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B-235167, Jan 8, 1990, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Accountable Officers - Cashiers - Relief - Physical losses - Theft DIGEST: Cashier is relieved of liability for loss of funds in the amount of approximately $7,278. Presumption of negligence on the part of the accountable officer is rebutted when the record shows there is evidence of faulty agency security resulting in knowledge of the safe combination by persons other than the accountable officer.

Roger B. Feldman

Comptroller

United States Department of State

Washington, D.C. 20520

Mr. Feldman:

This is in response to your letter of June 30, 1989, requesting that Sita George, Class B Cashier for the American Embassy in Dar Es Salaam, Tanzania, be relieved of liability for the loss of approximately $7,278 for which she was accountable. For the following reasons, we grant relief.

The record reflects that during the afternoon of Friday, March 13, 1987, $1,800,000 Tanzanian Shillings ($30,000 U.S.), from the sale of a used vehicle, were deposited with Ms. George by the Embassy recreation association. The Shillings were in the form of 18 one hundred thousand Shilling bank bundles. The bundles each contained 1,000 one hundred Shilling notes. Ms. George issued a receipt for the deposit and put the 18 bundles, plus one other bundle of cash received from an earlier collection, in her safe and locked it.

At close of business on Monday, March 16, 1987, Ms. George attempted to reconcile her accounts and discovered a shortage of approximately 400,000 Shillings. When Ms. George checked her safe she found four of the 100,000 shilling bundles were missing. Both Ms. George and the recreation association manager confirmed that on Friday, March 13, 1987, there were indeed 18 bundles of shillings deposited (plus the one extra bundle from the other collection), but that on Monday there were only 15 bundles in the safe. The Embassy financial officer conducted two verifications which confirmed the 400,000 shilling shortage.

The Embassy Security Officer commenced an investigation which proved

inconclusive as to what happened to the funds. The Embassy after-hours log for the weekend of March 13, 1987, showed that only five Embassy employees entered the building. When questioned, these employees stated that they never entered the cashier's office and that they did not know the safe combination. Also, five Marine guards were on duty over that weekend. The key to the cashier's office was kept at the Marine guard's post but none of the Marines recalled issuing the key to any American or local employee that weekend.

The investigation officer concluded that the cashier's safe combination had been compromised. The investigator discovered that the combination box was stored unlocked in a communications room security container which communications personnel had access to. Furthermore, five other individuals at one time or another knew or had access to the safe combination. Thus, the record reflects that several persons, other than Ms. George, could have taken the funds.

The State Department's Committee of Inquiry into fiscal irregularities determined that although Ms. George was the accountable officer she could not be held liable for the loss because the cashier's safe combination had been compromised.

Under 31 U.S.C. Sec. 3527, our Office is authorized to relieve accountable officers of responsibility for a physical loss of government funds if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agent was acting in the discharge of his or her official duties and (b) that there was no fault or negligence on the part of the cashier which contributed to the loss. B-230796, April 8, 1988. Anytime a physical loss of funds occurs there arises a rebuttable presumption of negligence on the part of an accountable officer. 54 Comp.Gen. 112, 115 (1974). Ordinarily, cases of unexplained loss, such as this case, result in a denial of relief because of the absence of evidence to rebut the presumption of negligence on the part of the accountable officer. See B-217945, July 23, 1985.

We will, however, grant relief in cases in which persons other than the accountable officer have access to funds through knowledge of the safe combination, under the theory that definite responsibility for the loss is not possible. B-228884, Oct. 13, 1987; B-217945, July 23, 1985. In this case at least five people knew or had possession of the safe combination.

Furthermore, we have recognized that if there is no sign of forcible entry and no indication of fault or negligence on the part of the accountable officer, evidence of faulty agency security will rebut the presumption of negligence. B-228884, Oct. 13, 1987, B-211649, Aug. 2, 1983. In this case, the record shows that the box containing safe combinations was stored unlocked in a security container to which Embassy personnel had access in contravention of State Department security regulations. See 4 Foreign Affairs Manual 317.3. Moreover, when the Embassy cashier obtained her safe in 1986 from the previous financial officer, the combination was not changed as required by State Department regulations. Id.

You have indicated that new internal controls have been implemented to avoid such losses in the future. You have also made the requisite determination that Ms. George was acting in the discharge of her official duties and that the loss occurred through no fault of Ms. George. For the above mentioned reasons we concur with your determination and therefore grant relief to Ms. George. The loss may be charged to the proper appropriation in accordance with 31 U.S.C.

Sec. 3527.