



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: My Anh Company
File: B-252872
Date: April 19, 1994

DIGEST

In 1972, the United States Agency for International Development (A.I.D.) awarded a contract in Vietnam to the My Anh Company. On April 27, 1975, the My Anh Company requested that A.I.D. refund its security deposit on that contract. The My Anh Company states that before A.I.D. could do so, the personnel of the A.I.D. office in Saigon were evacuated on April 29, 1975. Since the claim accrued on or about April 27, 1975, and was not filed in the General Accounting Office until 1993, payment of this claim is time-barred by the 6-year Barring Act, 31 U.S.C. § 3702(b)(1) (1988).

DECISION

The United States Agency for International Development (A.I.D.) requests an advance decision as to whether it may pay the claim of the My Anh Company for failing to return that company's security deposit on or about April 27, 1975.¹ We conclude that this claim is barred by the 6-year statute of limitations in 31 U.S.C. § 3702(b)(1) (1988).

BACKGROUND

In 1972, the A.I.D. office in Saigon, Republic of Vietnam (RVN), awarded a contract for building cleaning services to a local South Vietnamese company called My Anh, which was owned by Mr. Pham Mong Hoang and his wife, Mrs. Nguyen Thi Anh. This contract required a deposit of 794,000 RVN Piasters as security for adequate performance of the

¹This matter was submitted to our Office by Mr. David D. Ostermeyer, an Authorized Certifying Officer, Office of Financial Management, U.S. Agency for International Development, Washington, DC, pursuant to 31 U.S.C. § 3529 (1988). It is now under the cognizance of Ms. Pamela L. Callen, an Authorized Certifying Officer of that same office.

cleaning services.² On July 10, 1972, the My Anh Company deposited that amount of money by check with the A.I.D. cashier in Saigon.³

The A.I.D. office in Saigon negotiated the check and recorded the receipt of 794,000 RVN Piasters as a debt owed to the My Anh Company, payable upon satisfactory completion and termination of the contract, in A.I.D.'s account for performance bonds.⁴

The My Anh Company performed services under the contract until late April 1975. Due to the deteriorating military situation, Mrs. Anh requested a refund of the My Anh Company's security deposit by letter, dated April 27, 1975.⁵ The letter was counter-signed by Mr. A. Maurice Pare, the A.I.D. Contract Office Representative, with the notation "[c]oncurrence" on the same day.

²A.I.D. no longer has a copy of this contract. However, the contract number, A.I.D. 730-3512, and the name of the contractor, the My Anh Company, appear in the inventory of contracts issued by the Saigon Office, which was compiled by the A.I.D. Office of Contract Management in Washington, DC, in 1975. See also fn. 3, infra. We note that A.I.D. apparently no longer has the originals of several documents to which this decision will refer, and some of our statements are based on copies of various documents supplied by the My Anh Company.

³See copy of "Receipt for Payment," No. 254, dated July 10, 1972, issued by the A.I.D. cashier in Saigon. (Exhibit "A" to A.I.D.'s letter to the Comptroller General, dated March 16, 1993). Hereinafter, references to an "Exhibit" followed by a letter reference, will refer to the exhibits accompanying the foregoing letter.

⁴For procurement regulations in effect in July 1972, allowing an agency to accept a check in lieu of a surety bond, see 41 C.F.R. § 1-10.204-2 (1972). We note that, even under current procurement regulations, the government may accept checks, bank drafts, or currency from a contractor in lieu of a performance bond. See 48 C.F.R. § 28.204-2 (1992), and 48 C.F.R. § 28.203-2 (1992).

⁵See copy of letter from Mrs. Nguyen Thi Anh to A.I.D. Procurement Officer, Saigon, RVN, dated April 27, 1975, Exhibit "B".

The A.I.D. office in Saigon then commenced the ministerial actions needed to effect the return of the security deposit. An unsigned voucher, dated April 28, 1975, was prepared.⁶ The cashier section of the A.I.D. office in Saigon ceased operations about noon on April 29, 1975, and the staff was evacuated that afternoon.

On October 7, 1991, Mr. Pham and Mrs. Anh asked A.I.D. to issue a refund of the My Anh Company's security deposit and to pay it to their daughter, Ms. Thu Pham.⁷ Ms. Pham now resides in Columbus, Ohio; to the best of A.I.D.'s knowledge her parents still reside in the Socialist Republic of Vietnam. The claim was not received by this Office until March 31, 1993.

The request from A.I.D. states that the agency is referring the matter to our Office because, while on balance A.I.D. is inclined to accept the claimants' contention that the security deposit was not returned, the agency cannot be certain.

ANALYSIS

The threshold question is whether the claim of the My Anh Company is barred under the provisions of the Barring Act, 31 U.S.C. § 3702(b)(1) (1988), which, with exceptions not relevant here, provides that a claim against the United States government must be received by the Comptroller General within 6 years after the claim accrues.

Although the My Anh Company's claim was not received here within the 6-year period, A.I.D. notes that our Claims regulation allows a claim to be considered timely filed when filed within the 6-year period with the agency whose activities gave rise to the claim. See 4 C.F.R. 31.5(a) (1993). The agency suggests that the My Anh Company's letter of April 27, 1975, to its Saigon office can be considered as a timely filing with the agency.

The provision cited by A.I.D. was added as an amendment to the regulation, effective June 15, 1989. The regulation previously required that a claim had to be filed directly with GAO within the allowed 6-year period, and that claims filed with any agency other than GAO did not satisfy the filing requirements of the Barring Act. The preface to the 1989 amendment stated that the amendment only applied to

⁶See copy of A.I.D. Voucher and Schedule of Payments, Schedule No. 730-75-4147, unsigned, but dated April 28, 1975, Exhibit "D".

⁷See copy of letter from Pham Mong Hoang and Nguyen Thi Anh, to A.I.D., dated October 7, 1991, Exhibit "G".

claims that were not yet barred, and that any claim that accrued before June 15, 1983, was time-barred unless it had been filed with GAO within the applicable 6-year period.⁸ Since the My Anh Company's claim accrued on or about April 27, 1975, it is not timely filed under the 1989 amendment to the regulation.

Alternatively, A.I.D. asks if the Barring Act, 31 U.S.C. § 3702(b)(1) (1988), could otherwise be tolled. We are not aware of any authority for tolling the statute. See Soriano v. United States, 352 U.S. 270 (1957), where the court rejected the plaintiff's contention that hostilities with the Japanese tolled a statute of limitations. Also, in Hai Tha Truong, 64 Comp. Gen. 155 (1984), we held that the Barring Act could not be tolled for the claim of a Vietnamese refugee who had lived in the Socialist Republic of Vietnam after his claim had accrued. As stated there, the 6-year Barring Act is not a mere statute of limitations, but a condition precedent to the right to have the claim considered by our Office.

Accordingly, the My Anh Company's claim is time-barred under the provisions of 31 U.S.C. § 3702(b)(1) (1988).

for the 
Comptroller General
of the United States

⁸See 54 Fed. Reg. 51867-51868 (Dec. 19, 1989), and Janice B. Lopez, B-249968, Feb. 16, 1993; Captain Elias W. Covington, USA (Retired), B-244827, Sept. 9, 1992; Commander James H. Baker, USN (Retired), B-193856.4, June 19, 1992.