR PAPERS IN HIS CHARGE, OR TO AUTHORIZE THE REIMBURSEMENT, FROM ANY APPROPRIATION OR FUND AVAILABLE FOR PURPOSES OF THE ACTIVITY IN WHICH THE LOSS OR DEFICIENCY OCCURRED, OF AMOUNTS PAID SUBSEQUENT TO AUGUST 1, 1947, BY OR ON BEHALF OF THE OFFICER OR AGENT IN RESTITUTION OF THE LOSS OR DEFICIENCY, IF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT DETERMINES (1) THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE SUCH OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT SUCH LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF SUCH OFFICER OR AGENT; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON PART OF SUCH OFFICER OR AGENT. ***"

CLEARLY 31 U.S.C. SEC. 82A-1 WOULD BE APPLICABLE ONLY IF IT IS FIRST DETERMINED THAT THERE WAS A LOSS IN THE IMPREST FUND AND THAT MS. STARR DID IN FACT USE HER OWN MONEY TO MAKE UP SUCH LOSS. HOWEVER, REIMBURSEMENT WAS REFUSED BY THE AGENCY BASED ON THE LACK OF PROOF THAT A LOSS DID, IN FACT, OCCUR. MOREOVER, EVEN ASSUMING THAT A LOSS WAS INCURRED, MS. STARR'S ACTION IN SEEKING TO CONCEAL IT SERVED TO OBFUSCATE THE TIME OF LOSS AND THE MANNER IN WHICH IT OCCURRED. UNDER THE CIRCUMSTANCES WE WOULD HAVE NO BASIS FOR ALLOWING MS. STARR'S CLAIM FOR REIMBURSEMENT.