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B-188744 July 15, 1977

Number: B-188744

Date: 1977-07-15

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The Honorable The Secretary of the Interior

Dear Mr. Secretary:

This replies to your request that relief be granted under the provisions of 31 U.S.C. Sec. 82a-2 (1970) for the improper disbursement of individual Indian Money in the amount of $1,158.34 chargable to the account of John W. Vale, former Indian Service Special Disbursing Agen, Bureau of Indian Affairs (BIA), Station Symbol 4844. The request sets forth your finding that the improper payment involved in this matter was not the result of bad faith or lack of due care and your recommendation that this amount be restored by this Office by adjustment and charge to 1472100 Operation of Indian Programs, BIA, fiscal year 1977.

According to the information you provided, the improper payment involved in this matter originated from the sale of Kalispel Allotment No. 103-62, Lucy Bigsmoke (Peuse), in January, 1972, which was conducted and approved by Bureau of Indain Affairs officials. A one-half interest in the proceeds of the allotment was paid to Antoine Peuse, as sole heir of his son, Louis Peuse, intestate, by the Individual Indian Money (IIM) Section in accordance with a January 10, 1972, Journal Voucher issued by the Northern Idaho Agency Realty Office indication that he was the person entitled to the Louis Peuse share of the proceeds.

By "Order Determining Heirs" dated January 31, 1961, the Examiner of Inheritance had designated Antoine Peuse the sole heir of Louis Peuse. A petition to reopen the estate, filed December 9, 1967, on behalf of Rosemary (Peuse) Grover (minor), daughter of the decedent, sought designation as sole heir. While a hearing was held on this petition on September 30, 1969, the Revised Order designating the petitioner sole heir was not signed until August 21, 1972. A petition for rehearing was denied on April 12, 1973. Through administrative oversight, neither the petition to reopen the estate nor the final order designating the decedent's daughter as sole heir, in place of decedent's father, Antoine Peuse, was recorded.

Distribution of the Louis Peuse estate in accordance with the August 21, 1972, Revised Order was authorized on June 15, 1973. As of July 1, 1973, administrative jurisdiction of this matter was assumed by BIA's Spokane Office. On September 6, 1973, Rosemary (Peuse) Grove Kuntz, as legal heir of Antoine Peuse, requested her share of the allotment proceeds, and as a result of her request, the administrative error was discovered.

Thereupon, the sum of $2,850, representing the decedent's share of the proceeds of the sale, was transferred from the Individual Indian Money Account of Antoine Peuse to the account of Rosemary (Peuse) Grove Kuntz, creating an overdraft in the account of Mr. Peuse. Subsequent collection efforts reduced this amount to $1,158.34 as of December 14, 1974. Since that time it appears that collection efforts have been suspended or terminated in view of the hardship created for Mr. Peuse, who had spent the allotment sale money, was then about 75 years of age, and whose principal source of income was his old age pension. Apparently the remaining overdraft to Mr. Peuse's account was then liquidated by charging the balance to the account of the disbursing officer, Mr. Vale, for whom you now seek relief.

A disburing officer is personally liable for deficiencies in his accounts which result from illegal, improper, or incorrect payments. Nevertheless, 31 U.S.C. Sec. 82a-2 (1970) authorizes our Office to grant relief from liability upon our determination that an illegal, improper, or incorrect payment is "*** not the result of bad faith or lack of due care on the part of such disbursing officer***."

From the instant record, it appears that the disbursing officer did not and, under administratively established procedures, was not required or expected to verify the probate and title determinations underlying this erroneous payment, i.e., that the error which resulted in this erroneous payment did not result from his personal failure to follow established procedures or to supervise properly the activities of his staff; and that this was the kind of error that occasinally happens in even the most carefully set up and efficiently supervised system. Accordingly, we believe that the standards for granting relief are satisfied in the case.

We also find no basis for concluding that the agency has failed to pursue diligently the collection of this claim within the meaning of 31 U.S.C. Sec. 82a-2. The action taken by the ageny in this instance appears to be in accordance with 31 U.S.C. Sec. 952(b) (1970), which authorizes "*** collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon***."

In summary, the erroneous payment of trust funds within his charge having not been the result of bad faith or negligence on the part of the disbursing officer, and the agency's determination to suspend or terminate further collection efforts having been appropriate in the circumstances, the request for relief is granted. The disbursing officer's accounts may be adjusted as proposed in your letter.

Sincerely yours,

Paul G. Dembling General Counsel