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[Request for Relief From Liability for Physical Loss of Funds]

Number: B-214286

Date: 1984-07-20

B-214286, JUL 20, 1984, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - OFFICIALS REQUIRING RELIEF DIGEST: RELIEF REQUEST FOR SECURITIES AND EXCHANGE COMMISSION COMPTROLLER AND HIS BRANCH CHIEF FOR PHYSICAL LOSS OF FUNDS IS NOT NECESSARY. WITH ONE EXCEPTION SATISFACTORILY EXPLAINED, NEITHER INDIVIDUAL HAD, NOR, BY THE NATURE OF THEIR JOBS, WERE REQUIRED TO HAVE ACTUAL CUSTODY OF THE MISSING FUNDS AND THEREFORE ARE NOT CONSIDERED ACCOUNTABLE OFFICERS FOR PURPOSE OF GRANTING RELIEF UNDER 31 U.S.C. 3527(A). AGENCY IS ADVISED TO CONTINUE DILIGENT EFFORTS TO COLLECT FROM FORMER EMPLOYEE, WHO THE INVESTIGATIVE REPORTS INDICATE MAY HAVE BEEN RESPONSIBLE FOR THE LOSS. IF UNSUCCESSFUL, THE ACCOUNT MAY BE ADJUSTED PURSUANT TO 31 U.S.C. 3530(A).

THE HONORABLE JOHN S.R. SHAD, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

DEAR MR. CHAIRMAN:

THIS IS IN REPLY TO YOUR REQUEST THAT RELIEF BE GRANTED UNDER 31 U.S.C. SEC. 3527(A) (1976) (FORMERLY 31 U.S.C. SEC. 82A-1) FOR TWO PHYSICAL LOSSES IN THE TOTAL AMOUNT OF $22,400, ON BEHALF OF LAWRENCE H. HAYNES, COMPTROLLER, AND LOUIS C. MANGANIELLO, BRANCH CHIEF, COMPTROLLER'S OFFICE, SECURITIES AND EXCHANGE COMMISSION.

THE RECORD INDICATES THAT A LOSS OF $15,000 OCCURRED AT THE COMMISSION BETWEEN OCTOBER 3, 1980 AND JUNE 18, 1981, AND A LOSS OF $7,400 OCCURRED BETWEEN OCTOBER 6, 1981 AND MARCH 31, 1982. BOTH LOSSES WERE IN CASH OR CHECK FEES COLLECTED BY THE COMMISSION. MESSRS. HAYNES AND MANGANIELLO DID NOT ROUTINELY TAKE PHYSICAL POSSESSION OF THE FUNDS, ALTHOUGH THEY BOTH SUPERVISED THE HANDLING OF FUNDS COLLECTED BY SUBORDINATE FEE CLERKS AND OTHER EMPLOYEES IN THE ACCOUNTING BRANCH, WHO DURING THE PERIOD IN QUESTION, ASSISTED THE FEE CLERKS.

THE NUMBER OF PERSONS WHO HANDLED THE FUNDS AND THE LAXITY OF PROCEDURES TO ACCOUNT FOR THE FUNDS AS THEY WENT FROM HAND-TO-HAND, MAKES IT IMPOSSIBLE TO DETERMINE WHO HAD ACTUAL CUSTODY OF THE FUNDS AT THE TIME OF THE LOSSES. AT ANY RATE, YOU HAVE NOT REQUESTED RELIEF FOR ANY OF THE FEE CLERKS OR THEIR ASSISTANTS WHO ROUTINELY HANDLE SUCH FUNDS.

THE TWO GENTLEMEN FOR WHOM YOU DID REQUEST RELIEF-- MR. LAWRENCE H. HAYNES AND MR. LOUIS C. MANGANIELLO-- ARE NOT ACCOUNTABLE OFFICERS FOR PURPOSES OF ASSIGNING RESPONSIBILITY FOR A PHYSICAL LOSS OF GOVERNMENT FUNDS, BECAUSE, ACCORDING TO YOUR SUBMISSION, WITH ONE EXCEPTION, NEITHER GENTLEMAN HAD CUSTODY OF OR ACCESS TO THE FUNDS.

/1/ WE HAVE, ON OCCASION, HELD A PRINCIPAL CASHIER RESPONSIBLE FOR A LOSS OF FUNDS IMPROPERLY TRANSFERRED TO A SUBORDINATE CASHIER (SEE, FOR EXAMPLE, B-196960, NOVEMBER 18, 1980; B-191942, SEPTEMBER 12, 1979) OR WHERE THERE WAS CONTRIBUTORY NEGLIGENCE ON THE PART OF THE PRINCIPAL CASHIER. HOWEVER, WE DO NOT REGARD A SUPERVISOR WHOSE JOB DESCRIPTION DOES NOT REQUIRE HIM TO ASSUME ACTUAL CUSTODY OF GOVERNMENT FUNDS AS AN ACCOUNTABLE OFFICER FOR PURPOSES OF 31 U.S.C. SEC. 3527(A). (THE ONE TIME EXCEPTION IN THE CASE OF MR. HAYNES APPEARS TO HAVE BEEN SATISFACTORILY ACCOUNTED FOR BY THE FEE CLERK HERSELF. SEE FOOTNOTE 1.) THEREFORE, IT IS UNNECESSARY TO REQUEST RELIEF FOR MESSRS. HAYNES AND MANGANIELLO.

WE NOTE WITH APPROVAL THAT THE LAX OFFICE PROCEDURES REFERRED TO ABOVE HAVE SINCE BEEN CORRECTED. WE NOTE ALSO THAT BASED ON AN INTERNAL INVESTIGATION BY THE FEDERAL BUREAU OF INVESTIGATION, THE COMMISSION BELIEVES THAT A FORMER EMPLOYEE IS RESPONSIBLE FOR THE LOSS, WHICH YOU REPORTED TO THE DEPARTMENT OF JUSTICE. WE DO NOT KNOW WHY THE DEPARTMENT OF JUSTICE DECLINED TO BRING CIVIL ACTION AGAINST THE EMPLOYEE TO RECOVER THE FUNDS. IF THE DECLINATION WAS NOT BASED ON THE LACK OF CREDIBLE EVIDENCE, THE COMMISSION SHOULD CONTINUE TO TAKE DILIGENT COLLECTION ACTION TO ATTEMPT TO RECOVER THE FUNDS FROM THE EMPLOYEE, PURSUANT TO THE FEDERAL CLAIMS COLLECTION STANDARDS, 4 C.F.R. PART 102.

IN THE EVENT THAT ALL EFFORTS TO COLLECT THE MISSING AMOUNTS FROM THE EMPLOYEE PROVE FRUITLESS, AND YOU MAKE SUCH A DETERMINATION AS CHAIRMAN OF THE COMMISSION, THE ACCOUNT MAY BE ADJUSTED BY CHARGING ANY APPROPRIATIONS AVAILABLE FOR THE ACTIVITIES OF THE COMPTROLLER'S OFFICE AT THE TIME THE DETERMINATION IS MADE. 31 U.S.C. SEC. 3530(A).

/1/ THE INTERNAL INVESTIGATION REPORT DOES INDICATE THAT ON ONE OCCASION, A CASH DEPOSIT WAS MADE AFTER OFFICE HOURS WHEN THE REGULAR FEE CLERK HAD GONE HOME. COMPTROLLER HAYNES SIGNED FOR THE MONEY AND PLACED IT IN THE SAFE, CALLING THE FEE CLERK'S ATTENTION TO IT NEXT MORNING. THE CLERK STATED THAT SHE FOUND THE MONEY IN THE SAFE, MADE UP A DEPOSIT SLIP, AND SENT THE MONEY VIA MESSENGER TO THE BANK 1 1/2 HOURS LATER.