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B-229207 July 11, 1988

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Mr. Harlan R. Hively Director, National Finance Center U.S. Customs Service Department of the Treasury Indianapolis, Indiana 46204

Dear Mr. Hively:

This letter is in response to your request that two cashiers of the United States Customs Service and several other Customs employees that handled funds during an auction sale of general order merchandise conducted by the Customs Service on March 18, 1987 in Miami, Florida be granted relief from liability for an $1,100 cash loss. /1/ The Customs Service determined that the loss occurred because of its failure to conduct the auction in accordance with proper procedures. For the reasons set forth below, we grant relief as requested.

BACKGROUND

On March 18, 1987, the Miami District of the United States Customs Service conducted an auction of general order merchandise. As a prerequisite to participating in the auction, all bidders were required to pay a $100 deposit, while any bidder who anticipated making a large purchase was requested to make a larger deposit that would be sufficient to cover their intended purchase. In addition, a minimum 50 percent deposit or payment in full was required after a bid was accepted. Bid deposits were to be accepted at 8:00 a.m., an hour before the auction was scheduled to begin.

At 8:00 a.m. on the morning of the auction, the cashiers had not yet arrived. In order to get the auction started on time, deposits were accepted, recorded in a control ledger and held in a deposit fund controlled by two Customs Service employees. When the cashiers arrived, they set up separate funds to collect final payments. As the auction progressed, however, additional deposits were made into the deposit fund To reflect these increased deposits, the original entries in the control ledger and the cash receipt forms were amended, crossed out and marked over. As a result of this procedure, money was transferred to and from three separate funds controlled by six different individuals--each cashier had a separate cash box, two employees controlled the deposit fund, and two other employees were involved in the transfer of money between the deposit fund and the two cashiers.

When the auction closed, all bidders proceeded to the cashiers-successful bidders to make final payments and unsuccessful ones to receive their deposits. Thus, unsuccessful bidders were receiving refunds at the same time successful bidders were making final payment. In addition, deposits were retrieved from the

deposit fund and taken to the cashiers for final disposition. At the close of the auction, it was determined that the deposit fund was $1100 short. Subsequent investigations concluded that "the shortage occurred due to a failure to follow procedures which led to a breakdown in internal controls. " However, because of the changes and crossouts on the cash receipt forms and the lack of accountability in the transfer of money between the different funds, it was "not possible to affix responsibility for the shortage to one individual or transaction. " On this basis, the National Finance Center for the Customs Service has now asked us to grant relief to the Customs Service officers /2/ that handled funds during the auction, as authorized by 11 U.S.C. Sec. 3527(a).

DISCUSSION

An accountable officer is generally anti government officer or employee who by reason of his or her employment is responsible for or has custody of government funds. 61 Comp.Gen. 313, 314 (1982). Any such officer or employee who receives or collects money for the government is accountable to the government for all money collected. 59 Comp.Gen. 113, 114 (l979). Thus, in addition to the two cashiers, the other four employees who handled funds during the auction are also considered accountable officers who, unless relieved of liability, are personally liable for any physical loss of the funds entrusted to them.

Under 31 U.S.C. Sec. 3527(a) , this Office has authority to grant relief from liability to an accountable officer if we agree with the determination by the head of an agency that "the official or agent was carrying out official duties when the loss or deficiency occurred" and that "the loss or deficiency was not the result of fault or negligence by the official or agent." While the submission we received from the Customs Service was not as precise as it should have been in this respect, we believe the submission substantially complied with the statutory requirements in requesting relief for the Customs Service officers who handled funds during the auction.

Our Office has held that accountable officers have a duty to familiarize themselves with Treasury as well as agency rules and regulations concerning proper procedures for handling monies in their custody. B-l93380, Sept. 25, 1979. Ordinarily, a failure to do so constitutes negligence under the concept that a prudent person exercising the requisite degree of care will become familiar with applicable regulations concerning the protection of funds. According to the Customs Service, Customs Directive IV 52-5230-01, states:

"The cashiers will not accept blanket bidding and will not hold money on account for bidders. Each successful bidder will pay to the Customs Cashier after each and every lot."

It is clear that the Customs Service cashiers and the other employees involved did not comply with this directive. The Customs Service's internal investigation determined that if those procedures had been followed, "only one employee would have handled each monetary transaction and responsibility for the shortage could have been determined." In addition, in our view, it is reasonable to assume that if the proper procedures had been followed much of the confusion in handling funds that took place during and at the close of the auction would have been avoided and the shortage might never have occurred. Thus, we believe that the cashiers and other employees involved were negligent.

Nevertheless, the establishment of the three separate funds and the transfer of

money between them without any accountability Precludes the placement of individual responsibility for the loss and provides a oasis for granting relief. B-227714, Oct. 23, 1987. Ordinarily when a physical loss of funds occurs, it is reasonable to hold the accountable officer who had exclusive control of those funds responsible for the loss. In the instant case, however, the funds were commingled and no individual had exclusive control over them. Our Office has held that in such cases where there is no basis for attributing a loss to a particular individual because of administrative laxity in fund handling procedures, no one car be held liable. B-19144D, May 25, 1979; See B-191891, June 16, 1980, and B-182386, April 24, 1975.

In accordance with the foregoing, we grant relief to the two cashiers and the other four employees that also handled funds during the auction.

Sincerely yours,

(Mrs.) Rollee H. Efros Associate General Counsel

1. The submission we received from the Customs Service did not identify the two cashiers or the other employees for whom it requested relief. We were informally advised by a Customs Service official that the agency wanted to protect the identities of those individuals since it believed the loss was caused by the failure of the Customs Service to follow proper procedures rather than any individual negligence.

2. While the submission from the Customs Service is unclear as to the exact number of Customs officers for whom relief was requested, we have since determined that in addition to the two cashiers involved, the Customs Service is also seeking relief for the four other Customs Service employees who handled funds during the auction.