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DECISION

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

FILE: B-195629

DATE: September 7, 1979

MATTER OF: The Office of S. Thomas Shumate
AIA Architect *DLG02701*

*person
person*

DIGEST:

Blanket assignment to bank of accounts receivable, which predates by more than 3 years Government contract under which proceeds are now available for payment, may not be recognized as valid assignment pursuant to Assignment of Claims Act. However, if assignee is able to provide any evidence to substantiate assignment's validity, assignee may be paid so long as Government is indemnified.

The Finance and Accounting Officer of the Department of the Army, Savannah District, Corps of Engineers (Corps), has requested an advance decision regarding the propriety of payment to the North Carolina National Bank (NCNB), Raleigh, North Carolina, of the remaining balance due under contract DACA21-77-C-0031 awarded to the Office of S. Thomas Shumate, Jr., AIA Architect (Shumate), on November 23, 1976. We have been informally advised by the Corps that the contract for architectural services was completed on December 28, 1978.

*AGC 0863
file
DLG02702*

The Corps is uncertain as to the proper payee because of a claim by NCNB that it should be the payee by virtue of an agreement in which Shumate allegedly assigned the proceeds from any accounts receivable to NCNB.

By letter of May 1, 1979, counsel for NCNB asserted its claim to any payment due Shumate by the Corps by notifying the Corps' legal counsel that NCNB had a loan outstanding to Mr. Shumate secured by his accounts receivable. As evidence of this assignment, counsel submitted a Security Agreement (Accounts Receivable Revolving Credit), dated January 24, 1973, in which Shumate agreed to

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assign to NCNB its current and future accounts receivable of any type or kind arising out of architectural endeavors.

Shumate filed a Petition in Bankruptcy on October 27, 1978, which states that NCNB is a creditor of the bankrupt and has a valid lien against certain accounts receivable which includes an amount owed by the Savannah District Corps of Engineers. At the request of counsel for NCNB, the Trustee in Bankruptcy filed a Petition to Abandon Accounts Receivable which included the amount due Shumate by the Savannah District Corps of Engineers. The record contains an order from Bankruptcy Judge authorizing the trustee to abandon the accounts receivable listed as an asset in the bankruptcy proceeding. Counsel for the bank contends that the effect of this order is to enable NCNB to continue to receive such sums as are owed under the pledged accounts.

Generally, an assignment of accounts receivable from the United States can be lawfully accomplished only through compliance with the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 203 (1976) and 41 U.S.C. § 15 (1976). This act permits the assignment to a bank, trust company, or other financing institution of monies due under a Government contract provided the assignment conforms to the requirements of the act, including proper written notice of the assignment.

In General Services Administration--Advance Decision, Assignment of Claims Act, B-194945, June 19, 1979, 58 Comp. Gen. _____, we considered a similar situation involving a blanket assignment to a financial institution executed well prior to the Government contract under which proceeds became available for possible payment to an assignee. We concluded that the assignee bank should be paid, subject to certain conditions, and stated:

"In this connection, we have held that an assignment of a claim against the Government should specify the particular contract involved, and, therefore, that a blanket assignment does not meet the requirements of the Act where the Government seeks to set off a tax indebtedness. See B-120222, October 27, 1955. We have noted in one decision that the lack of specificity of a blanket agreement can be cured for purposes of perfecting a valid assignment under the Act when 'there are in existence later amendment schedules [specifying the Government contract] signed by the assignor, which purport to be an integral part of the original [blanket] assignment instrument.' B-171125, February 4, 1971. GSA has provided us documentation in addition to the 1976 agreement which raises the possibility that there may be sufficient documentation of a valid assignment applicable to the instant contract payment.

"It appears from the documents subsequently submitted here by GSA that during the period of performance of the Floyd Bennett Field contract, Sterling loaned Teltronics \$1 million. This is evidenced by a secured note dated December 29, 1978, and executed by the Treasurer and Vice-President of Teltronics. By the terms of the note, Teltronics granted a security interest in and assigned all accounts receivable to Sterling. (This note also refers to the 1976 blanket agreement as a matter of collateral security for the loan.) In the documentation we received, a schedule of Teltronics' accounts receivable lists the Floyd Bennett Field contract

account. Assuming that GSA concludes that the December 1978 secured note is an authentic document, we believe it should be recognized as an assignment under the Act. Nevertheless, because of the controversy in this matter the bank should be required to indemnify the Government from any claims that might be made by the contractor. The bank may be paid upon satisfaction of these requirements."

The record here contains no evidence of the type involved in the above-quoted case to warrant payment to the assignee even with an indemnification agreement. More specifically, the agency was not notified of the assignment prior to contract completion. Apparently, no monies were supplied to the assignor during the performance of this contract by the assignee. Further, the Security Agreement was not amended in the ordinary course of business to make this contract an integral part of the blanket assignment, which predated the contract by several years, nor did any subsequent agreement refer to the blanket agreement.

Accordingly, on the record here, the Government may not recognize the assignment as valid and payment may not be made by the Government to NCNB. Our conclusion is not affected by the listing of this account receivable in the bankruptcy proceeding prior to abandonment. However, we recognize the possibility that the assignee may have evidence of the type involved in the above case to substantiate the validity of the assignment. Therefore, the Corps should afford the assignee an opportunity to provide any available evidence. If the Corps is satisfied that whatever evidence is submitted substantiates the assignment's validity, consistent with this decision, the assignee may be paid so long as the Government is indemnified from any possible claims by the assignor.


Deputy Comptroller General
of the United States