

*Milner* 20307

**DECISION**



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

**FILE:** B-207251

**DATE:** November 16, 1982

**MATTER OF:** Eugene Drexler

**DIGEST:**

Claim against Small Business Administration (SBA) for attorney fees earned in preparing contractor's termination settlement agreement, which is based on SBA's allowing such fees as part of settlement, is denied since claimant had no privity of contract with SBA and his recourse is against his client. SBA's acceptance of such costs as allowable settlement expense imposed no obligation on SBA to insure money paid to contractor is disbursed in any particular way. In any event, claim is precluded by the Assignment of Claims Act of 1940.

Eugene Drexler has submitted a claim for payment for legal services rendered to Quadrstech Research Corporation in connection with the preparation, presentation and negotiation of a contract termination settlement with the Small Business Administration (SBA). Drexler states that Quadrstech went out of business before paying the full amount owed him and that since the termination settlement included a sum for legal fees, he should have been paid by SBA from that sum. For the reasons discussed below, we conclude that Drexler has no valid claim against the Government with respect to this matter.

In 1976, the U.S. Marine Corps entered into a contract with SBA which, in turn, subcontracted (No. SBA2-10-8(a)-76C-191) the requirement to Quadrstech under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1980). SBA extended advance payments to Quadrstech in the amount of \$250,000. This was placed in a special bank account requiring the signatures of representatives of

both SBA and Quadrotech for withdrawal. The agreement with respect to this account provided that all such funds therein shall be subject to a lien in favor of the Government and such lien shall be paramount to all other liens. On December 8, 1978, the contract was terminated for convenience of the Government and at that time there was an unliquidated balance of \$200,000 in the special account.

In early 1981, SBA and Sequerra Co., Inc., which was controlled by the same people who controlled Quadrotech, entered into a stipulation settling a suit in which SBA sought to collect the balance of an SBA loan to Sequerra. As Quadrotech had guaranteed the loan, it was also a defendant and it asserted a counterclaim. As a part of the settlement, in which Drexler was not involved, Quadrotech released to SBA its interest in the special account set up for the Quadrotech contract which at that time contained \$105,924.04. This left \$94,075.96 still owed to SBA as a result of its advance payments under the Quadrotech contract.

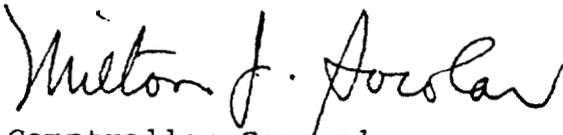
By supplemental agreement of April 24, 1981, the Government agreed to pay Quadrotech \$107,866 in complete settlement of its termination claim and of all other claims and liabilities of the Government and Quadrotech under the contract. This amount was deposited in the special bank account and by agreement SBA received \$94,075.96 in payment of the amount Quadrotech then owed to SBA and Quadrotech received the remainder. The account was then closed and Quadrotech, according to Drexler, went out of business without paying Drexler the \$1,525 owed to him.

Drexler then asked SBA to make a direct payment to him from proceeds of the settlement. SBA refused Drexler's request, stating it had no authority to make such a payment because there was no privity of contract between SBA and him. Drexler concedes his contract was not with the Government but insists he is entitled to payment from the funds paid to SBA by the Department of Defense pursuant to the settlement agreement. He asserts that SBA held the sum allowed for legal fees in trust for distribution to him.

We see no merit to this position. Although the Government accepted as allowable expenses certain costs which Quadratech had paid or was obligated to pay, such acceptance did not require Quadratech to disburse the funds it received in accordance with those items of expense it used to support its proposal. Moreover, the Government had no obligation to see that such accounts were paid. Unless otherwise required by law, the claims of third parties, including that of Drexler, depend upon their contractual agreements with the contractors and must be satisfied without involvement of the Government. See Defense Acquisition Regulation § 8-209.1 (1976 ed.); Federal Procurement Regulations § 1-8.208-1 (1964 ed.).

Although Drexler claims to be seeking funds which he contends are held in trust by SBA, he is merely seeking payment from the Government for legal services he rendered to Quadratech. Thus, in effect, he claims an interest in the money claimed by and paid to Quadratech. The Assignment of Claims Act of 1940, 31 U.S.C. § 3727 (formerly 31 U.S.C. § 203), however, does not permit recognition of such a third party claim. This statute renders all assignments of claims upon the United States, except as provided therein, unenforceable. One exception has been made to permit assignment of Government contract proceeds to banks and other financing institutions. There is no exception made with respect to fees due attorneys. This statute was enacted for the purpose of preventing, before the allowance of such claims, third parties with whom the Government is not in privity, from acquiring enforceable interests in claims against the United States. See Pittman v. United States, 116 F. Supp. 576 (Ct. Cl. 1953), cert. denied 348 U.S. 815, where an attorney with an advance written agreement calling for payment of 15 percent of any amount allowed in exchange for his services in prosecuting a claim against the U.S. Maritime Commission contended the monetary award created an attorney's lien in his favor against the award with priority over a claim by the Government. In dismissing the claim, the Court of Claims stated that whether it was called an attorney's lien, an equitable interest, or some other name, the contract between the attorney and his client gave the attorney an interest in the client's claim and this was forbidden by the Assignment

of Claims Act. See also Malman v. United States, 202 F.2d 483 (2d Cir. 1953), rehearing denied, 207 F.2d 897 (2d Cir. 1953); B-179424, November 13, 1973; B-151449, May 16, 1963. Although Drexler's agreement with Quadratech made prior to the settlement agreement and payment of his fee was not dependent upon the success of the termination claim, his claim against the SBA funds is subject to the same objections voiced by the court in the Pittman case.

for   
Comptroller General  
of the United States