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B-192010, Aug 14, 1978

Number: B-192010

Date: 1978-08-14

B-192010, AUG 14, 1978

SECRETARY OF THE TREASURY:

THIS IS IN REPLY TO A REQUEST FROM DEPUTY FISCAL ASSISTANT SECRETARY PAUL TAYLOR, THAT RELIEF BE GRANTED TO CASHIER EUGENE J. MARTIN AND SPECIAL AGENT JAMES P. MARKOWSKI, FROM LIABILITY FOR THE LOSS OF $525. THE INFORMATION SUBMITTED INDICATES THAT THE FUNDS WERE ADVANCED TO SPECIAL AGENT MARKOWSKI BY CASHIER MARTIN FOR THE PURCHASE OF FIREARMS FOR USE IN AN UNDERCOVER OPERATION CONDUCTED BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. THE FUNDS WERE LOST WHEN MR. MARKOWSKI WAS ASSAULTED BY HIS INFORMANTS WHILE ATTEMPTING TO MAKE THE PURCHASE.

AN ACCOUNTABLE OFFICER IS AN INSURER OF PUBLIC FUNDS IN HIS CUSTODY AND IS EXCUSABLE ONLY FOR LOSS DUE TO ACTS OF GOD OR THE PUBLIC ENEMY. UNITED STATES V. THOMAS, 15 WALL. 337 (1872). GOVERNMENT EMPLOYEES CHARGED WITH THE HANDLING OF PUBLIC FUNDS ARE EXPECTED TO EXERCISE THE HIGHEST DEGREE OF CARE. HOWEVER, 31 U.S.C. SEC. 82A-1 (1970) AUTHORIZES THE COMPTOLLER GENERAL TO GRANT RELIEF FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES IF:

A) IT IS DETERMINED BY THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT CNCERNED -

1. THAT THE LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES OR THAT IT OCCURRED BY REASON OF THE ACT OR OMISSION OF THE SUBORDINATE OF THE OFFICER OR AGENT; AND

2. THAT THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER OR HIS SOBORDINATE; AND

B) THE GENERAL ACCOUNTING OFFICE AGREES WITH THE ABOVE ADMINISTRATIVE DETERMINATIONS.

CASHIER MARTIN ADVANCED THE FUNDS TO MR. MARKOWSKI, A PROPERLY AUTHORIZED RECIPIENT, IN ACCORDANCE WITH APPLICABLE PROCEDURES. WE, THEREFORE, CONCUR IN THE ADMINISTRATIVE DETERMINATION THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON MR. MARTIN'S BEHALF AND HENCE HE IS HEREBY RELIEVED OF LIABILITY.

THE RECOMMENDATION OF YOUR DEPARTMENT REGARDING SPECIAL AGENT MARKOWSKI IS BASED UPON A DETERMINATION THAT THE LOSS WAS ATTRIBUTABLE NOT TO NEGLIGENCE ON HIS PART, BUT TO THE ACTS OF A PUBLIC ENEMY. SPECIAL AGENT MARKOWKSI WAS IN POSSESSION OF THE $525 WHICH HE PLANNED TO USE FOR THE PURCHASE OF HANDGUNS AT THE SECOND OF TWO CONSECUTIVE "BUYS" SCHEDULED FOR THAT DAY. PRECAUTIONS TAKEN

FOR THE INITIAL "BUY" WERE FAIRLY EXTENSIVE AND INCLUDED THE CONCEALMENT ON SPECIAL AGENT MARKOWSKI'S PERSON OF A MIKE -TRANSMITTER. THE ELECTRONIC SIGNALS WERE TO BE MONITORED BY A TEAM OF FOUR SPECIAL AGENTS IN TWO AUTOMOBILES. UPON THE INSISTENCE OF THE SUSPECTS, MR. MARKOWSKI ACCOMPANIED THEM TO A SECLUDED AREA WHERE THE HANDGUNS WERE SUPPOSEDLY LOCATED. MEANWHILE, THE COVER TEAM LOST SIGHT OF THE SUSPECT VEHICLE AND THE EFFECTIVENESS OF THE MICROPHONE WAS NEGATED WHEN ONE OF THE SUSPECTS TURNED ON LOUD MUSIC IN THE AUTOMOBILE. UPON ARRIVAL AT THEIR DESTINATION, THE SUSPECTS ASSAULTED SPECIAL AGENT MARKOWSKI AND REMOVED THE $525 FROM HIS RIGHT FRONT POCKET, WHILE APPARENTLY LEAVING PERSONAL FUNDS IN HIS LEFT REAR POCKET UNTOUCHED.

YOUR DEPARTMENT HAS DETERMINED THAT SPECIAL AGENT MARKOWSKI WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES AT THE TIME THE LOSS OCCURRED. THERE IS NO EVIDENCE IN THE RECORD TO THE CONTRARY. IN ADDITION, THE RECORD INDICATES THAT THE SUBJECT FUNDS AND MR. MARKOWSKI'S PERSONAL FUNDS WERE SEGREGATED AND THAT THE CASH REMOVED FROM MR. MARKOWSKI'S RIGHT FRONT POCKET WAS, IN FACT, THE FUNDS WHICH HAD BEEN ADVANCED BY CASHIER MARTIN. ON THE FACTS PRESENTED, IT SEEMS CLEAR THAT NEIGHER MR. MARKOWSKI NOR THE OTHER MEMBERS OF THE COVER TEAM WERE IN ANY WAY NEGLIGENT IN THE HANDLING OF THIS MATTER.

ACCORDINGLY, WE CONCUR IN THE ADMINISTRATIVE DETERMINATIONS AND GRANT RELIEF IN THE AMOUNT OF $525 TO SPECIAL AGENT MARKOWSKI UNDER THE PROVISIONS OF 31 U.S.C. SEC. 82A-1. A CHARGE MAY BE MADE TO THE SALARIES AND EXPENSES APPROPRIATION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (ACCOUNT 2071000).