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B-193380, Sep 25, 1979

Number: B-193380

Date: 1979-09-25

B-193380, SEP 25, 1979

OFFICE OF GENERAL COUNSEL

R. G. FREEMAN, III, ADMINISTRATOR OF GENERAL SERVICES:

THIS IS IN REPLY TO A LETTER FROM THE CONTROLLER-DIRECTOR OF ADMINISTRATION, GENERAL SERVICES ADMINISTRATION, REQUESTING OUR OFFICE TO RELIEVE MS. LINDA S. SARRO OF LIABILITY FOR A SHORTAGE IN AN IMPREST FUND. THE SHORTAGE OCCURRED WHILE MS. SARRO SERVED AS PRINCIPAL CASHIER IN THE BOSTON FINANCE DIVISION OF THE GENERAL SERVICES ADMINISTRATION (GSA).

WHILE RECONCILING HER CASH AND SUBVOUCHERS ON AUGUST 17, 1977, MS. SARRO DISCOVERED A $300 SHORTAGE. A SENIOR ACCOUNTANT VERIFIED THE SHORTAGE ON THE SAME DAY. FIVE DAYS LATER, UPON HIS RETURN FROM VACATION, THE BOSTON FINANCE DIRECTOR FOUND AN ADDITIONAL $500 MISSING FROM THE IMPREST FUND, MAKING A TOTAL SHORTAGE OF $800. THE SHORTAGE WAS REPORTED TO THE FEDERAL BUREAU OF INVESTIGATION, THE UNITED STATES SECRET SERVICE, GSA'S OFFICE OF INVESTIGATIONS AND THE PHILADELPHIA DISBURSING CENTER OF THE DEPARTMENT OF THE TREASURY.

PURSANT TO 31 U.S.C. SEC. 82A-1 (1976), YOU HAVE MADE THE REQUIRED FINDINGS THAT THE SHORTAGE OCCURRED WHILE MS. SARRO WAS DISCHARGING HER OFFICIAL DUTIES, AND THAT IT WAS NOT THE RESULT OF HER FAULT OR NEGLIGENCE. TO GRANT RELIEF, THIS OFFICE MUST CONCUR IN THESE DETERMINATIONS AFTER CONSIDERATION OF THE PERTINENT FINDINGS.

FIRST, AS A PRELIMINARY MATTER, ALTHOUGH THESE WERE APPARENTLY SEPARATE LOSSES, ONE OF WHICH WAS LESS THAN $500, GSA HAS CHOSEN TO TREAT THEM, FOR PURPOSES OF THIS REQUEST, AS ONE TOTAL LOSS OF OVER $500, AND THEREFORE TO SUBMIT THEM TO US, RATHER THAN RESOLVING THEM UNDER THE AUTHORITY DELEGATED BY US IN 54 COMP.GEN. 112 (1974). WE ARE INCLINED TO AGREE THAT THE LOSSES OCCURRED UNDER VERY SIMILAR CIRCUMSTANCES AND THAT THEY SHOULD BE TREATED TOGETHER.

AN ACCOUNTABLE OFFICER IS CONSIDERED TO BE AN INSURER OF THE PUBLIC FUNDS IN HER CUSTODY. SHE IS EXPECTED TO EXERCISE THE HIGHEST DEGREE OF CARE IN THE PERFORMANCE OF HER DUTIES. 48 COMP.GEN. 556, 567-568 (1969). SHE BECOMES LIABLE AUTOMATICALLY AT THE MOMENT EITHER A PHYSICAL LOSS OCCURS OR AN ERRONEOUS PAYMENT IS MADE. 54 COMP.GEN. 112, 114 (1974). THIS LIABILITY IS UNAFFECTED BY A LACK OF NEGLIGENCE ON HER PART (B-170012, AUGUST 11, 1970) ALTHOUGH RELIED MAY BE GRANTED BASED ON EVIDENCE OF A LACK OF NEGLIGENCE. THE MERE FACT THAT AN UNEXPLAINED SHORTAGE HAS OCCURRED IS, IN AND OF ITSELF, SUFFICIENT TO RAISE A PRESUMPTION OF NEGLIGENCE. 48 COMP.GEN. AT 567. WHEN FUNDS DISAPPEAR WITHOUT EXPLANATION OR EVIDENT REASON, IT IS PRESUMED THAT THE RESPONSIBLE OFFICIAL WAS

IN SOME WAY DERELICT. B-187139, OCTOBER 25, 1978. IF WE ARE TO GRANT RELIEF UNDER 31 U.S.C. SEC. 82A-1, THIS PRESUMPTION MUST BE REBUTTED. THE BURDEN OF PROOF THAT THERE WAS NO NEGLIGENCE RESTS UPON THE OFFICER WHO SUSTAINED THE LOSS. B-191440, JULY 19, 1978; B-177430, OCTOBER 30, 1973.

BOTH LOSSES ARE UNEXPLAINED IN THE SENSE THAT THERE IS NO INDICATION PRECISELY HOW OR WHEN THEY TOOK PLACE. THE IMPREST FUND WAS KEPT:

"*** IN TWO SEPARATE BOXES; ONE BOX IN THE SAFE IS USED FOR IMMEDIATE TRANSACTIONS DURING THE DAY AND ANOTHER BOX CONTAINING MOST OF THE MONEY AVAILABLE THE RESERVE BOX IS KEPT IN ANOTHER DRAWER IN THE SAFE."

GSA BELIEVES THAT BOTH THE $300 AND THE $500 WERE TAKEN FROM THE RESERVE CASH BOX IN THE SAFE. IN RESPONSE TO OUR INQUIRY, A GSA REPRESENTATIVE INFORMALLY ADVISED US THAT THE CASHIER HAD BEEN INSTRUCTED NOT TO LOCK THE CASH BOX USED FOR IMMEDIATE TRANSACTIONS AND THAT WHILE THE RESERVE CASH BOX WAS KEPT LOCKED, A KEY FOR THAT BOX WAS KEPT IN THE OTHER CASH BOX, BOTH CASH BOXES BEING KEPT IN THE LOCKED SAFE.

THREE PEOPLE KNEW THE COMBINATION OF THE SAFE: MS. SARRO AND TWO ALTERNATE CASHIERS. THE COMBINATION WAS ALSO KEPT IN A SEALED ENVELOPE IN THE OFFICE OF THE DIRECTOR OF THE FINANCE DIVISION. THERE IS NO INDICATION IN THE RECORD THAT THE ENVELOPE WAS TAMPERED WITH.

MS. SARRO SAYS THAT DURING THE PERIOD WHEN THE $300 LOSS TOOK PLACE, BUSINESS WAS CONDUCTED NORMALLY. ALTHOUGH HER ORIGINAL STATEMENT SUPPLEMENTED THAT WITH A STATEMENT THAT: MENTIONS HAVING SEVERAL INTERRUPTIONS DURING THIS PERIOD, SHE HAS

"ON EVERY INTERRUPTION THE MONEY WAS PUT IN THE BOX AND INTO THE SAFE EACH TIME AND THE SAFE LOCKED. AT NO TIME WAS THE MONEY LEFT UNATTENDED OR IN AN UNLOCKED SAFE."

THE LOSS OF $300 WAS DISCOVERED ON AUGUST 17, AND PRESUMABLY TOOK PLACE BETWEEN JULY 31, 1977, WHEN THE FUND WAS LAST VERIFIED, AND AUGUST 17. THE $500 LOSS APPARENTLY TOOK PLACE OVER THE PERIOD BETWEEN THURSDAY, AUGUST 18 AND MONDAY, AUGUST 22.

GSA OFFICIALS THOUGHT THAT THE $300 LOSS MAY HAVE TAKEN PLACE AT THE BANK WHICH CASHED SIX CHECKS FOR $3,308.87 FOR MS. SARRO AUGUST 1, 1977. HOWEVER, ACCORDING TO GSA, A CHECK BY THE BANK OF ITS RECORDS DID NOT SHOW A $300 OVERAGE. WHILE THE BANK TELLER'S RECORDS DID NOT COUNT THE MONEY UPON RECEIPT AT THE BANK AND WAS INTERRUPTED WHEN COUNTING THE MONEY WHEN SHE ARRIVED BACK AT THE OFFICE AND, HENCE, DID NOT COMPLETE COUNTING THE MONEY.

IT IS THE DUTY OF CASHIERS AND ALTERNATE CASHIERS TO ACQUAINT THEMSELVES WITH TREASURY RULES AND REGULATIONS, AS WELL AS AGENCY RULES AND REGULATIONS CONCERNING THE PROPER PROCEDURES FOR HANDLING MONIES IN THEIR CUSTODY. THE CASHIER MUST MAINTAIN PROPER RECORDS OF AND PROVIDE ADEQUATE FISCAL CONTROL OVER ALL FUNDS ADVANCED TO HIM OR HER AND SHOULD LOCK UP ALL FUNDS WHEN NOT PHYSICALLY PRESENT IN THE AREA WHERE THE FUNDS ARE MAINTAINED. WHERE A CASH BOX IS USED AND KEPT IN A SAFE WHERE MORE THAN ONE PERSON HAS THE COMBINATION THE CASH BOX SHOULD BE KEPT LOCKED. GENERAL THE CASHIER SHOULD TAKE ANY PRECAUTIONS THAT A PRUDENT PERSON WOULD ORDINARILY TAKE TO PROTECT FUNDS. SEE B-177430, OCTOBER 30, 1973.

FURTHER, CONCERNING THE PROTECTION OF AGENCY IMPREST FUNDS, GSA ORDER OFA 1220.1, DATED MAY 25, 1965, AND IN EFFECT AT THE TIME OF THE LOSS INVOLVED HERE PROVIDED IN PERTINENT PART, AS FOLLOWS:

"5. INSTRUCTIONS. THE FOLLOWING PRECAUTIONS SHALL BE TAKEN TO SAFEGUARD REMITTANCES AND IMPREST FUNDS AGAINST FIRE, THEFT, AND OTHER HAZARDS:

"C. AN INDIVIDUAL LOCK BOX AND KEY SHALL BE MAINTAINED BY EACH AUTHORIZED BONDED EMPLOYEE AND HIS ALTERNATE. ALSO, ONE ADDITIONAL KEY FOR EACH LOCK BOX SHALL BE RETAINED IN A SEALED, DATED, AND SIGNED ENVELOPE, AS PROVIDED IN SUBPAR. B. THESE ADDITIONAL KEYS SHALL BE USED ONLY IN EVENT OF AN EMERGENCY. THE ALTERNATE CASHIER IS DESIGNATED IN THE SAME MANNER AS A CASHIER AND WILL FUNCTION IN SUCH CAPACITY DURING THE ABSENCE OF A PRINCIPAL CASHIER AND/OR WHERE THE VOLUME OF WORK REQUIRES THE PRINCIPAL TO HAVE ALTERNATES, IN WHICH CASE THE PRINCIPAL WILL ADVANCE FUNDS ON THE BASIS OF A RECEIPT SIGNED BY THE ALTERNATE. WHILE PERFORMING THE DUTIES, THE ALTERNATE IS BOUND TO OBSERVE THE SAME REGULATIONS AND LAWS AS THE PRINCIPAL CASHIER.

"F. LOCK BOXES SHALL BE KEPT LOCKED EXCEPT WHEN CASH IS WITHDRAWN OR PLACED THEREIN."

THE ABOVE CITED ORDER WAS APPLICABLE TO ALL GSA IMPREST FUND CASHIERS, ALTHOUGH ALL STATUTORY REQUIREMENTS FOR SURETY BONDS WERE REPEALED BY PUB. L. 92-310, JUNE 6, 1972, 86 STAT. 201.

IN OUR OPINION A PRUDENT PERSON WHO CASHED SIX CHECKS TOTALLING $3,308.87 AT A BANK WOULD COUNT THE CASH RECEIVED BEFORE LEAVING THE TELLER'S WINDOW. FAILURE TO DO SO COULD BE CONSIDERED NEGLIGENCE ON THE PART OF THE CASHIER. THE FAILURE IN THIS CASE IS COMPOUNDED BY THE FACT THAT A MONEY COUNT WAS NOT COMPLETED BY THE CASHIER WHEN SHE ARRIVED BACK AT HER OFFICE.

IN ANY EVENT, WHETHER THE FAILURE TO COUNT THE MONEY WHEN THE CHECKS WERE CASHED BE CONSIDERED NEGLIGENCE, IT IS CLEAR THAT THE CASHIER'S FAILURE TO COMPLY WITH AGENCY ORDERS OR REGULATIONS CONSTITUTED NEGLIGENCE. THE GSA ORDER CITED ABOVE REQUIRED THAT EACH CASHIER AND ALTERNATE CASHIER MAINTAIN AN INDIVIDUAL LOCK BOX AND KEY AND ALSO REQUIRED THAT LOCK BOXES BE KEPT LOCKED EXCEPT WHEN CASH WAS BEING WITHDRAWN OR PLACED THEREIN. IS CLEAR FROM THE FACTS SET FORTH ABOVE THAT MS. SARRO DID NOT COMPLY WITH THE CITED AGENCY ORDER IN THAT SHE LEFT ONE OF THE TWO CASH BOXES UNLOCKED IN THE SAFE. WHILE THE SAFE MAY HAVE BEEN LOCKED, MORE THAN ONE PERSON HAD THE COMBINATION TO THE SAFE. LEAVING AN UNLOCKED CASH BOX CONTAINING THE KEY TO THE LOCKED RESERVE CASH BOX IN A LOCKED SAFE UNDER SUCH CIRCUMSTANCES CONSTITUTED NEGLIGENCE. FURTHER, ORAL INSTRUCTIONS TO A CASHIER TO LEAVE A CASH BOX UNLOCKED CANNOT BE CONSIDERED TO SUPERSEDE PUBLISHED AGENCY ORDERS OR REGULATIONS. AS INDICATED ABOVE, IT IS THE DUTY OF A CASHIER TO ACQUAINT HERSELF WITH AGENCY ORDERS AND REGULATIONS PERTAINING TO SAFEGUARDING OF PUBLIC FUNDS.

BASED ON THE FACTS CONTAINED IN THE PRESENT RECORD WE CANNOT CONCUR IN THE ADMINISTRATIVE DETERMINATION THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF MS. SARRO. HENCE, WE CANNOT GRANT RELIEF UNDER 31 U.S.C. 82A-1.