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[Request for Relief for Commerce Department Cashier]

Number: B-226695

Date: 1987-05-26

B-226695, MAY 26, 1987, OFFICE OF GENERAL COUNSEL

APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - CASHIERS - RELIEF - PHYSICAL LOSSES - THEFT DIGEST: RECORD IS UNCLEAR WHETHER CASHIER OF IMPREST FUND REMAINED LIABLE AFTER GIVING GOVERNMENT CHECKS TO MESSENGER WHO CASHED CHECKS AND WAS SUBSEQUENTLY ROBBED. IF, IN FACT, CASHIER IS LIABLE, WE GRANT RELIEF ON GROUND THAT SHE DID NOT ACT NEGLIGENTLY IN HANDLING GOVERNMENT FUNDS; IF SHE IS NOT LIABLE, THEN THERE IS NO NEED FOR US TO GRANT RELIEF. AS TO MESSENGER, HE REMAINS LIABLE FOR THE LOSS AS AN ACCOUNTABLE OFFICER. HOWEVER, WE NEITHER GRANT NOR DENY RELIEF SINCE THERE IS NO REQUEST THEREFOR.

MARILYN G. WAGNER, ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION:

THIS REPLIES TO YOUR LETTER OF APRIL 3, 1987, REQUESTING THAT WE GRANT RELIEF TO MS. GRAZIELLA CORTESE, THE DEPARTMENT OF COMMERCE (DEPARTMENT) CASHIER AT THE AMERICAN CONSULATE IN MILAN, ITALY, UNDER 31 U.S.C. SEC. 3527, FOR A LOSS OF $5,787.85 FROM THE DEPARTMENT'S IMPREST FUND. FOR THE REASONS STATED BELOW, RELIEF IS GRANTED.

ON MAY 31, 1985, MS. CORTESE GAVE TWO GOVERNMENT CHECKS TO MR. CIRO DE MARTINO TO CASH AT THE BANCO NAZIONALE DEL LAVORO TO REPLENISH HER IMPREST FUND AT THE CONSULATE. MR. DE MARTINO WAS AN EMPLOYEE/MESSENGER AT THE CONSULATE. MS. CORTESE GAVE HIM THE CHECKS AFTER REQUESTING AND BEING REFUSED AN ARMED GUARD ESCORT TO THE BANK; SHE REFUSED TO GO TO THE BANK WITHOUT THE ESCORT.

MR. DE MARTINO PROCEEDED TO THE BANK WITH THE TWO CHECKS AND CASHED THEM. UPON LEAVING THE BANK, MR. DE MARTINO WAS ACCOSTED BY TWO MEN RIDING A MOTORCYCLE WITH A COVERED LICENSE PLATE. THESE MEN THREW HIM TO THE GROUND AND STOLE THE CASH. THE INCIDENT WAS IMMEDIATELY REPORTED TO THE MILAN POLICE WHO HAVE BEEN UNABLE TO LOCATE THE CRIMINALS OR RECOVER THE STOLEN MONEY.

UNDER 31 U.S.C. SEC. 3527(A), THIS OFFICE MAY RELIEVE AN ACCOUNTABLE OFFICER OF LIABILITY FOR PHYSICAL LOSS OF GOVERNMENT FUNDS IF IT AGREES WITH THE DETERMINATION BY THE HEAD OF THE AGENCY THAT THE LOSS OCCURRED WHILE THE OFFICER WAS ACTING IN HIS OR HER OFFICIAL CAPACITY AND WAS NOT THE RESULT OF FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER. THE RECORD BEFORE US INDICATES THAT THE LOSS WAS THE RESULT OF AN ARMED ROBBERY. THERE IS NO INDICATION IN THE RECORD THAT MS. CORTESE WAS IN ANY WAY IMPLICATED IN THE ROBBERY. THE RECORD BEFORE US IS UNCLEAR AS TO WHETHER MS. CORTESE REMAINED ACCOUNTABLE FOR THE REPLENISHMENT FUNDS AFTER GIVING RESPONSIBILITY FOR THEM TO A MESSENGER. SEE B-188413, JUNE 30, 1977. SIMILAR INSTANCES, WE HAVE RELIEVED ACCOUNTABLE OFFICERS FOR LOSSES RESULTING FROM ROBBERIES. SEE B-207821, OCTOBER 12, 1982; B-190923, DECEMBER 5, 1978. THEREFORE, IF SHE IS ACCOUNTABLE, WE GRANT RELIEF, IF SHE IS NOT, THERE IS

NO NEED TO.

IN REVIEWING THE RECORD IN THIS CASE WE NOTE THAT MR. DE MARTINO'S ACCOUNT OF THE INCIDENT IS BOTH UNCONTRADICTED AND UNCORROBERATED. SUCH CASES, WE HAVE GRANTED RELIEF WHERE THE INVESTIGATION OF THE LOSS CASTS NO DOUBT ON THE ACTUAL VICTIM'S ACCOUNT OF THE INCIDENT. B-190923, SUPRA.

WHILE THE PRACTICE OF HAVING AN UNARMED, UNESCORTED MESSENGER CARRY LARGE AMOUNTS OF CASH POSES AN INHERENT RISK OF THEFT, MS. CORTESE CANNOT BE BLAMED FOR ACCEPTING THIS RISK SINCE THE AGENCY DID NOT PROVIDE HER WITH A SAFER MEANS OF REPLENISHING HER FUNDS.

AS A FINAL MATTER, WE NOTE THAT THE AGENCY HAS NOT SUBMITTED A REQUEST FOR THE RELIEF OF MR. DE MARTINO. ALTHOUGH HE WAS NOT THE CASHIER CHARGED WITH RESPONSIBILITY FOR THE IMPREST FUND, HE BECAME AN ACCOUNTABLE OFFICER IN HIS CAPACITY AS A MESSENGER IN ACTUAL POSSESSION OF GOVERNMENT FUNDS. B-188413, ID. CONSEQUENTLY, MR. DE MARTINO IS LIABLE FOR THE AMOUNT OF THE LOSS UNLESS RELIEVED. IF IN YOUR REVIEW OF THE CIRCUMSTANCES SURROUNDING THIS LOSS YOU DETERMINE THAT MR. DE MARTINO SHOULD BE RELIEVED, WE WILL BE HAPPY TO CONSIDER YOUR RECOMMENDATION TO THAT EFFECT.

ACCORDINGLY, FOR THE REASONS STATED ABOVE, WE RELIEVE MS. CORTESE OF LIABILITY FOR THE LOSS UNDER THE PROVISIONS OF 31 U.S.C. SEC. 3527.