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B-208398, Sep 29, 1983, Office of General Counsel

Number: B-208398

Date: 1983-09-29

B-208398, SEP 29, 1983, OFFICE OF GENERAL COUNSEL

MR. CALVIN J. DORN, DIRECTOR, ACCOUNTING DIVISION OFFICE OF THE COMPTROLLER U.S. CUSTOMS SERVICE DEPARTMENT OF THE TREASURY:

THIS IS IN RESPONSE TO YOUR REQUEST THAT WE AUTHORIZE THE REGIONAL COMMISSIONER (MIAMI) TO "WRITE OFF" AN UNCOLLECTIBLE DEBIT VOUCHER STEMMING FROM A CHECK SEIZED UNDER 31 U.S.C. SEC. 5317(B) (FORMERLY 31 U.S.C. SEC. 1102). MS. CHERYL MORROW OF YOUR STAFF HAS INFORMED US THAT YOUR OFFICE IS UNSURE WHETHER THE REGIONAL COMMISSIONER SHOULD BE HELD ACCOUNTABLE FOR THE OUTSTANDING DEBIT VOUCHER. IN THE EVENT THAT ACCOUNTABILITY DOES EXIST, RELIEF FROM LIABILITY UNDER 31 U.S.C. SEC. 3527(A) (FORMERLY 31 U.S.C. SEC. 82A-1) IS SOUGHT. IN OUR OPINION, THE REGIONAL COMMISSIONER SHOULD NOT BE HELD ACCOUNTABLE FOR THE AMOUNT OF THE DEBIT VOUCHER, AND RELIEF PURSUANT TO 31 U.S.C. SEC. 3527(A) IS ACCORDINGLY UNNECESSARY.

FACTS

IN NOVEMBER 1980, THE CUSTOMS OFFICE IN SAN JUAN, PUERTO RICO, SEIZED A CHECK FOR $35,000 FROM MR. PEDRO DE JESUS VASQUEZ AT THE SAN JUAN INTERNATIONAL AIRPORT. CUSTOMS SEIZED THE CHECK BECAUSE MR. VASQUEZ FAILED TO REPORT HIS POSSESSION OF THE CHECK AS REQUIRED BY 31 U.S.C. SEC. 5316 (FORMERLY SEC. 1101). MR. VASQUEZ IMMEDIATELY FILED A PETITION FOR ADMINISTRATIVE REMISSION, WHICH WAS FORWARDED TO CUSTOMS HEADQUARTERS.

PRESUMABLY UPON THE ADVICE OF LEGAL COUNSEL, IT HAS BEEN THE PRACTICE OF THE CUSTOMS SERVICE TO OBTAIN A LIMITED POWER OF ATTORNEY FROM THE HOLDER OF A SEIZED CHECK BEFORE MAKING A "CUSTODIAL DEPOSIT" OF THE CHECK. THIS CASE, A POWER OF ATTORNEY WAS NEVER OBTAINED, EITHER BECAUSE MR. VASQUEZ REFUSED TO GIVE IT OR BECAUSE NO ONE ASKED (THE RECORD IS NOT ENTIRELY CLEAR ON THIS POINT). IN ANY EVENT, THE CHECK WAS PLACED IN A VAULT AND REMAINED THERE FOR OVER A YEAR.

IN DECEMBER 1981, CUSTOMS DECIDED TO MAKE A CUSTODIAL DEPOSIT TO PROTECT THE GOVERNMENT'S INTERESTS, AND DEPOSITED THE CHECK IN ITS SUSPENSE ACCOUNT 20X6875(06). THE CHECK WAS RETURNED FOR INSUFFICIENT FUNDS AND THE DEPOSITARY ISSUED A DEBIT VOUCHER FOR THE $35,000. IN ADDITION, CUSTOMS ASSESSED A CIVIL PENALTY AGAINST MR. VASQUEZ. CUSTOMS INDICATES THAT THE CASE AGAINST MR. VASQUEZ "HAS SINCE BEEN MITIGATED" TO $175, WHICH "NOW REPRESENTS THE MAXIMUM POSSIBLE LOSS TO THE GOVERNMENT." SINCE THE REGIONAL COMMISSIONER IS BEING HELD ACCOUNTABLE FOR THE OUTSTANDING DEBIT VOUCHER, RELIEF IS SOUGHT.

PERTINENT LEGISLATION

THE AUTHORITY FOR THE SEIZURE IN THIS CASE WAS ORIGINALLY ENACTED AS CHAPTER 2 OF THE CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT, PUB.L. NO. 91-508 (OCTOBER 26, 1970), TITLE II. ITS PURPOSE WAS TO "FURNISH AMERICAN LAW ENFORCEMENT AUTHORITIES WITH THE TOOLS NECESSARY TO COPE WITH THE PROBLEMS CREATED BY SO-CALLED SECRECY JURISDICTIONS." H.R.REP. NO. 975 (COMMITTEE ON BANKING AND CURRENCY), 91ST. CONG., 2D SESS., REPRINTED AT 1970 U.S.C. CONG. & AD. NEWS 4394, 4404. THIS IS OUR FIRST OCCASION TO CONSIDER TRANSACTIONS UNDER THIS LEGISLATION.

BRIEFLY, A PERSON WHO TRANSPORTS "MONETARY INSTRUMENTS" OF MORE THAN $5,000 INTO OR OUT OF THE UNITED STATES MUST, AT THE TIME OF ENTRY OR DEPARTURE, FILE A REPORT WITH THE CUSTOMS OFFICER IN CHARGE AT THE ENTRY/DEPARTURE POINT. 31 U.S.C. SEC. 5316; 31 C.F.R. SEC. 103.25(B). A REPORT IS NOT FILED OR IF IT CONTAINS MATERIAL OMISSIONS OR MISSTATEMENTS, THE INSTRUMENTS ARE SUBJECT TO SEIZURE AND FORFEITURE. U.S.C. SEC. 5317(B). IN ADDITION, A CIVIL PENALTY MAY BE IMPOSED, BUT IT MAY NOT EXCEED THE AMOUNT OF THE MONETARY INSTRUMENT FOR WHICH THE REPORT WAS REQUIRED. 31 U.S.C. SEC. 5321(A)(2) (FORMERLY SEC. 1103). THE COMMISSIONER OF CUSTOMS MAY, AT HIS DISCRETION, REMIT ALL OR ANY PART OF A FORFEITURE OR PENALTY. 31 U.S.C. SEC. 5321(C) (FORMERLY SEC. 1104); 31 C.F.R. SECS. 103.46(A)(7) AND 103.48. IN ADDITION TO CIVIL LIABILITY, THE LAW PROVIDES FOR CRIMINAL PENALTIES. 31 U.S.C. SEC. 5322 (FORMERLY SECS. 1058, 1059).

FORFEITURE UNDER 31 U.S.C. SEC. 5317(B) IS ACTUALLY ACCOMPLISHED BY MEANS OF A JUDICIAL DECREE.

GAO IS AUTHORIZED UNDER 31 U.S.C. SEC. 3527(A) TO RELIEVE ACCOUNTABLE OFFICERS FROM LIABILITY FOR THE PHYSICAL LOSS OR DEFICIENCY OF PUBLIC FUNDS IN THEIR CUSTODY PROVIDED CERTAIN CONDITIONS SPECIFIED IN THE STATUTE ARE MET.

DISCUSSION

IN OUR DECISION TO YOUR OFFICE OF SEPTEMBER 23, 1982, B-201973 ET AL., WE CONCLUDED THAT WHERE A CUSTOMS OFFICIAL RECEIVES A PERSONAL CHECK TENDERED IN PAYMENT OF CUSTOMS DUTIES OR PENALTIES OR FOR SOME OTHER OFFICIAL PURPOSE AND THE CHECK IS SUBSEQUENTLY DISHONORED, THE OFFICER'S ACCOUNT NEVER EFFECTIVELY RECEIVED THE PAYMENT, AND THUS NO PHYSICAL "LOSS OR DEFICIENCY" FOR WHICH RELIEF IS REQUIRED RESULTS. ASSUMING THAT THE DECISION BY CUSTOMS TO MITIGATE THE SUM OWED BY MR. VASQUEZ TO $175 WAS NOT MERELY A REFLECTION OF THE ULTIMATE WORTHLESSNESS OF THE INSTRUMENT OR, IN THE EVENT THAT IT WAS SUCH A REFLECTION, THAT THE WORTHLESSNESS OF THE INSTRUMENT WAS NOT THE RESULT OF NEGLIGENCE BY CUSTOMS PERSONNEL IN THEIR HANDLING OF THE CHECK, WE THINK THAT THE ABOVE PRINCIPLE GOVERNS THE CASE CURRENTLY BEFORE US. THE REGIONAL COMMISSIONER'S ACCOUNT NEVER EFFECTIVELY RECEIVED THE $35,000, AND THUS NO PHYSICAL LOSS OR DEFICIENCY RESULTED WHEN THE CHECK WAS DISHONORED. RELIEF FROM LIABILITY PURSUANT TO 31 U.S.C. SEC. 3527(A) IS THEREFORE UNNECESSARY. THE REGIONAL COMMISSIONER IS ACCORDINGLY AUTHORIZED TO CLEAR THE DEBIT VOUCHER BY APPROPRIATE ADMINISTRATIVE ACTION.