



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Request for Advance Decision from Defense Finance
and Accounting Service

File: B-270801

Date: March 19, 1996

DIGEST

1. Where assignment was properly executed and notice given in accordance with statutory requirements, the assignee is entitled to payment. Obligor (United States in this case) who had notice of valid assignment and, nevertheless, paid assignor is liable to the assignee for the amount of erroneous payment.
2. A disbursing officer who, pursuant to an invoice approved by the contracting officer, made erroneous payment to a contractor may be relieved of financial responsibility because the loss did not occur as result of bad faith or lack of due care on the officer's part.

DECISION

The Defense Finance and Accounting Service, Cleveland Center/New Orleans (New Orleans office), requests an advance decision in connection with an erroneous payment of contract funds to a contractor, Nantucket Renovations, which had assigned those funds to the Boston Financial Corporation pursuant to the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727; 41 U.S.C. § 15.

On January 4, 1995, the New Orleans office bill payment branch received a voucher in the total amount of \$31,755, for exterior repairs performed on hangars at South Weymouth, Massachusetts, Naval Air Station, by Nantucket Renovations under Contract #N62472-93-C-8768. The South Weymouth Naval Air Station certified the voucher for payment. The New Orleans office made payment to the payee shown in the contract document, Nantucket Renovations, by check number 8357-01181074, dated January 20, 1995, for \$31,769.31.¹

¹There is no indication in the documents provided why the amount certified differs from the amount of the check.

On February 14, 1995, Boston Financial inquired about the payment. It was at that time that the New Orleans office first learned that on July 20, 1994, Nantucket Renovations had executed an assignment of moneys due under the contract to Boston Financial. The contracting officer at South Weymouth Naval Air Station acknowledged receipt of the instrument of assignment on September 2, 1994. The contracting officer signed the modification to the contract reflecting the assignment (P00004) on November 7, 1994. However, Boston Financial states that it mailed a copy of the notice of assignment to the New Orleans office as evidenced by a certified mail receipt signed by an employee in the New Orleans office mailroom on August 3, 1994. The bill payment branch apparently never received the notice of assignment from the mailroom. The New Orleans office has attempted, without success, to recoup the \$31,769.31 from Nantucket Renovations.

The New Orleans office asks two questions: should a duplicate payment be made to Boston Financial, which is the proper payee according to the assignment of July 20, 1994? If the payment should have been made to Boston Financial, is the accountable officer liable for the payment?

The Assignment of Claims Act, 31 U.S.C. § 3727(c), permits an assignment to a financing institution of money due or to become due from the United States under a contract providing for payments aggregating \$1,000 or more. An assignment does not become effective until the assignee files written notice of the assignment together with a copy of the instrument of assignment with the contracting officer or the head of the contracting officer's agency, and the disbursing officer, if any, for the contract. 31 U.S.C. § 3727(c)(3). We conclude that Boston Financial is entitled to a payment of \$31,755, since the assignment was executed and notice given in accordance with statutory requirements. It is well-settled that once an obligor (the United States in this case) has notice of a valid assignment, as in the present case, it pays the assignor at its peril and is, therefore, liable to the assignee for the amount of the erroneous payment. See Central Bank of Richmond, Virginia, A National Banking Association v. United States, 117 Ct. Cl. 389 (1950).

The New Orleans office does not deny that its mailroom received and signed for a package on August 3, 1994, from Boston Financial. However, it questions the contents of the package for which Boston Financial provided mail receipts as proof of delivery of the notice of assignment. The New Orleans office argues that if the package was delivered on August 3 and the actual modification of the contract was not signed until November 4, it is unlikely the New Orleans office received a notice of assignment on August 3.

There is evidence in the record, however, reflecting that notice of the assignment was duly mailed by Boston Financial and received by the New Orleans office

mailroom. Nantucket Renovations signed the original assignment on July 20, 1994, and Boston Financial states that it mailed the assignment to the New Orleans office on or about July 26, 1994. On or about July 28, 1994, Boston Financial sent a follow-up letter to the New Orleans office with a corrected notice of assignment. On or about July 20, 1994, a notice of assignment was also sent to the contracting officer in South Weymouth who did not acknowledge receipt until September 2, 1994. Boston Financial's statement that it mailed a copy of the assignment is supported by a certified return receipt signed by an employee of the New Orleans office mailroom on August 3 which has the notation "Nantucket Renovations" on it. This convergence of dates as well as the notated return receipt, in the absence of any evidence from the New Orleans office to the contrary, supports Boston Financial statements that it mailed to the New Orleans office a letter apprising it of the Nantucket Renovations assignment as required by 31 U.S.C. § 3727(c). See generally, United States v. Garrity, 433 F.2d 649 (8th Cir. 1970) (proof of deposit of an item in the mail raises a presumption that it has been delivered and defendant presented no evidence to rebut presumption that item after mailing was received by him); United States v. Dollinger, 384 F. Supp. 682, 687 (S.D.N.Y. 1974) (evidence that letter was duly mailed to defendant's address, combined with mother's signature on certified mail receipt sufficient to find beyond reasonable doubt that defendant received and knew contents of letter); Fidelity Mortgage Co. v. Fidelity America Mortgage Co., 15 B.R. 622 (1981).

The New Orleans office does not dispute that its mailroom received a certified letter from Boston Financial, but argues that since the contracting office did not sign the contract modification until November 4, 1994, the certified letter mailed by Boston Financial in August could not possibly have contained the contract modification. However, 31 U.S.C. § 3727(c)(3) only requires that the assignee provide written notice of the assignment and a copy of the assignment, not a copy of the contract modification.

As for the second question, our Office is authorized by 31 U.S.C. § 3527(c) to relieve accountable officers of responsibility for an improper or erroneous payment if we determine that the payment was not the result of bad faith or lack of due care on the part of the accountable officer. B-206902, June 1, 1982. The record reflects that the payment office followed established procedures and did not have actual notice of the assignment until February 1995. If the payment office had received notice, procedures mandate that "the disbursing officer will make no payments under the contract until he receives the acknowledged copy from the administrative contracting office" NavCom Manual, Vol. IV, § 046053, Disbursing, Preparation and Payment of Public Vouchers. In the current case, the disbursing officer apparently had no reason to doubt the correctness of the voucher that she received from the South Weymouth Naval Air Station. The disbursing office did not have actual notice of the assignment prior to making the payment. Nor did the disbursing office lose the certified letter. Although the New Orleans office may be

faulted for the loss of the package received from Boston Financial Corporation on August 3, 1994, this lack of care does not prevent relief of the disbursing officer. Indeed, the contracting officer at the Naval Air Station in South Weymouth, who clearly had notice of the assignment, endorsed Nantucket Renovations' invoice for payment. Therefore, we grant relief. We note that granting of relief does not affect the liability of the Nantucket Renovations for the improper payment, nor does it affect the agency's duty to continue to pursue collection action.

/s/Robert P. Murphy
for Comptroller General
of the United States