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B-213427, Dec 13, 1983, Office of General Counsel

Number: B-213427

Date: 1983-12-13

B-213427, DEC 13, 1983, OFFICE OF GENERAL COUNSEL

MR. DONALD F. LAYFIELD, REGIONAL ADMINISTRATOR GENERAL SERVICES ADMINISTRATION, REGION 4:

THIS IS IN RESPONSE TO YOUR LETTER REQUESTING RELIEF IN THE AMOUNT OF $1,710 ON BEHALF OF MS. ELEANOR R. KRANCHICK, COLLECTIONS OFFICER. FOR THE REASONS INDICATED BELOW, WE DENY RELIEF.

MS. KRANCHICK WAS THE SOLE COLLECTIONS OFFICER AT A BOAT AUCTION HELD BY THE GENERAL SERVICES ADMINISTRATION IN MIAMI, FLORIDA. DURING THE AUCTION, MS. KRANCHICK RECEIVED APPROXIMATELY $95,000 IN CASH. WHEN THE CASH RECEIPTS WERE DEPOSITED AT A LOCAL BANK, THERE WAS A SHORTAGE OF $1,710.

YOU INDICATE THAT MS. KRANCHICK WHILE IN THE PERFORMANCE OF HER OFFICIAL DUTY FOLLOWED ALL EXISTING REGULATIONS FOR COLLECTING FUNDS INCLUDING HAVING A SEPARATE CASH BOX AND ISSUING RECEIPTS TO EACH BUYER SPECIFYING WHETHER PAYMENT WAS IN CASH, MONEY ORDER, OR OTHER. YOU, THEREFORE, CONCLUDE THAT SHE ACTED WITH REASONABLE CARE, AND THAT THERE IS NO EVIDENCE DEMONSTRATING THAT ANY OF HER ACTIONS OR INACTIONS COULD BE CHARACTERIZED AS NEGLIGENT.

TO EXPLAIN THE LOSS, YOU POINT OUT THE DIFFICULT CONDITIONS UNDER WHICH MS. KRANCHICK COLLECTED PAYMENTS. FOR EXAMPLE, WHILE COUNTING CASH PAYMENTS, SUCH AS $13,000 IN 20-DOLLAR BILLS, SHE OFTEN HAD TO STOP COUNTING TO ANSWER QUESTIONS OF A TECHNICAL NATURE FROM CUSTOMERS REFERRED TO HER FROM OTHER AUCTION STAFF. ADDITIONALLY, BECAUSE OF THE MANY BOATS SOLD AT THE AUCTION, THE PAYMENT LINE WAS LONG AND SLOW MOVING WITH NUMEROUS CUSTOMER COMPLAINTS WHICH FURTHER DISTRACTED HER. THESE NUMEROUS INTERRUPTIONS WERE FURTHER COMPOUNDED BY THE CROWD NOISE WHICH WAS UNUSUALLY LOUD AND DISTRACTING. FURTHERMORE, MS. KRANCHICK WAS NOT GIVEN A CALCULATOR FOR TABULATING RECEIPTS AND THE SUPERVISOR INSISTED THE RECEIPTS BE TURNED IN BEFORE A SATISFACTORY COUNT COULD BE MADE SO AS TO DEPOSIT THEM AT A BANK BEFORE CLOSING. CONSEQUENTLY, YOU APPARENTLY ATTRIBUTE THE LOSS TO THE ARDUOUS WORKING CONDITIONS COUPLED WITH THE FACT THAT THE CASHIER WAS PROVIDED WITH NO RELIEF DURING THE LENGTHY AUCTION.

UNDER 31 U.S.C. SEC. 3527(A), WE MAY RELIEVE AN ACCOUNTABLE OFFICER, SUCH AS MS. KRANCHICK, FOR A LOSS OF FUNDS WHEN THE HEAD OF THE AGENCY DECIDES AND WE CONCUR THAT THE LOSS OCCURRED WHILE THE EMPLOYEE WAS CARRYING OUT OFFICIAL DUTIES AND WAS NOT THE RESULT OF FAULT OR NEGLIGENCE ON THE PART OF THE EMPLOYEE.

ALTHOUGH YOU HAVE MADE THE REQUISITE STATUTORY FINDINGS, WE DO NOT CONCUR IN THEM AND THEREFORE CANNOT GRANT RELIEF.

THE SHORTAGE INVOLVED HERE IS AN UNEXPLAINED LOSS IN THAT THERE IS NO INDICATION IN THE RECORD AS TO HOW THE MISSING FUNDS WERE LOST. SUCH A LOSS, IN AND OF ITSELF, IS SUFFICIENT TO RAISE A PRESUMPTION OF NEGLIGENCE. 48 COMP.GEN. 566, 567 (1969). THIS PRESUMPTION MAY BE REBUTTED BY COMPETENT EVIDENCE THAT THE CASHIER EXERCISED DUE CARE IN PERFORMING HER DUTIES. IT IS NOT REBUTTED MERELY BY RELIANCE ON THE ABSENCE OF IMPLICATING EVIDENCE. THUS, THE ADMINISTRATIVE DETERMINATION THAT THERE WAS NO FAULT OR NEGLIGENCE, UNSUPPORTED BY EVIDENCE, CANNOT PROVIDE A BASIS FOR RELIEF. RATHER, THE ACCOUNTABLE OFFICER MUST COME FORWARD WITH AFFIRMATIVE EVIDENCE THAT SHE EXERCISED THE REQUISITE DEGREE OF CARE. SEE B-167126, AUGUST 9, 1976. SEE ALSO B-191051, JULY 31, 1978.

THE REAL BASIS PUT FORTH FOR RELIEF IS THAT MS. KRANCHICK HAD A HEAVY WORKLOAD INVOLVING MORE THAN JUST COLLECTING CASH. THIS IS NOT A BASIS FOR RELIEF. SEE 48 COMP.GEN. 566, 568 (1969); B-191051, JULY 31, 1978; AND B-186127, SEPTEMBER 1, 1976.

WE DENY RELIEF AT THIS TIME BECAUSE THE PRESUMPTION OF NEGLIGENCE HAS NOT BEEN REBUTTED. HOWEVER, WE NOTE FROM YOUR LETTER THAT THE SUPERVISOR INSISTED THAT NO FINAL COUNT BE MADE UNTIL ALL THE FUNDS WERE TURNED INTO THE BANK. IT IS NOT CLEAR TO US WHETHER PHYSICAL CUSTODY OF THE FUNDS EVER PASSED TO SOMEONE OTHER THAN THE COLLECTIONS OFFICER BEFORE THE FUNDS REACHED THE BANK. IF SOMEONE OTHER THAN THE COLLECTIONS OFFICER TRANSPORTED THE FUNDS AND MADE THE DEPOSIT, YOU MAY WISH TO RECONSIDER WHICH EMPLOYEE WAS ACTUALLY ACCOUNTABLE FOR THE FUNDS AT THE TIME OF THE LOSS. SHOULD YOU DETERMINE THAT THE COLLECTIONS OFFICER WAS NOT ACCOUNTABLE FOR THE FUNDS AT THE TIME OF THE LOSS, YOU MAY WISH TO FURNISH US WITH THE DETAILS AND REQUEST THAT WE RECONSIDER THIS DECISION. ON THE OTHER HAND, IF THE COLLECTIONS OFFICER HAD CUSTODY OF THE FUNDS AT ALL TIMES, COLLECTION ACTION SHOULD BE COMMENCED AGAINST HER PROMPTLY.