

DECISION

118544
P.L.-1
Phillips

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

FILE:

B-206902

DATE: June 1, 1982**MATTER OF:**

Request for Advance Decision from Army
Finance and Accounting Officer

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 amount of erroneous payment.
2. While assignee is entitled to an amount equal to the amount assigned under the contract, but erroneously paid to the assignor, assignee is not entitled to accrued interest since payment of interest by Government of the United States on its unpaid accounts or claims may not be made except where interest is stipulated by contract or is provided by laws of United States.
3. Finance and Accounting officer who, pursuant to a voucher from another command, made erroneous payment to contractor may be relieved of financial responsibility because loss did not occur as result of bad faith or lack of due care on officer's part.

The Finance and Accounting Officer, United States Army Military District of Washington, Finance and Accounting Office (MDW FAO), Washington, D.C., requests an advance decision in connection with an erroneous payment of contract funds to a contractor, Penn Construction Co., Inc. (Penn), which had assigned these funds to the Elkridge National Bank (Elkridge) pursuant to the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 203, 41 U.S.C. § 15 (1976).

The record indicates that on January 30, 1981, purchase order DAAG-54-81-M0593, in the total amount of \$7,900, was issued to Penn for the furnishing of labor, equipment and materials for the installation of a chain link and barbed wire fence. Block 15 of the purchase order indicated that payment would be made by the United States Army Intelligence Command Finance and Accounting Office (INSCOM FAO). Penn executed an assignment dated April 13, 1981, assigning all monies due under the purchase order to Elkridge. Modification to purchase order P0001, dated April 13, 1981, was signed by the contracting officer, acknowledging the assignment.

A voucher was prepared and INSCOM FAO certified that \$7,900 was due under the purchase order; however, Penn was erroneously named as the payee to receive the funds for the project. This voucher was sent to MDW FAO where, pursuant to the voucher, payment was made to Penn on May 13, 1981. It was not until June 26, 1981, that Elkridge contacted the contracting officer inquiring about the above funds at which time the erroneous payment to Penn was discovered. INSCOM FAO attempted, without success, to recoup the \$7,900 from Penn.

In his request for an advance decision, the Finance and Accounting Officer asks the following questions:

- a. Should a duplicate payment be made to Elkridge, which is the proper payee according to the assignment of April 13, 1981?
- b. If the response to question "a" is affirmative, should accrued interest be paid to the assignee?
- c. If the responses to both questions "a" and "b" are affirmative, should MDW FAO, DSSN 5077, or INSCOM FAO, DSSN 8349, be responsible for payment to Elkridge?

In regard to question "a," Elkridge is entitled to a payment of \$7,900, since the assignment was executed and notice given in accordance with statutory requirements. It is well-settled law 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).

Concerning question "b," the payment of interest by the Government of the United States on its unpaid accounts or claims may not be made except where interest is stipulated by contract or is provided by the laws of the United States, which does not appear to be the case in the present situation. Therefore, we have no basis for allowing interest. See B-165362, May 15, 1969.

Regarding question "c," as noted earlier, block 15 of the purchase order did indicate that payment would be made by INSCOM FAO and at the time of the erroneous payment to Penn, MDW FAO, DSSN 5077, was apparently the account number from which INSCOM vouchers were to be paid. Thus, it would appear that the new account number for INSCOM, DSSN 8349, established subsequent to the erroneous payment to Penn, would be responsible for payment to Elkridge.

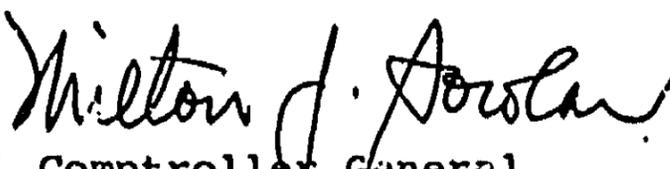
Finally, there is the question of whether the Finance and Accounting Officer, Colonel J. Lawton, of MDW FAO, should be relieved of financial responsibility for the erroneous payment to Penn. Our Office is authorized by 31 U.S.C. §§ 82a-2 (1976), to relieve accountable officers of responsibility for an improper or erroneous payment if we determine that the erroneous payment was not the result of bad faith or lack of due care on the part of the accountable officer.

Department of Army Regulation (AR) § 37-107 provides that:

"the Finance and Accounting officer will accept the certification from a properly designated certifying officer unless he has a reasonable doubt as to the correctness of the facts stated on or attached to the voucher."

Also, under MDW's procedures for receipt and payment of certified vouchers, the Finance and Accounting Officer can rely on a voucher prepared by the pre-certifying officer. In the present case, it does not appear that the Finance and Accounting Officer had any reason to doubt the correctness of the voucher that he received from INSCOM. Therefore, we agree that this loss did not occur as a result of bad faith or lack of due care on Colonel Lawton's part.

Accordingly, relief may be granted to him.

for 
Comptroller General
of the United States