DECISION

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

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FILE: B-215145 DATE: April 17, 1985

MATTER OF: Bank of Bethesda--Claim Against Navy for Reimbursement of Costs

DIGEST:

Bank of Bethesda is not entitled to be reimbursed for purchase of vault and related equipment for branch office on Navy installation. Bank sought payment under Navy regulations authorizing such equipment to be furnished at Government expense to bank offices certified as "nonself-sustaining." GAO agrees with Navy, however, that there is no basis to authorize payment where purchases were made prior to certification, and where authorizing regulation is clear on its face that benefits thereunder are available only after certification. Bank, as voluntary creditor of the Government, is not authorized to recover cost of goods allegedly purchased on behalf of the Government where direct expenditure by the Navy would not have been authorized.

This responds to a request by the Bank of Bethesda that we review its claim for reimbursement of expenses incurred in purchasing and installing equipment, including a vault and an alarm system, for a new branch office at the Naval Medical Command in Bethesda, Maryland. The Bank's claim was originally filed with the Navy, which denied it based upon the Bank's status as a voluntary creditor of the Government. For the reasons discussed below, we agree that the Bank is not entitled to reimbursement.

BACKGROUND

According to its submission, the Bank of Bethesda was required by the Navy to move its branch office at the Naval Medical Command as part of an overall facilities relocation in 1983. Although original notification of the proposed move came as early as July 1979, the Bank apparently received no instructions to relocate until March of 1983. At that time, the Navy informed Bank officials that the branch office would be required to move to temporary space by April 11, 1983, and to a new permanent location by June 1983.

The Bank states that, because of the restrictive time requirements imposed upon it by the Navy, it was required to make immediate arrangements to order a vault, alarm system, and counter-equipment for the new facility. According to the Bank, its officers approached the Navy during March 1983, about the possibility of obtaining financial support from the Government to cover the costs of this equipment, particularly since the branch office was not making any significant profit at the time. The Bank indicates that Navy officials assured Bank officers that, if the branch was indeed unprofitable, the vault and related equipment could be paid for or provided by the Government. The Bank says that it immediately ordered the vault and alarm system in reliance on these representations. The details of how the Navy would contribute, however, were not made clear to the Bank (through provision of a copy of the applicable Navy regulation) until well after it had ordered the equipment in question.

By letter dated May 18, 1983, Commander Q.E. Crews of the Naval Medical Command provided the Bank with a copy of Secretary of the Navy Instruction (SECNAVINST) 5381.1G, March 7, 1983, which governs the rights and requirements of banking institutions operating on Navy and Marine Corps installations. Section 8(c) of that instruction provides that any bank office on a Navy or Marine Corps installation, once certified as "nonself-sustaining," may be provided Government-owned property and services (including vaults and other necessary equipment) without charge. Commander Crews informed the Bank that, because the Naval Medical Command had received no evidence to the contrary, the Bank of Bethesda branch at the Command was presumed to be self-sustaining and therefore ineligible for the benefits accorded to nonself-sustaining bank offices. He also noted that a self-sustaining bank may use its own funds to modify or renovate an existing Government space.

On August 29, 1983, the Bank of Bethesda wrote to Commander Crews, requesting that the Naval Medical Command branch be certified as nonself-sustaining, based upon a review of the branch's finances by the Bank's accountants. The Bank also requested that the Navy reimburse the Bank for vault and equipment costs incurred during the move in June. According to the Bank, the Navy certified the branch's nonself-sustaining status on December 12, 1983, but denied the request for reimbursement on the grounds that (1) the equipment was ordered before the branch was certified, and (2) the Bank failed to follow competitive bidding requirements. The Bank responded on December 21, 1983, with a request that the specific requirements of the applicable regulation be waived so

that reimbursement might be granted. The Navy, on March 12, 1984, again declined to reimburse the Bank, this time on the basis of a legal opinion of the Office of Counsel for the Navy Comptroller, stating that the regulation in question could not be waived by the Navy and that, even if it could, the claim could not be paid under the so-called "voluntary creditor rule." The Bank of Bethesda has appealed the question to this Office.

DISCUSSION

The applicable Navy regulation, SECNAVINST 5381.1G, March 7, 1983, delineates two separate categories of banking offices on Navy or Marine Corps installations: self-sustaining and nonself-sustaining. The distinction is significant, as bank offices falling under the latter classification are eligible for such benefits as free rent and utilities. All offices are considered to be self-sustaining--

> "* * * until the banking institution provides NCD4 [Office of the Navy Comptroller, Banking and Contract Financing Director], through the installation commander, profit-center financial statements (certified by the Bank's certified public accountant) indicating that the profitability of that office has fallen below seven (7) percent of gross expenses incurred for four (4) consecutive calendar quarters. Free rent and utilities may then be authorized by NCD4. At this time the banking office is categorized as a nonself-sustaining office." SECNAVINST 5381.1G § 8(b)(1).

Once categorized as nonself-sustaining, the banking office is to be furnished "space in government-owned buildings" under a 5-year no-cost license, subject to cancellation upon a change in the status of the banking office. The regulation further states that:

"Adequate space shall be made available [to nonself-sustaining bank offices]--including steel bars; grillwork; security doors; a vault, safes, or both; burglar alarm system; other security features normally used by banking institutions; construction of counters and teller cages; and other necessary modifications and alterations in existing buildings." Id. § 8(c)(3).

The Bank of Bethesda's original request for reimbursement was based upon a construction of SECNAVINST 5381.1G that would have permitted the benefits conveyed therein to be provided on a retroactive basis, that is, for the period prior to actual certification of nonself-sustaining status by the Navy. We agree, however, with the Navy that the regulation in question is, by its own terms, applicable on a prospective basis only. Entitlement to the benefits provided under the regulation is not based upon achievement of the nonself-sustaining status described in the regulation, but rather upon recognition of that status through certification by the Navy. As the regulation states, "[f]ree rent and utilities may then [i.e. after certification] be authorized" by the Navy. SECNAVINST 5381.1G § 8(b)(1) (emphasis added). The language of the regulation is clear on its face, and provides no authority to award benefits for periods prior to certification by the Navy. There is no basis under the authorizing regulation for payment under the Bank's claim.

Once it became apparent that the Navy would not apply the regulation on a retroactive basis, the Bank of Bethesda sought a "waiver" based upon the equities of the circumstances involved, in particular the Navy's pressure on the Bank to move rapidly, together with its assurances as to the availability of reimbursement. As indicated previously, the Navy denied the Bank's "waiver" request on grounds that it had no authority to waive a DOD-wide policy. The Navy's ultimate disposition of the claim, however was on the basis that the Bank acted as a "voluntary creditor"--i.e. one who pays what is perceived to be an obligation of the Government to a third party, with the belief that his actions would thereby create a valid claim in his favor. A voluntary creditor, as a general rule, is not entitled to reimbursement except when public necessity can be established. 62 Comp. Gen. 419, 424 (1983).

The voluntary creditor rule is related to the Antideficiency Act's prohibition against the acceptance by the Government of voluntary services. See 31 U.S.C. § 1342 (1982). Its underlying rationale is that, where a valid obligation of the government exists, specific procedures and mechanisms exist to see that that obligation is fulfilled; to permit a volunteer to intervene in the process would interfere with the Government's interest in seeing that its procedures are followed. See 62 Comp. Gen. 419 (1983), for a thorough review of the origins and applications of the voluntary creditor rule.

The voluntary creditor rule is not an absolute bar to recovery. Under certain exceptional circumstances, one who

makes a payment on behalf of the Government may recover the amount paid. In 62 Comp. Gen. 419, supra, we delineated guidelines for determining when the rule would or would not be applied. We stated that, as a preliminary matter, there are three types of cases in which we will continue to apply the rule strictly. They are:

> --Cases in which the underlying expenditure is unauthorized;
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> --Cases in which the claimant requests reimbursement for purchasing an item to be used primarily for his or her own use, where the item is authorized--but not required--to be furnished at Government expense; and
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> --Cases involving claims not involving the procurement of goods or services. 62 Comp. Gen. at 423.

If a claim by a voluntary creditor does not fall into any of these categories, it may be considered for payment, although certain other stringent requirements (particularly a showing of public necessity) must also be met. Id. at 424.

In the present case, we find it unnecessary to proceed beyond the initial inquiry. As indicated above, we agree with the Navy's conclusion that SECNAVINST 5381.1G provided no legal authority to reimburse the Bank for expenses incurred prior to certification. Consequently, as the Navy would not have been authorized to purchase the equipment directly for the Bank, the voluntary actions of the Bank can have no legal effect. This case thus falls within the first of the three categories, outlined above, for which we have stated the voluntary creditor rule should be strictly applied.1/

Because of our conclusion that the Bank's claims are barred under the voluntary creditor rule, it is unnecessary to address the quantum meruit or estoppel arguments at any length. We should point out, however, that while it is true that the Comptroller General may authorize payment on a quantum meruit basis to a person who has provided services to the Government, pursuant to the Comptroller General's claim

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1/ The present situation also appears comparable to those cases falling within the second category, as the items for which the Bank requests reimbursement are goods purchased primarily for its own use.

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settlement authority (31 U.S.C. § 3702), he too must first make the threshold determination that the procurement would have been authorized at the time it was made. As stated above, the procurement would not have been permissible when made even if the Bank had secured a written commitment to reimburse it for its purchases. See B-207557, July 11, 1983; B-212430, June 11, 1984. Moreover, a Government agency may not be estopped by unauthorized representations of its employees (even if such representations had actually been made), particularly when they purport to waive a binding agency regulation. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Finally, it is our view that any bank operating an office on a military installation is responsible for familiarizing itself with those regulations, issued by the military service, specifically governing the establishment, operation, and termination of such banking facilities. The regulation in question, SECNAVINST 5831.IG, is comprehensive in nature, and governs a wide range of requirements, from the types of banking services which are to be rendered to the use of promotional material by the Bank. The regulation's predecessor was in fact specifically incorporated by reference in the Bank of Bethesda's support agreement with the Navy dated August 30, 1982, and the Bank therefore had constructive notice of the regulation. We thus give little weight to the Bank's complaint that the Navy did not furnish it a copy of the regulations until after it had made the purchase for which it now seeks reimbursement. The Bank should have been familiar with the regulation, and had it been so, could not have claimed to rely on any Navy official's mistaken assertion of the availability, under the regulation, of reimbursement.

CONCLUSION

Based upon the foregoing, we affirm the Navy's conclusion that reimbursement of the purchase value of the vault and related equipment is not authorized.

for Harry R. Van Cleve
Comptroller General
of the United States