

DECISION



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

Fein Stein
SGM
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FILE: B-217468

DATE: June 25, 1985

MATTER OF: Payment by National Mediation Board to
A. Robert Lowry, Inc. for Arbitral
Services Rendered by Mr. A. Robert Lowry.

DIGEST:

An arbitrator employed as an individual submitted a claim for personal services to the National Mediation Board. On the claim voucher he requested that payment be made to a corporation of which he is the sole functioning officer and only owner. Since individuals and corporations are different legal entities, payment should be made only to the individual who performed the personal services.

An authorized certifying officer of the National Mediation Board (NMB) by letter of December 21, 1984, requests an advance decision regarding a voucher presented to him for certification.

Mr. A. Robert Lowry was selected as the neutral arbitrator by the parties to a series of disputes and appointed as such by the NMB on June 12, 1984. The NMB compensates neutral arbitrators, who are independent contractors, for salary and expenses, upon submission of standard vouchers. Mr. Lowry submitted a pay voucher for \$1,430 for services rendered as referee, which he signed as an individual. However, on the voucher he requested that payment be made not to him personally, but to "A. Robert Lowry, Inc." We are told that in a letter submitted with the voucher, Mr. Lowry states that he is the "sole functioning officer and only owner" of the corporation.

The authorized certifying officer indicates that the NMB has not previously made payment for arbitral services to a corporation. The Board views the contractual relationship with the arbitrators as one involving personal service and therefore not subject to substitution except upon specific advance NMB authorization. According to the submission, Mr. Lowry has assured NMB that he personally performed all of the services for which payment is claimed.

Based on this assurance and Mr. Lowry's designation of "what amounts to a professional corporation as the recipient of his compensation", the Board is prepared to honor the request. In this regard, we are told that:

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"There appears to be no basis to distinguish between payment to Mr. Lowry's corporation and payments routinely made in the private sector to professional corporations maintained by attorneys, physicians and other professionals."

We recommend that for purposes of this voucher, payment be made to Mr. Lowry in his individual capacity.

The general rule is that a corporation is a different legal entity than a sole proprietorship. This is so even if there is only one stockholder. See Fletcher Cyc Corp § 25.1 (Perm Ed). In B-178540, May 8, 1974, we held that a sole proprietorship could not properly be substituted for a corporation in whose name a low bid is executed since an award to anyone other than the bidder named in the bid would be an improper substitution of different entities.

Most states permit a group of professional persons, such as lawyers, to organize their practice in a corporate form as a "professional corporation," which is generally subject to special requirements. See Fletcher Cyc Corp. § 112.1. While we cannot determine from the information provided that A. Robert Lowry, Inc. is a professional corporation, the NMB employed Mr. Lowry as an individual and not as a member of a professional corporation. Therefore, Mr. Lowry should be paid as an individual, and not as a corporation. In the future, if a professional corporation is engaged to perform services and does so, it may be paid in that capacity.



Acting Comptroller General
of the United States