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[Request for Relief From Liability for Account Deficiency]

Number: B-216279

Date: 1984-10-09

B-216279, OCT 9, 1984, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - LACK OF DUE CARE, ETC. - RELIEF DENIED DIGEST: CUSTOMS SERVICE CASHIER MAY NOT BE RELIEVED OF LIABILITY FOR DEFICIENCY RESULTING FROM HER FAILURE TO OBTAIN FUNDS FROM CUSTOMS AUCTION CUSTOMER PRIOR TO ISSUING A RECEIPT. RECORD CLEARLY INDICATES THAT CASHIER ACTED NEGLIGENTLY. FACT THAT CASHIER DID NOT ACTUALLY COME INTO PHYSICAL POSSESSION OF FUNDS IN QUESTION DOES NOT PREVENT HER FROM BEING HELD LIABLE FOR THE DEFICIENCY.

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

DEAR MR. DORN:

THIS IS IN RESPONSE TO YOUR LETTER DATED AUGUST 24, 1984 (REFERENCE FIS-1-CM:F:A:R CS) REQUESTING THAT MS. E. MORGAN, CUSTOMS TELLER IN THE OFFICE OF THE REGIONAL COMMISSIONER OF CUSTOMS IN NEW YORK, BE RELIEVED OF LIABILITY FOR A DEFICIENCY OF $1,000 IN HER ACCOUNT. THE DEFICIENCY APPARENTLY RESULTED WHEN MS. MORGAN ERRONEOUSLY GAVE A CUSTOMS AUCTION CUSTOMER A DEPOSIT RECEIPT WITHOUT COLLECTING THE TENDERED FUNDS. FOR THE REASONS SET FORTH BELOW, WE ARE UNABLE TO GRANT RELIEF.

FACTS

THE RECORD INDICATES THAT THE $1,000 DEFICIENCY IN THIS CASE RESULTS FROM A TRANSACTION WHICH TOOK PLACE BETWEEN MS. MORGAN AND A PURCHASER AT A MAY 6, 1982, CUSTOMS AUCTION SALE OF SEIZED AND ABANDONED IMPORTED MERCHANDISE IN NEW YORK. MS. MORGAN WAS APPROACHED BY A PURCHASER AT THE AUCTION WHO ADVISED HER THAT HE WISHED TO MAKE A DEPOSIT OF $1,000, IN ACCORDANCE WITH AUCTION PROCEDURES. MS. MORGAN ACCORDINGLY PREPARED AND STAMPED A CASH RECEIPT FOR $1,000. THEREUPON, ACCORDING TO AN INTERNAL CUSTOMS SERVICE MEMORANDUM SUPPLIED IN THE SUBMISSION, THE FOLLOWING OCCURED:

"AT THE SAME TIME, ANOTHER PURCHASER AT THE AUCTION PLACE $4,500.00 ON THE TABLE TO BE COUNTED AND VERIFIED BY TELLERS, MS. A. GONZALES AND MR. L. ROOT. THIS SITUATION APPARENTLY CREATED SOME CONFUSION AND MS. MORGAN RETURNED THE RECEIPT TO THE PURCHASER. IMMEDIATELY THEREAFTER, SHE REMEMBERED THAT SHE HAD NOT RECEIVED THE MONIES AND CALLED THE PURCHASER BACK AND REQUESTED THAT HE DEPOSIT THE $1,000.00. HIS RESPONSE AND THAT OF THE TWO OTHER MEN WITH HIM, APPARENTLY RELATIVES, WAS THAT HE HAD ALREADY PAID THE MONEY. THE MEMORANDUM IN THE FILE OF ASSISTANT SUPERVISORY CASHIER, C. ADAMS, INDICATES THAT AFTER PICKING UP THE CASH RECEIPTS AND ADDITIONAL DEPOSITS COLLECTED, A COUNT OF THE CURRENCY AND CHECKS TOGETHER WITH THE SUPERVISORY CASHIER REVEALED THAT THEY ONLY TOTALED

$56,532.00, WHEREAS, THE LIST OF ADDITIONAL DEPOSITS TOTALED $57,532.00. THERE WAS A SHORTAGE OF $1,000.00."

DISCUSSION

A FEDERAL ACCOUNTABLE OFFICER IS HELD TO A HIGH STANDARD OF CARE WITH RESPECT TO THE FUND WITH WHICH HE OR SHE IS CHARGED. WHEN A DEFICIENCY OCCURS, THE BURDEN IS ON THE ACCOUNTABLE OFFICER TO PRESENT CONVINCING EVIDENCE THAT THE DEFICIENCY WAS NOT CAUSED BY NEGLIGENCE ON HIS OR HER PART. SEE 54 COMG.GEN. 112, 114-115 (1974). THIS OFFICE HAS AUTHORITY TO RELIEVE AN ACCOUNTABLE OFFICER FOR A "PHYSICAL LOSS OR DEFICIENCY" PURSUANT TO 31 U.S.C. SEC. 3527 (1982) IF WE AGREE WITH THE DETERMINATION BY THE HEAD OF THE AGENCY THAT THE LOSS OR DEFICIENCY IN QUESTION OCCURRED WITHOUT THE ACCOUNTABLE OFFICER'S FAULT OR NEGLIGENCE. SEE, E.G., B-212605, APRIL 19, 1984. HOWEVER, NO SUCH FINDINGS WERE MADE BY THE CUSTOMS SERVICE IN THE CASE AT HAND. ACCORDINGLY, THIS OFFICE IS WITHOUT JURISDICTION TO GRANT RELIEF. B-197616, MARCH 24, 1980.

FURTHER, EVEN WERE THE CUSTOMS SERVICE TO MAKE THE REQUISITE FINDINGS IN THE INSTANT CASE, WE NONETHELESS WOULD BE UNABLE TO CONCUR IN THOSE FINDINGS AND GRANT RELIEF BECAUSE THERE IS NO QUESTION IN THE RECORD AS TO MS. MORGAN'S NEGLIGENCE. THE CUSTOMS SERVICE SUBMISSION NOTES THAT MS. MORGAN "INADVERTENTLY" FAILED TO COLLECT THE FUNDS PRIOR TO ISSUING THE RECEIPT. AN INTERNAL CUSTOMS SERVICE REGIONAL COUNSEL'S MEMORANDUM INDICATES THAT "THE SHORTAGE WAS DUE TO HUMAN ERROR." MS. MORGAN'S OWN STATEMENT, SUPPLIED WITH THE SUBMISSION, REPORTS THAT THE DEFICIENCY WAS "DUE TO HUMAN ERROR" AND THAT SHE GAVE THE RECEIPT TO THE CUSTOMER "BY NOT THINKING." ACCORDINGLY, BECAUSE THE RECORD CLEAR INDICATES THAT MS. MORGAN WAS, IN FACT, NEGLIGENT, THE STANDARD FOR RELIEF PURSUANT TO 31 U.S.C. SEC. 3527 COULD NOT BE MET IN THE CASE AT HAND.

YOU INDICATE IN YOUR AUGUST 24, 1984, LETTER THAT IT IS THE OPTION OF THE CUSTOMS SERVICE REGIONAL COUNSEL THAT, ALTHOUGH MS. MORGAN WAS NEGLIGENT, SHE NONETHELESS CANNOT BE HELD LIABLE FOR THE $1,000 SHORTAGE BECAUSE SHE "DID NOT RECEIVE THE $1,000 CASH AND, THEREFORE, CANNOT BE HELD LIABLE FOR ANY PHYSICAL LOSS." AN INTERNAL MEMORANDUM BY THE REGIONAL COUNSEL CONCLUDES:

*** IN THE CASE BEFORE US, THE FACTS INDICATE THAT MS. MORGAN NEVER RECEIVED THE $1,000.00. AS THE MONIES WERE NEVER ACTUALLY RECEIVED BY THE TELLER, AND 31 U.S.C. SEC. 521 REQUIRES PUBLIC MONIES COLLECTED (EMPHASIS SUPPLIED) TO BE KEPT SAFELY, IT IS OUR OPINION THAT THE TELLER IS NOT PERSONALLY RESPONSIBLE FOR THE SHORTAGE."

WE DO NOT AGREE WITH THE CUSTOMS SERVICE REGIONAL COUNSEL THAT AN ACCOUNTABLE OFFICER MAY BE HELD LIABLE FOR A DEFICIENCY ONLY WHEN HE OR SHE ACTUALLY HAD PHYSICAL POSSESSION OF THE FUNDS IN QUESTION. IN OUR VIEW, ALL THAT IT IS REQUIRED FOR AN ACCOUNTABLE OFFICER TO BE PRESUMED LIABLE IS A DEFICIENCY IN THE ACCOUNT FOR WHICH HE OR SHE IS RESPONSIBLE. INITIALLY, WE NOTE THAT 31 U.S.C. SEC. 3527(A) PERMITS RELIEF FROM LIABILITY IN THE ABSENCE OF NEGLIGENCE IN CASES OF EITHER "PHYSICAL LOSS OR DEFICIENCY OF PUBLIC MONEY." (EMPHASIS ADDED.) THIS OFFICE HAS FREQUENTLY DECLINED TO RELIEVE ACCOUNTABLE OFFICERS OF LIABILITY IN CASES INVOLVING SHORTAGES WITHOUT ANY EVIDENCE OF PHYSICAL MISHANDLING OF FUNDS. FOR EXAMPLE, WE HAVE REPEATEDLY HELD CASHIERS LIABLE FOR DEFICIENCIES IN CASES WHERE THERE WAS MERELY AN UNEXPLAINED SHORTAGE, WITH NO EVIDENCE OF ANY PHYSICAL LOSS. SEE, E.G., 48 COMG.GEN. 566, 567-68 (1969). FURTHER, WE HAVE DECLINED TO RELIEVE CASHIERS FROM LIABILITY FOR DEFICIENCIES RESULTING FROM THE ACCEPTANCE OF A COUNTERFEIT NOTE, B-155287, SEPTEMBER 5, 1967, AND FROM THE FAILURE TO

COUNT CASH PRIOR TO LEAVING A TELLER'S WINDOW, B-193380, SEPTEMBER 25, 1979.

ACCORDINGLY, BECAUSE THE STANDARDS FOR RELIEF SET FORTH IN 31 U.S.C. SEC. 3527 ARE NOT MET IN THESE CIRCUMSTANCES, WE ARE UNABLE TO GRANT THE REQUESTED RELIEF.