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[Repayment for Relief From Liability for Loss Resulting From Forged Endorsements]

Number: B-213874

Date: 1984-09-06

B-213874, SEP 6, 1984

ACCOUNTABLE OFFICERS - RELIEF - ILLEGAL OR ERRONEOUS PAYMENTS - WITHOUT FAULT OR NEGLIGENCE DIGEST: UNDER 31 U.S.C. SEC. 3527(C) ARMY FINANCE OFFICER IS RELIEVED OF LIABILITY FOR ERRONEOUS PAYMENTS DUE TO CASHING OF POSTAL MONEY ORDERS WITH FORGED ENDORSEMENTS SINCE HE MAINTAINED AN EFFECTIVE CONTROL SYSTEM AND ADEQUATELY SUPERVISED HIS STAFF.

MR. CLYDE E. JEFFCOAT PRINCIPAL DEPUTY COMMANDER U.S. ARMY FINANCE AND ACCOUNTING CENTER INDIANAPOLIS, INDIANA 46249

DEAR MR. JEFFCOAT:

THIS IS IN RESPONSE TO YOUR REQUEST OF NOVEMBER 29, 1983, FOR RELIEF OF LIEUTENANT COLONEL (LTC) H. PEREZ, FINANCE OFFICER, 3RD INFANTRY DIVISION, FOR A LOSS OF $500, RESULTING FROM THE CASHING OF TWO POSTAL MONEY ORDERS OVER THE FORGED ENDORSEMENTS OF A ROGER FERNANDEZ IN JULY 1979. EXPLAINED BELOW WE GRANT THE REQUESTED RELIEF.

ACCORDING TO THE SUBMISSION, DURING MAY 1982, THE 3RD INFANTRY DIVISION FINANCE OFFICE RECEIVED TWO UNITED STATES POSTAL MONEY ORDERS IN THE AMOUNT OF $100 AND $400, IT HAD PAID IN JULY 1979 TO A ROGER FERNANDEZ. THE MONEY ORDERS WERE RETURNED BECAUSE THE ENDORSEMENTS WERE FORGED, A FACT VERIFIED BY AN AFFIDAVIT SUBMITTED BY ROGER FERNANDEZ AFTER HE WAS CONTACTED. CONSEQUENTLY, THERE WAS A LOSS WHICH WAS REFLECTED ON THE FINANCE OFFICER'S STATEMENT OF ACCOUNTABILITY FOR OCTOBER 1982.

THE FINANCE OFFICE CONDUCTED AN INVESTIGATION TO ASCERTAIN THE IDENTITY OF THE INDIVIDUAL WHO COMMITTED THE FORGERY AS WELL AS THE CASHIER WHO CASHED THE MONEY ORDERS. SINCE ALL PERSONNEL ASSIGNED TO THE DISBURSING SECTION IN 1979 HAD DEPARTED THE COMMAND, THE INVESTIGATION PROVED FRUITLESS. LIKEWISE, A CRIMINAL INVESTIGATION WAS UNSUCCESSFUL IN ASCERTAINING ANY PERTINENT INFORMATION BECAUSE OF THE PASSAGE OF TIME SINCE THE CASHING OF THE MONEY ORDERS.

ALTHOUGH THE STANDARD OPERATING PROCEDURES FOR CASHING NEGOTIABLE INSTRUMENTS IN EFFECT AT THE TIME OF THE LOSS HAVE BEEN SUPERSEDED AND ARE NO LONGER AVAILABLE, AFTER REVIEWING THE INVESTIGATIVE RECORD, THE ARMY REQUESTED LTC PEREZ TO SUBMIT A STATEMENT REGARDING THE PROCEDURES IN EFFECT IN 1979 AND THE STEPS HE TOOK TO ENSURE THEIR IMPLEMENTATION. LTC PEREZ' STATEMENT CONTAINED THE FOLLOWING CONCERNING PROCEDURES IN EFFECT AT THE TIME OF THE LOSS:

"* * * THESE CASHIER PROCEDURES ARE PARAPHRASED BELOW TO THE BEST OF MY

RECOLLECTION:

'CASHING OF NEGOTIABLE INSTRUMENTS WILL BE MADE ONLY FOR THE INDIVIDUAL NAMED THEREON, NO TWO PARTY CHECKS WILL BE CASHED.

'PRIOR TO CASHING A NEGOTIABLE INSTRUMENT, THE PAYEE MUST PRESENT PROPER IDENTIFICATION. ACCEPTABLE IDENTIFICATION CONSISTS OF: DD FORM 2A FOR ARMY PERSONNEL AND EQUIVALENT DD FORM FOR AIR FORCE, NAVY, MARINE CORPS AND COAST GUARD. FOR CIVILIAN EMPLOYEES, DD FORM 1173 MUST BE PRESENTED.

'ONCE PROPER IDENTIFICATION IS ESTABLISHED, REQUIRE THE CUSTOMER TO SIGN THE INSTRUMENT IN THE PRESENCE OF THE CASHIER AND COMPARE THE SIGNATURE WITH THAT SHOWN ON THE IDENTIFICATION CARD. IF SIGNATURES AGREE, PROCEED TO EXCHANGE THE NEGOTIABLE INSTRUMENT FOR CASH.

'COUNT THE MONEY AT LEAST TWICE TO AVOID ERRORS.'

"WHILE I RECALL THE REQUIREMENT FOR CASHIERS TO PLACE THEIR INITIALS ON VOUCHERS PAID, I DO NOT HONESTLY REMEMBER IF I HAD A SIMILAR REQUIREMENT WHEN CASHING NEGOTIABLE INSTRUMENTS."

AFTER RECEIVING THIS STATEMENT, THE ARMY CONCLUDED THAT THE TWO IMPROPER PAYMENTS WERE NOT THE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE ON THE PART OF LTC PEREZ, AND, ACCORDINGLY, THE ARMY REQUESTED THAT HE BE RELIEVED OF LIABILITY FOR THESE TWO LOSSES.

THE TIME PERIOD INVOLVED HERE RAISES THE ISSUE OF THE APPLICABILITY OF THE 3-YEAR STATUTE OF LIMITATIONS FOUND IN 31 U.S.C. SEC. 3526. AS NOTED, BOTH MONEY ORDERS WERE CASHED IN JULY 1979. HOWEVER, THE 3-YEAR PERIOD DID NOT BEGIN TO RUN UNTIL LATER. THE POST OFFICE MONEY ORDERS WITH THE FORGED ENDORSEMENTS WERE NOT FORWARDED TO THE ARMY UNTIL MAY 1982, AND THE SHORTAGE SUBSEQUENTLY WAS REFLECTED IN THE DISBURSING OFFICER'S STATEMENT OF ACCOUNTABILITY FOR OCTOBER 1982. WE CONSIDER THE DATE OF RECEIPT BY THE AGENCY OF SUBSTANTIALLY COMPLETE ACCOUNTS AS THE POINT FROM WHICH THE 3-YEAR PERIOD BEGINS TO RUN. E.G., B-198451.2, SEPTEMBER 15, 1982. THUS, THE 3-YEAR PERIOD BEGAN TO RUN WHEN THE ARMY FINANCE AND ACCOUNTING CENTER RECEIVED THE DISBURSING OFFICER'S STATEMENT OF ACCOUNTABILITY FOR OCTOBER 1982. SEE 62 COMP.GEN. 91, 97-98 (1982). THE ARMY HAD NO WAY OF KNOWING THAT THERE WAS A LOSS UNTIL IT RECEIVED THE RETURNED MONEY ORDERS, THE EVENT WHICH TRIGGERED INCLUSION ON THE STATEMENT OF ACCOUNTABILITY.

AS A FINANCIAL OFFICER, LTC PEREZ IS PERSONALLY LIABLE FOR THE IMPROPER PAYMENTS MADE BY HIS SUBORDINATE. HOWEVER, UNDER 31 U.S.C. SEC. 3527(C) THIS OFFICE MAY GRANT RELIEF FROM LIABILITY UPON A DETERMINATION THAT THE PAYMENT DID NOT RESULT FROM BAD FAITH OR A LACK OF DUE CARE ON HIS PART. SEE GENERALLY 54 COMP.GEN. 112 (1974). MORE SPECIFICALLY, IN CASES WHERE A SUBORDINATE ACTUALLY DISBURSES FUNDS, WE HAVE GRANTED RELIEF TO THE SUPERVISOR UPON A SHOWING THAT HE PROPERLY SUPERVISED HIS SUBORDINATES BY MAINTAINING AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS TO SAFEGUARD THE FUNDS, AND TOOK STEPS TO SEE THAT THE SYSTEM WAS EFFECTIVE AND BEING FOLLOWED. B-194877, JULY 12, 1979; B-192109, OCTOBER 11, 1978.

WE CONSIDER THE STATEMENT SUBMITTED BY LTC PEREZ AS CONSTITUTING SUFFICIENT EVIDENCE THAT HE ESTABLISHED AND MAINTAINED ADEQUATE OFFICE PROCEDURES TO SAFEGUARD THE FUNDS FOR WHICH HE WAS ACCOUNTABLE. THE IMPROPER PAYMENTS HERE WERE THE RESULT OF CRIMINAL ACTIVITY. EVEN THE MOST CAREFULLY ESTABLISHED AND

EFFECTIVELY SUPERVISED SYSTEM CANNOT PREVENT EVERY CONCEIVABLE FORM OF CRIMINAL ACTIVITY. B-202911, JUNE 29, 1981. SINCE THERE IS NO INDICATION THAT THE IMPROPER PAYMENTS WERE THE PROXIMATE RESULT OF BAD FAITH OR LACK OF REASONABLE CARE ON HIS PART, RELIEF IS GRANTED LTC PEREZ.

COLLECTION ACTION HAS NOT BEEN POSSIBLE BECAUSE THE IDENTITY OF THE PAYEE IS STILL UNKNOWN. OF COURSE, IF HIS IDENTITY IS LEARNED, THE DEPARTMENT OF THE ARMY WILL DILIGENTLY PURSUE COLLECTION. SEE 31 U.S.C. SEC. 3527(A)(2)(B).

ACCORDINGLY, WE GRANT RELIEF TO LTC PEREZ FROM LIABILITY FROM THE IMPROPER PAYMENTS OF $100 AND $400.