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B-193830, Oct 1, 1979

Number: B-193830

Date: 1979-10-01

B-193830, OCT 1, 1979

OFFICE OF GENERAL COUNSEL

CYRUS R. VANCE, SECRETARY OF STATE:

THIS IS IN RESPONSE TO A LETTER FROM MR. ROGER B. FELDMAN, DEPUTY ASSISTANT SECRETARY FOR BUDGET AND FINANCE, CONCERNING LIABILITY FOR $2,412 LOST WHILE IN SHIPMENT TO THE AMERICAN EMBASSY IN ASUNCION, PARAGUAY. FOR THE REASONS THAT FOLLOW, RELIEF IS GRANTED AS INDICATED. HOWEVER, THE FACTS OF THIS CASE SUGGEST CERTAIN COMMENTS WHICH SHOULD BE TAKEN INTO CONSIDERATION IN THE FUTURE.

BRIEFLY, THE MONEY WAS SHIPPED IN SEPTEMBER, 1973, BY DIPLOMATIC POUCH FROM THE STATE DEPARTMENT TO THE EMBASSY IN ASUNCION. THE POUCH DID NOT REACH ITS DESTINATION AND HAS NEVER BEEN RECOVERED. IN DECEMBER, 1978, PURSUANT TO 31 U.S.C. SEC. 82A-1 (1976), DEPUTY ASSISTANT SECRETARY FELDMAN REQUESTED RELIEF FROM LIABILITY ON BEHALF OF MS. JUANA M. MARTINEZ MIRANDA, CLASS B CASHIER AT THE EMBASSY. IN B-193830, MARCH 30, 1979, WE GRANTED RELIEF TO MS. MARTINEZ MIRANDA BASED ON OUR CONCURRENCE WITH THE ADMINISTRATIVE DETERMINATION THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HER PART.

HOWEVER, WE ALSO POINTED OUT THAT GRANTING RELIEF TO MS. MARTINEZ MIRANDA COULD NOT ENTIRELY DISPOSE OF THE MATTER. THE LAST PARAGRAPH OF OUR MARCH 30, LETTER IS REPEATED BELOW:

"HOWEVER, THE PERSON RESPONSIBLE FOR MAILING THE FUNDS PRESUMABLY HAD CUSTODY OF THE FUNDS IN THE COURSE OF HIS OFFICIAL DUTIES AND HENCE WOULD BE CONSIDERED AN ACCOUNTABLE OFFICER IN HIS OWN RIGHT AT THE TIME THE FUNDS WERE MAILED. THE DEPARTMENT MUST THEREFORE DETERMINE WHO WAS ACCOUNTABLE FOR THE CURRENCY AT THE TIME IT WAS MAILED. COLLECTION ACTION SHOULD BE TAKEN AGAINST THAT ACCOUNTABLE OFFICER UNLESS THE DEPARTMENT DECIDES TO REQUEST RELIEF. ***"

IN RESPONDING TO OUR MARCH 30 LETTER, THE DEPUTY ASSISTANT SECRETARY STATED:

"*** MARTHA SHAFSHUF OF THE OFFICE OF FINANCE HANDLED THE CHECKS, THE CURRENCY, AND ARRANGED TO TURN IT OVER FOR SHIPMENT. THIS WAS TURNED OVER TO JOHN B. HENDERSON, CHIEF OF THE MAIL AND POUCH BRANCH (AT THE TIME) WHO SIGNED RECEIPT. THIS WAS POUCHED AND REGISTERED BY THE DISPATCH CLERK IN THE MAIL AND POUCH BRANCH, WHO WAS NOT AWARE OF THE CONTENTS OF ANY ITEMS IN THE POUCH. THE POUCH WAS THEN TURNED OVER TO APO UNDER NORMAL PROCEDURES. ***"

HE THEN REQUESTED OUR CONCURRENCE WITH THE STATEMENT THAT -

"THE DEPARTMENT'S COMMITTEE OF INQUIRY INTO FISCAL IRREGULARITIES DETERMINED THAT THE LOSS COULD NOT BE ATTRIBUTED TO ANY OF THESE INDIVIDUALS SINCE IT DID NOT OCCUR WHILE IN THEIR CUSTODY. ACCOUNTABILITY FOR THE FUNDS CONTINUED TO BE MADE BY THE CASHIER."

WHILE THE LOSS IN QUESTION WAS CHARGEABLE TO MS. MARTINEZ MIRANDA'S ACCOUNT, SHE WAS NOT THE ONLY "ACCOUNTABLE OFFICER" WITH RESPECT TO THE LOSS. IT IS TRUE THAT, IN A CASE LIKE THIS, RELIEF FROM LIABILITY MUST BE REQUESTED FOR THE PERSON WHOSE ACCOUNT IS CHARGEABLE WITH THE LOSS. HERE, THE LOSS COULD NOT POSSIBLY HAVE BEEN ATTRIBUTABLE IN ANY WAY TO MS. MARTINEZ MIRANDA SINCE SHE WAS NOT INVOLVED IN PACKAGING OR SHIPPING THE FUNDS AND THE FUNDS NEVER REACHED HER. NEVERTHELESS, THE GRANTING OF RELIEF TO HER WAS NECESSARY TO ENABLE HER ACCOUNT TO BE CLEARED. THIS GRANTING OF RELIEF, HOWEVER, DID NOT TERMINATE THE MATTER BECAUSE OF THE POSSIBILITY THAT SOME OTHER PERSON MAY HAVE BEEN "ACCOUNTABLE." THE TERM "ACCOUNTABLE OFFICER" IS NOT LIMITED TO INDIVIDUALS WHO HOLD ACCOUNTS. RATHER, AS WE HAVE STATED IN A NUMBER OF DECISIONS, THE TERM EMBRACES ANY GOVERNMENT OFFICER OR EMPLOYEE WHO, BY REASON OF HIS EMPLOYMENT, IS RESPONSIBLE FOR, OR HAS CUSTODY OF, GOVERNMENT FUNDS. E.G., B-188894, SEPTEMBER 29, 1977. THESE CONSIDERATIONS FORMED THE BASIS OF OUR MARCH 30 LETTER.

WE HAVE BEEN INFORMALLY ADVISED THAT MS. SHAFSHUF OF THE OFFICE OF FINANCE PACKAGED THE FUNDS AND TURNED THE PACKAGE OVER TO MR. HENDERSON. AS WE UNDERSTAND IT, MR. HENDERSON WAS INFORMED THAT THE PACKAGE CONTAINED CASH, AND ALTHOUGH HE SIGNED A RECEIPT FOR THE PACKAGE, HE NEVER SAW OR COUNTED THE CASH. THUS, BOTH MS. SHAFSHUF AND MR. HENDERSON WERE ACCOUNTABLE FOR THE CURRENCY WHILE IT WAS IN HIS/HER RESPECTIVE CUSTODY.

IN VIEW OF THE FACTS AND CIRCUMSTANCES OF THIS CASE, AND SINCE THERE IS NO EVIDENCE IN THE RECORD THAT FAULT OR NEGLIGENCE ON THE PART OF THE ABOVE-NAMED INDIVIDUALS CONTRIBUTED TO THE LOSS, RELIEF IS GRANTED TO MS. SHAFSHUF AND MR. HENDERSON IN THE AMOUNT OF $2,412.

WE NOTE THAT, TO PREVENT RECURRENCE OF THIS TYPE OF LOSS, YOUR DEPARTMENT STATES THAT SHIPMENTS WILL NO LONGER BE MADE VIA APO. RATHER, IN THE FUTURE, THE CHIEF OF THE MAIL AND POUCH BRANCH WILL ARRANGE SPECIAL SHIPMENT FOR ALL POSTS WHICH NORMALLY USE APO. IN ADDITION, WE SUGGEST THAT YOUR DEPARTMENT ESTABLISH WRITTEN PROCEDURES TO REQUIRE THAT CASH BE PACKAGED IN THE PRESENCE OF AT LEAST TWO EMPLOYEES. SEE 31 C.F.R. PARTS 261 AND 262 (TREASURY DEPARTMENT REGULATIONS UNDER THE GOVERNMENT LOSSES IN SHIPMENT ACT.)