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B-212605, Apr 19, 1984

Number: B-212605

Date: 1984-04-19

B-212605, APR 19, 1984

THE HONORABLE JUDITH L. TARDY ASSISTANT SECRETARY FOR ADMINISTRATION DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

THIS IS IN REPLY TO YOUR LETTER DATED JUNE 6, 1983, FORWARDED TO US BY THE CHIEF DISBURSING OFFICER, DEPARTMENT OF THE TREASURY, REQUESTING THAT MR. FRANK STABILE, PRINCIPAL CASHIER AT THE PHILADELPHIA REGIONAL OFFICE OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) BE RELIEVED OF LIABILITY FOR A SHORTAGE OF $1,887.86 IN HIS IMPREST FUND ACCOUNT. THE SHORTAGE RESULTED FROM AN APPARENT THEFT WHICH TOOK PLACE ON OR ABOUT JULY 30, 1982. FOR THE REASONS SET FORTH BELOW, RELIEF IS GRANTED.

THE RECORD INDICATES THAT AT APPROXIMATELY 11:45 A.M. ON JULY 30, 1982, MR. STABILE OPENED THE IMPREST FUND SAFE AND FOUND THAT HIS CASH BOX WAS MISSING. THE CASH BOX HAD CONTAINED $1,887.86 IN CASH AND A TREASURY CHECK FOR $3,101.46. MR. STABILE HAS STATED THAT HE CLEARLY RECALLS LOCKING THE SAFE AT THE CLOSE OF BUSINESS ON JULY 29. THE UNLOCKING AND OPENING OF THE SAFE WAS WITNESSED BY MR. STABILE'S SUPERVISOR. THE CASH BOX OF AN ALTERNATE CASHIER, WHICH WAS ALSO HELD IN THE SAFE, WAS NOT MISSING. BOTH MR. STABILE AND THE ALTERNATE CASHIER KNEW THE COMBINATION TO THE IMPREST FUND SAFE. THERE WAS NO EVIDENCE OF FORCED ENTRY INTO THE SAFE. THE PROPER INVESTIGATIVE AUTHORITIES WERE CALLED AND A STOP PAYMENT ORDER WAS PLACED ON THE MISSING CHECK.

THE FEDERAL BUREAU OF INVESTIGATION CONDUCTED AN INVESTIGATION. THE PRIMARY SUSPECT IN THE FBI INVESTIGATION OF THE APPARENT THEFT WAS A BUILDING MAINTENANCE EMPLOYEE WHO HAD A HISTORY OF CRIMINAL ACTIVITY AND WHOM A POLICE INFORMANT HAD NAMED AS THE THIEF. THE FBI INTERVIEWED THIS SUSPECT WHO AGREED TO UNDERGO A POLYGRAPH EXAMINATION BUT LATER DECLINED TO DO SO. THE INVESTIGATION DID NOT RESULT IN THE PROSECUTION OF ANY SUSPECTS.

HUD HAS MADE AN ADMINISTRATIVE DETERMINATION THAT "(1) THE LOSS OCCURRED WHILE FRANK STABILE WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, AND (2) THAT SUCH LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HIS PART." THIS OFFICE HAS AUTHORITY PURSUANT TO 31 U.S.C. SEC. 3527(A) TO RELIEVE AN ACCOUNTABLE OFFICER OF LIABILITY FOR LOST OR STOLEN FUNDS IF WE AGREE WITH THE DETERMINATION BY THE HEAD OF AN AGENCY THAT THE LOSS IN QUESTION OCCURRED WHILE THE ACCOUNTABLE OFFICER WAS DISCHARGING HIS OR HER OFFICIAL DUTIES AND THAT THE LOSS OCCURRED WITHOUT THE CASHIER'S FAULT OR NEGLIGENCE.

A FEDERAL ACCOUNTABLE OFFICER IS HELD TO A HIGH STANDARD OF CARE WITH RESPECT TO THE FUNDS WITH WHICH HE OR SHE IS CHARGED. WHEN A LOSS OF FUNDS OCCURS, THE ACCOUNTABLE OFFICER IS PRESUMED NEGLIGENT, AND HE OR SHE HAS THE BURDEN OF

PRESENTING CONVINCING EVIDENCE THAT THE LOSS WAS NOT CAUSED BY NEGLIGENCE ON HIS OR HER PART. SEE 54 COMP.GEN. 112, 114-115 (1974); B-204173, NOVEMBER 9, 1982. BASED ON THE RECORD IN THIS CASE, WE CONCLUDE THAT THERE IS SUFFICIENT EVIDENCE THAT MR. STABILE ACTED WITH DUE CARE, AND WE CONCUR IN THE DETERMINATION OF HUD THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HIS PART.

IN PREVIOUS CASES, WE HAVE RECOGNIZED THAT THE DISAPPEARANCE OF AN ENTIRE CASH BOX FROM A LOCKED SAFE INDICATES THAT A THEFT HAS PROBABLY OCCURRED. B-191942, SEPTEMBER 12, 1979. FURTHER, THE FBI INVESTIGATION PRODUCED THE EVIDENCE THAT THE BUILDING MAINTENANCE EMPLOYEE MAY HAVE BEEN RESPONSIBLE FOR THE THEFT. IN CASES INVOLVING LOSSES DUE TO THEFT, WE GENERALLY HAVE GRANTED RELIEF IF THE EVIDENCE PRESENTED REVEALS THAT THE THEFT CANNOT BE ATTRIBUTED IN ANY WAY TO FAULT OR NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICER. ID.

AS PREVIOUSLY NOTED, MR. STABILE HAS STATED THAT HE CLEARLY RECALLS LOCKING THE SAFE AT THE CLOSE OF BUSINESS ON THE DAY PRIOR TO THE THEFT. MOREOVER, THE FBI INVESTIGATION DID NOT REVEAL ANY EVIDENCE TO IMPLICATE MR. STABILE IN THE THEFT OR THAT HE DID NOT LOCK THE SAFE. IN A SIMILAR CASE, WE HAVE HELD THAT EVIDENCE OF THIS NATURE WAS SUFFICIENT FOR US TO CONCUR IN AN ADMINISTRATIVE DETERMINATION TO GRANT RELIEF TO AN ACCOUNTABLE OFFICER BECAUSE THE LOSS WAS NOT DUE TO HIS FAULT OR NEGLIGENCE. B-188733, MARCH 29, 1979.

FINALLY, WE NOTE THAT BOTH MR. STABILE AND AN ALTERNATE CASHIER HAD THE COMBINATION TO THE SAFE. THIS WAS CONTRARY TO THE TREASURY DEPARTMENT'S "MANUAL OF PROCEDURES AND INSTRUCTIONS FOR CASHIERS," SECTION 0402. SEE B-199034, FEBRUARY 9, 1981. SINCE MORE THAN ONE PERSON HAD READY ACCESS TO THE SAFE IN WHICH THE CASH BOXES WERE KEPT, DEFINITE PLACEMENT OF RESPONSIBILITY FOR THE LOSS IS PRECLUDED. SEE B-199020, AUGUST 18, 1980. WE HAVE GRANTED RELIEF IN SUCH CASES WHERE, AS IN THIS CASE, THERE IS NO EVIDENCE OF CONTRIBUTING NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICER. B-199034, FEBRUARY 9, 1981.

ACCORDINGLY, WE GRANT RELIEF TO MR. STABILE IN THE AMOUNT OF $1,887.86.