



The Comptroller General
of the United States

Washington, D.C. 20548

Easterwood

Decision

Matter of: Securities and Exchange Commission - Payment of
Special Master's Fees and Expenses from Judgment
Fund

File: B-234793.2

Date: June 5, 1989

DIGEST

31 U.S.C. § 1304, the Judgment Fund, is not available to pay fees and expenses of a Special Master appointed by a district court pursuant to a joint settlement agreement between the plaintiff and the Securities and Exchange Commission to review the Commission's equal employment opportunity policies and recommend improvements. The court order directing payment to the Special Master implements the joint settlement under which the Commission agreed to hire an equal opportunity expert. The fees and expenses are properly payable from the Commission's appropriations.

DECISION

The question in this case is whether the fees and expenses of the Special Master appointed by the court in Broderick v. Ruder, Civil Action No. 86-1834 (D.D.C. Jan. 23, 1989), should be paid from 31 U.S.C. § 1304, the Judgment Fund, or whether they should be paid from appropriations available to the Securities and Exchange Commission, the defendant agency in the civil action.^{1/} Since the Special Master was appointed specifically to implement the joint settlement agreement in the Broderick case, which provided that the Commission would hire an equal opportunity expert, we conclude that the expenses are properly payable from the Commission's appropriations.

BACKGROUND

In the court-approved joint settlement of the Broderick case, filed on June 16, 1988, the Securities and Exchange Commission agreed, besides several other items of relief to

^{1/} This matter was submitted by the Associate General Counsel of the Securities and Exchange Commission.

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plaintiff, to hire an equal opportunity expert to review the Commission's equal employment opportunity procedures and to make recommendations for their improvement. The settlement provided that the SEC would consult with plaintiff, and, if the parties could not agree on the selection of a suitable expert, the court would choose one.

The parties were unable to agree and asked the court to make the selection. The court chose an expert by order filed October 27, 1988. The expert was designated a Special Master by a court-approved stipulation between the parties and the expert, filed January 23, 1989. The stipulation stated that the Special Master's purpose was to conduct the Equal Employment Opportunity (EEO) review called for by the joint settlement as approved by the court on June 16. The stipulation further provided that the Special Master would submit monthly statements of his fees and expenses to the court, subject to objections by the Commission, and that the court would order payment of the fees and expenses found due. The Commission agreed in the stipulation to "take whatever steps are necessary to provide payment on an expedited basis." The stipulation also stated that the Commission intended to apply for payment of the Special Master from the Judgment Fund, 31 U.S.C. § 1304 (1982).

The Special Master has performed part of the duties under the joint settlement; he has submitted statements of his fees and expenses to which the Commission has agreed; and the court has ordered payment of those amounts. The question is whether payment should come from the Commission's appropriations or the Judgment Fund.

OPINION

The Judgment Fund is available to pay money judgments against the United States--not judgments directing a specific action, even if that specific action may be translated into a measurable cost. B-193323, Jan. 31, 1980. For example, if a judgment ordered reinstatement of a terminated federal employee--but did not specifically order backpay to the employee--any resulting payment to the employee because of the reinstatement would not be paid from the Judgment Fund but from agency appropriations. 58 Comp. Gen. 311 (1979).

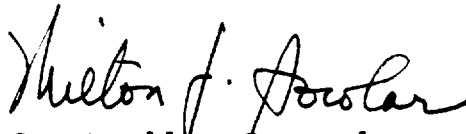
The court-approved joint settlement of June 16, 1988, requiring the Commission to hire an equal opportunity expert, is an example of a specific agency action having an eventual measurable cost that is not payable from the Judgment Fund. A letter from the Claims Group, General Accounting Office, to the Commission, dated December 2,

1988, resulting in certification for payment of the backpay portion of the joint settlement from the Judgment Fund, made this clear, and the Commission did not question it. The Commission now, however, seeks to avoid using its appropriations by focusing solely on the court orders to pay the Special Master specific amounts.

The January 23 stipulation regarding appointment of the Special Master was merely a mechanism to implement the joint settlement in which the Commission agreed to hire the expert. It was necessary for the court to intervene only because the parties could not agree on an expert. Although the stipulation provided a slightly more detailed description of duties for the Special Master than originally provided in the joint settlement, it did not designate any particular source of funds for the payment of the Special Master. In our opinion, the stipulation did not alter the original agreement of the parties, under which the Commission would be the source of funds for payment of the expert appointed under the joint settlement.

The recent court orders approving payment of the Special Master's fees are not inconsistent with this view. They state only that the Commission "is ordered to take whatever steps are necessary to provide payment on an expedited basis." There is no designation of the Judgment Fund as the source of the payment for the Special Master.^{2/}

Accordingly, the Special Master's fees and expenses ordered to be paid on February 22 and March 15 by the court, in implementation of the joint settlement, are payable out of the Securities and Exchange Commission's appropriations.



Acting Comptroller General
of the United States

^{2/} Because of the joint settlement in this case, we find it unnecessary to address the broader issue of whether the United States could be ordered by a court to pay the fees and expenses of a Special Master in Title VII litigation.