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[Request for Relief for Army Finance and Accounting Officer]

Number: B-226116

Date: 1987-02-20

B-226116, FEB 20, 1987, OFFICE OF GENERAL COUNSEL

APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - DISBURSING OFFICERS - RELIEF - ILLEGAL/IMPROPER PAYMENTS - SUBSTITUTE CHECKS DIGEST: RELIEF IS GRANTED ARMY DISBURSING OFFICIAL UNDER 31 U.S.C. SEC. 3527(C) FROM LIABILITY FOR IMPROPER PAYMENT RESULTING FROM VENDOR'S NEGOTIATION OF BOTH ORIGINAL AND RECERTIFIED CHECKS. PROPER PROCEDURES WERE FOLLOWED IN THE ISSUANCE OF THE RECERTIFIED CHECK, THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF THE DISBURSING OFFICIAL AND SUBSEQUENT COLLECTION ATTEMPTS ARE BEING PURSUED. HOWEVER, WE THINK THAT THE ARMY SHOULD DEVELOP GUIDELINES ON WHEN IT IS APPROPRIATE TO DELAY ISSUING A RECERTIFIED PAYMENT. IN ADDITION, FOR CASES INVOLVING NOTICES OF LOSSES RECEIVED AFTER JUNE 1, 1986, WE WILL DENY RELIEF OF ARMY DELAYS MORE THAN 3 MONTHS IN FORWARDING THE DEBT TO ARMY COLLECTION DIVISION.

BRIGADIER GENERAL B. W. HALL:

THIS RESPONDS TO YOUR REQUEST OF JANUARY 7, 1987, THAT WE RELIEVE MR. E. CRIPPEN, SPECIAL DISBURSING AGENT, DSSN 5024, FINANCE AND ACCOUNTING OFFICER, SACRAMENTO ARMY DEPOT, SACRAMENTO, CALIFORNIA, UNDER 31 U.S.C. SEC. 3527(C) FOR AN IMPROPER PAYMENT OF A $249.30 CHECK PAYABLE TO MOUNTAIN MIKE'S PIZZA. FOR THE REASONS BELOW, RELIEF IS GRANTED.

THE LOSS RESULTED WHEN THE VENDOR NEGOTIATED BOTH THE ORIGINAL AND A RECERTIFIED CHECK. BOTH CHECKS WERE IN THE SAME AMOUNT. THE RECERTIFIED CHECK WAS ISSUED ON THE BASIS OF THE VENDOR'S ALLEGATION THAT THE ORIGINAL CHECK HAD NOT BEEN RECEIVED AND A REQUEST FOR STOP PAYMENT HAD BEEN MADE. BOTH CHECKS WERE ISSUED BY THE ARMY UNDER AUTHORITY DELEGATED BY THE DEPARTMENT OF THE TREASURY. 31 C.F.R. SEC. 245.8 AND TREASURY FISCAL REQUIREMENTS MANUAL FOR GUIDANCE OF DEPARTMENTS AND AGENCIES, BULLETIN NO. 83-28.

IT APPEARS THAT THE ISSUANCE OF A RECERTIFIED CHECK IN THIS CASE WAS WITHIN BOUNDS OF DUE CARE. ID. THERE WAS NO INDICATION OF BAD FAITH ON THE PART OF THE DISBURSING OFFICER AND ADEQUATE COLLECTION EFFORTS ARE BEING MADE. ACCORDINGLY, WE GRANT RELIEF.

ALTHOUGH WE HAVE GRANTED RELIEF, WE ARE NEVERTHELESS CONCERNED WITH THE TIMING OF THE ISSUANCE OF THE RECERTIFIED PAYMENT. UNDER ARMY'S RECERTIFICATION PROCEDURES, THE FINANCE AND ACCOUNTING OFFICER MAY EITHER MAKE AN IMMEDIATE OR DELAYED RECERTIFIED PAYMENT. ARMY'S RECERTIFICATION OF CHECKS DISBURSING AND ACCOUNTING PROCEDURES, LETTER OF INSTRUCTION, FEBRUARY 6, 1985, UPDATED JULY 17, 1986. TREASURY BULLETIN NO. 83-28 INDICATES THAT THE TIMING OF THE RECERTIFIED PAYMENT IS AT THE DISCRETION OF THE AGENCY. HOWEVER, ACCORDING TO THE BULLETIN'S

GUIDANCE, AN IMMEDIATE REPLACEMENT IS ADVISABLE WHEN CIRCUMSTANCES INDICATE THAT "*** THE RISK OF LOSS FROM AN OVERPAYMENT TO THE PAYEE IS LOW (FOR EXAMPLE, THE AGENCY MAKES RECURRING PAYMENTS TO THE PAYEE THAT MAY BE OFFSET AGAINST AN OVERPAYMENT)." TREASURY BULLETIN NO. 83-28, SUPRA, P. 7. HERE, IT DOES NOT APPEAR THAT THE ARMY WOULD BE MAKING RECURRING PAYMENTS TO THE VENDOR. SINCE THE VENDOR WAS NOT IN A CONTINUOUS RELATIONSHIP WITH THE ARMY, AND IN VIEW OF THE FACT THAT HIS REQUEST FOR A RECERTIFIED PAYMENT CAME 2 MONTHS AFTER THE ORIGINAL CHECK WAS ISSUED, WE THINK THAT THE FINANCE OFFICER SHOULD HAVE WAITED FOR TREASURY TO RESPOND TO THE SF 1184 "UNAVAILABLE CHECK CANCELLATION" PLACED ON THE ORIGINAL CHECK BEFORE ISSUING THE RECERTIFIED PAYMENT. AS IT TURNED OUT, THE DAS (DAILY ADVICE OF STATUS) FROM TREASURY INDICATING THAT THE ORIGINAL CHECK HAD BEEN NEGOTIATED WAS DATED ONLY 9 DAYS AFTER THE RECERTIFIED CHECK WAS ISSUED. THEREFORE, A DELAY OF ONLY 9 DAYS WOULD HAVE PREVENTED THE LOSS IN THIS CASE.

IT IS OUR UNDERSTANDING THAT ARMY HAS NOT ISSUED GUIDELINES ON WHEN A RECERTIFIED PAYMENT SHOULD BE DELAYED. UNDER THESE CIRCUMSTANCES, THE FINANCE AND ACCOUNTING OFFICER WAS ACTING WITHIN THE BOUNDS OF DUE CARE WHEN HE ISSUED THE RECERTIFIED PAYMENT HERE AND WE WILL NOT DENY RELIEF. HOWEVER, WE THINK THAT ARMY SHOULD DEVELOP GUIDELINES INDICATING WHEN AN IMMEDIATE RECERTIFICATION PAYMENT IS APPROPRIATE, AND WHEN A DELAYED PAYMENT SHOULD BE MADE.

FINALLY, ASIDE FROM OUR CONCERN OVER THE TIMING OF THE RECERTIFIED PAYMENT, WE ARE ALSO CONCERNED WITH THE COLLECTION ACTION TAKEN IN THIS CASE. IT TOOK ARMY OVER 28 MONTHS TO REFER THIS LOSS TO YOUR COLLECTION DIVISION ONCE THE DAS FROM TREASURY WAS RECEIVED. AS WE PREVIOUSLY INDICATED TO YOU, FOR CASES INVOLVING NOTICES OF LOSSES RECEIVED AFTER JUNE 1, 1986, WE WILL NO LONGER GRANT RELIEF IF ARMY DELAYS MORE THAN 3 MONTHS IN FORWARDING THE DEBT TO YOUR COLLECTION DIVISION. HOWEVER, SINCE THE DAS FROM TREASURY WAS RECEIVED PRIOR TO THAT DATE, WE WILL NOT DENY RELIEF HERE.