

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185232

DATE: APR 5 1976

MATTER OF: Claim of Peoples Bank and Trust Company

DIGEST:

Claim by bank for charges owed by Government contractor may not be paid by Government since bank is in position of subcontractor and has no privity of contract with Government. GAO will only exercise equitable authority where specifically granted by statute. There is no such authority applicable here.

The Acting Associate Director, Administration, National Park Service, United States Department of the Interior, has requested our opinion as to whether a claim by Peoples Bank and Trust Company, Cedar Rapids, Iowa, may be certified and processed for payment. We will treat this request as a submission from the head of the agency.

The record shows that the claimant provided banking services for a National Park Service concessioner, Park Reservation System, as the result of which the bank incurred sizable losses, principally the result of credit card charge services associated with ineligible, duplicate, cancelled and otherwise bad reservation slips returned to the bank by the card service organizations. The National Park Service contract with Park Reservation System was terminated and the assets of the concessioner subsequently were paid into the Registry of the United States District Court for the Central District of California incident to an action filed in that court by the United States entitled United States v. Park Reservation System, et al., Civil No. 74-2785-R. The litigation was terminated by a compromise settlement dated February 4, 1975. Because Park Reservation System was no longer viable, the bank was unable to obtain restitution on the charge slips from the concessioner. The National Park Service has paid the claimant the sum of \$8,191.72 for various camping fee refunds. Payment is now requested of the \$3,954.63 balance of the claim comprised of concessioner surcharge, duplicate payments and miscellaneous related charges.

As a general rule, the relationship of bank and depositor is that of debtor and creditor, founded upon contract. Bank of Marin v. England, 385 U.S. 99, 101 (1966); 9 C.J.S. Banks and Banking, section 267(b). It appears from the record that whatever agreement the claimant may have had for the provision of banking services was solely with Park Reservation System, a Government contractor; it does not appear that the United States was a party to any such

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agreement. Normally, where the Government enters into a contract, as with Park Reservation System, there is no privity of contract between the Government and a subcontractor of the contractor. See Merritt v. United States, 267 U.S. 338 (1925); Bennett Box and Pallet Co., Inc., et al., B-182097, May 28, 1975, 75-1 CPD 319. It has been consistently held that subcontractors do not have legally enforceable rights against the United States for money due them from Government contractors. See United States v. Munsey Trust Co., 332 U.S. 234, 241 (1947); United Pacific Insurance Co. v. United States, 319 F.2d 893 (1963); Johnson Corporation, B-180591, January 17, 1975, 75-1 CPD 34. Consequently, we can perceive no legal basis for payment of this claim.

The Park Service has also suggested that because of the "unique relationship" that existed between the concessioner, the bank, and the National Park Service in providing a service to park visitors, the bank may be entitled on equitable grounds to recover the amount here claimed. However, we have stated previously that this Office will exercise equitable jurisdiction only where such jurisdiction is specifically granted by statute. See 46 Comp. Gen. 874 (1967); The R.H. Pines Corporation, B-181599, December 26, 1974, 54 Comp. Gen. 527, 74-2 CPD 385. There is no such authority for this Office to consider claims by subcontractors for reimbursement for losses incurred in dealings with Government contractors.

In view of the foregoing, there is no legal basis for payment of this claim.

PAUL G. DEMBING

~~Acting~~ Comptroller General
of the United States