

15331

Ayer
PL1

DECISION



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

FILE: B-200603

DATE: November 4, 1980

MATTER OF:

Determination of Proper Payee Under

National Aeronautics and Space
Administration--Advance Decision,
Assignment of Claims Act]

DIGEST:

Assignment to partnership of accounts receivable from United States may not be recognized as valid assignment pursuant to Assignment of Claims Act, where partnership's primary purpose is obtaining Government contracts for ADP equipment, since partnership is not "financing institution" within meaning of Act.

(The National Aeronautics and Space Administration (NASA) requests an advance decision concerning the proper payee under contract No. NAS5-25927 with U.S. Financial Services, Inc. (Financial). Two parties claim the payment--both by virtue of assignments from Financial.) The first assignment, dated February 12, 1980, is to Marilyn M. Poling, Donald L. Poling, and John D. Williams III (Partnership). Mr. Williams is the president of Financial. The second assignment, dated May 5, 1980, is to the National Savings and Trust Company (Bank).

NASA believes that the first assignment is invalid, since, in its view, the Partnership is not a "financing institution" within the meaning of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 203 (1976) and 41 U.S.C. § 15 (1976) (Act). NASA therefore believes that it is appropriate for it to continue making contract payments to the Bank. NASA inadvertently overlooked the first assignment and has made one payment to the Bank of \$59,000.

(The Act constitutes a broad prohibition against the assignment of claims against the United States to third parties.) One purpose of the prohibition is the maintenance of the Government's defenses against

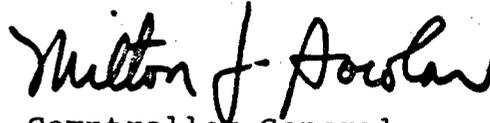
012659-113680

assignors' (such as Financial) claims by way of setoff and counterclaim which might not be available against an assignee (such as the Partnership or the Bank). Beaconwear Clothing Company v. United States, 355 F.2d 583, 589 (Ct. Cl. 1966). The Act does recognize, however, an exception where the assignment is to "a bank, trust company, or other financing institution." The exception is for the purpose of inducing financial institutions to lend money to contractors to finance the performance of Government contracts. Central Bank v. United States, 345 U.S. 639 (1953).

NASA reports that the Partnership's stated purpose is obtaining Government contracts for ADP equipment and that the Partnership "is not regularly engaged in the business of lending or financing Government Contracts." While we have recognized that a company providing funds to ADP firms, by purchasing equipment leased by such firms to third parties, may be considered a financing institution under the Act, Alanthus Peripherals, Incorporated, 54 Comp. Gen. 80 (1974), 74-2 CPD 71 (Alanthus), we have generally restricted our recognition of proper assignees, within the meaning of the term financing institution, to assignees which deal in money as opposed to other commodities as the primary function of their business activities. Alanthus, supra, at 83. (The record shows that NASA's characterization of the nature of the Partnership's business activity is accurate. We therefore conclude that the first assignment to the Partnership may not be recognized, even if properly filed with the Government, since the Partnership is not a financing institution, even under the Alanthus rationale, and therefore not a proper assignee under the Act. Bamco Machine, Inc., 55 Comp. Gen. 155, 158 (1975), 75-2 CPD 111.

(Consequently, the assignment to the Bank should be recognized as a valid assignment under the Act and NASA can continue making contract payments to the Bank.) Nevertheless, because of the controversy in this matter, the Bank should be required to indemnify the Government

from any claims that might be made by the Partnership. The Bank may be paid upon satisfaction of this requirement. See Argonaut Insurance Company, B-182983, February 4, 1975, 75-1 CPD 80.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States