

Relack. 05-14



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

USDA--Liability of agent brokers regarding
reimbursable expenses associated with off-hour
Matter of: inspections

File: B-224942

Date: December 17, 1987

DIGESTS

1. Where agent/broker requests agricultural inspection services on behalf of a disclosed principal, the agent/broker may not be held liable for reimbursable charges incurred in connection with such inspection services under 7 U.S.C. § 2260 (1982).

2. The legal relationship between parties to an inspection service transaction--owner, agent/broker and the Department of Agriculture--is not analogous to the legal relationship between parties to a credit card transaction--cardholder, merchant and bank--since in the latter case there exists no agency relationship.

DECISION

The Director of the Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) has requested our decision on whether APHIS may properly hold agent/brokers of vessel and aircraft owners liable for reimbursable expenses associated with off-hour inspections performed by APHIS. For the reasons stated below, we conclude that agent/brokers who request inspection services on behalf of a disclosed principal may not be held liable for any financial obligation arising out of off-hour inspections.

APHIS performs agricultural inspections of passengers and cargo entering the United States from abroad. Given the magnitude of goods entering the United States, there is a demand for such inspection services virtually around the clock. During normal business hours, the inspections are performed without charge. However, during the hours between 5:00 p.m. and 8:00 a.m., and on weekends, the party for whom the inspection is performed must reimburse APHIS for the services rendered in accordance with 7 C.F.R. Part 354 (1986).

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Under 7 U.S.C. § 2260 (1982), the Secretary of Agriculture is authorized to accept reimbursement for off-hour inspections from the persons for whom the work is performed.

The statute provides:

"The Secretary of Agriculture is authorized to pay employees of the United States Department of Agriculture performing inspection or quarantine services relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by them at any place where such inspection and quarantine services are performed, at such rates as he may determine, and to accept from persons for whom work is performed reimbursement for any sums paid out by him for such work." (Emphasis supplied.)

According to the record, a considerable proportion of parties requesting off-hour inspection services are agent/brokers. Consequently, APHIS wishes to know whether it may properly hold such agent/brokers liable based upon their requests for inspection services.

In our opinion, agent/brokers who make requests for off-hour inspection services on behalf of disclosed principals may not be held liable for reimbursable costs associated with such inspections. Under the fundamental principles of agency law, one who acts in the capacity of an agent for a disclosed principal is not liable for claims arising out of a contract executed by the agent on behalf of his principal. See, e.g., Atlantic & Gulf Stevedores, Inc. v. Revelle Shipping Agency, Inc., 750 F.2d 457, 459 (5th Cir. 1985); Lake City Stevedores, Inc. v. East West Shipping Agencies, Inc., 474 F.2d 1060, 1063 (5th Cir. 1973). Since the inspection services requested by an agent/broker on behalf of a disclosed principal are being performed for the principal, the agent cannot be held liable. Conversely, the agent can be held liable where he fails to disclose that the services are being requested on behalf of a named principal since in such a case, the services are to all outward appearances being performed for the agent.

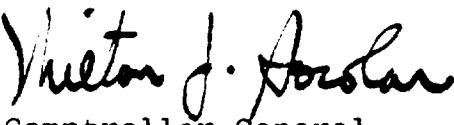
The submission of the Director of APHIS also suggests an analogy which he requests we specifically address in responding to his inquiry. The Director argues that consumer credit transactions are analogous to the transactions here in question. In particular he states:

"A consumer who uses a credit card obtained through a bank is liable to the bank for charges made at the local department store. If the

consumer does not pay the bill to the bank, the bank cannot refuse to pay the local department store for these charges."

We do not think that consumer credit transactions are analogous to the transactions here. Simply stated, the bank does not act as the cardholder's agent. A typical credit card transaction is either a three-party or four-party transaction involving two contracts. The consumer enters into a contract with the bank, whereby the bank agrees to extend a given line of credit to the consumer in exchange for the consumer's agreement to pay all bills due and owing. The store enters into a contract with the bank, whereby the store agrees to accept the consumer's card for purchases in exchange for the bank's agreement to pay all charges validly made with the card. Neither of these contracts creates an agency relationship.^{1/} By contrast, the transactions here in question, although they typically involve three parties and two contracts, are distinct since one of the contracts establishes an agency relationship between the vessel owner and the agent/broker. Additionally, the contract entered into between APHIS and the owner of the vessel executed by the agent/broker on behalf of the owner does not, and indeed cannot, contain a promise on the part of the agent to pay charges as a result of the inspection because of the wording of the statute authorizing the Secretary to accept payment from persons for whom the services are rendered.

Accordingly, we conclude that an agent/broker who requests APHIS inspection services on behalf of a named principal cannot be held liable for charges incurred as a result of such inspection.

for 
Comptroller General
of the United States

^{1/} For an in-depth description of credit card transactions, see National Bankcard Corporation v. VISA U.S.A., Inc., 596 F. Supp. 1231 (S.D. Fla. 1984) aff'd, 779 F.2d 592 (1986) cert. denied 107 S.Ct. 329 (1987).