

*C. Anderson*

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**DECISION**



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

**FILE:** B-215145

**DATE:** August 13, 1985

**MATTER OF:** Bank of Bethesda--Request for  
Reconsideration

**DIGEST:**

Bank of Bethesda's quantum meruit claim for reimbursement for its purchase of vault and related equipment for a branch office on Navy facility is denied. Even if Bank could meet threshold requirements of quantum meruit claim, it could not make the requisite showings of quantifiable benefit to the Government; and good faith (reasonable diligence). Bank may, however, be reimbursed under regulations for value of equipment it has furnished during any period for which it has been certified as nonself-sustaining.

This responds to a request by the Bank of Bethesda that we reconsider our decision 64 Comp. Gen. \_\_\_\_\_, B-215145, April 17, 1985. In that case, we denied the Bank's claim for reimbursement of expenses of installing new equipment (including a vault and an alarm system) for a new branch office at the Naval Medical Command, Bethesda, Maryland. For the reasons discussed below, we reaffirm our denial of the Bank's claim.

In our previous decision, we concluded that Secretary of the Navy Instruction (SECNAVINST) 5381.1G, which authorizes the provision of space and equipment to "nonself-sustaining" banks under certain conditions, was not applicable on a retroactive basis, and therefore provided no authority for payment of the Bank's claim. We also held that the Bank had acted as a voluntary creditor and thus was not eligible for payment.

In our discussion of the Bank's quantum meruit claim, we concluded that the absence of authority in SECNAVINST 5381.1G meant that the Bank could not meet the threshold quantum meruit requirement that the underlying procurement be authorized. As discussed below, however, we do not believe the Bank would have been entitled to recover under quantum meruit even in the absence of these legal hurdles.

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Under GAO's claim settlement authority, the Comptroller General may authorize payment on a quantum meruit/quantum valebant basis under certain circumstances. Where, for any of a variety of reasons, action taken by one party has resulted in another's receipt and acceptance of a benefit, even in the absence of an enforceable contract, the law may imply a promise to pay by the receiving party whatever the benefit is reasonably worth. This principle has long been recognized by this Office in the context of claims against the Government. See 63 Comp. Gen. 579 (1984); 33 Comp. Gen. 533 (1954). Such claims require proof of a number of different conditions, including (1) that the Government in fact received and accepted a benefit; (2) that the claimant acted in good faith; and (3) that the amount claimed represents the reasonable value of the benefit received. See 63 Comp. Gen. 579, supra; 40 Comp. Gen. 447, 451 (1961).

In the ordinary quantum meruit claim against the Government, the question of whether goods or services have actually been retained or accepted by the Government is a relatively straightforward one. See, e.g., 63 Comp. Gen. 579, supra, (Government-ordered publications). In the present case, however, the goods provided are actually owned and used by the claimant. The exact "benefit to the Government" is not, therefore, readily apparent. The Bank's attorneys have described the benefit in terms of the overall advantages of uninterrupted on-base banking services. It is not clear, however, that banking services would in fact have been interrupted but for the Bank's actions, nor is it clear how such a benefit--if it could be proved--should be valued. In light of the speculative nature of the Bank's claim of benefit bestowed (and the valuation thereof), payment under quantum meruit would not be authorized.

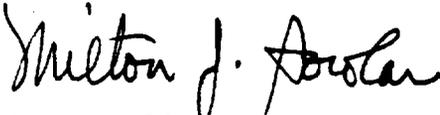
In addition, with respect to the element of "good faith", this Office has previously recognized that term as encompassing the exercise of reasonable diligence. See B-187445, January 27, 1977. In our previous decision, however, we noted the Bank's failure to familiarize itself with the applicable regulation:

"[I]t 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 5831.1G, 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."

Thus, it is questionable whether the Bank would have been able to meet the "good faith" requirement for a quantum meruit recovery.

Finally, although we here reaffirm our denial of the Bank's claim for reimbursement of the purchase price of installed equipment, we note that, after it was finally certified by the Navy as nonself-sustaining, the Bank was entitled under SECNAVINST 5381.1G to government-furnished space, including vault and related equipment. Since the Bank has itself provided the necessary equipment, we would have no objection to the Navy's periodic reimbursement--on a rental-value basis--for the equipment in question, during any period the Bank remains in a nonself-sustaining status.

for   
Comptroller General  
of the United States