



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Blue Diamond Trucking Service, Inc.

**File:** B-249375.4

**Date:** July 30, 1993

---

### DIGEST

1. Government's collection efforts against carrier indebted for \$91,635.33 in overcharges were frustrated by carrier's involuntary dissolution for failing to re-register with the state of incorporation. The General Services Administration (GSA), in settling a carrier claim involving other transactions, determined that the government owed the carrier \$31,474.80. Set-off of that amount against overcharge debt under 31 U.S.C. § 3726(b) was improper since the statute does not authorize set-off where, as here, the bills involving the overcharges were paid more than 3 years earlier.

2. Even though the General Services Administration should not have set off funds found due a carrier to collect amounts the carrier owed the government, because such action was time-barred, these funds should not be released to individuals claiming to be the carrier's successors where the corporation had been involuntarily dissolved by the state of incorporation for failure to re-register and the Court of Federal Claims has denied them standing as proper assignees in connection with a related matter. The claim is doubtful and should be paid only if further litigation establishes the claimants' standing to receive the set off funds and the court finds payment otherwise proper.

---

### DECISION

On behalf of himself, Vincent Scott, the Scott Family Trust and Blue Diamond Trucking Service, Inc., Clarence Scott requests review of the General Services Administration's (GSA) audit actions with respect to Blue Diamond. We sustain GSA's settlements.

GSA requested the Department of Justice to initiate civil action against Blue Diamond in 1989 to collect overcharges paid to the firm in 1986 or 1987 on Government Bill of Lading (GBL) transactions; these overcharge claims now

involve 33 transactions totalling \$91,635.33.<sup>1</sup> However, the Department of Justice reported that service of process on Blue Diamond was not obtainable, apparently because the firm was involuntarily dissolved by the Secretary of State of Georgia in May 1989 for failure to file its annual registration

Separately, in 1988, Blue Diamond filed undercharge claims totalling \$79,500 on nine other GBL transactions, all based on the government detaining the firm's trailers in Bayonne, New Jersey. By December 19, 1991, GSA had settled these claims, allowing only \$31,474.80 of the \$79,500 claimed. GSA has set this money off against the \$91,635.33 in overcharge claims.

Mr. Scott (1) contests the \$91,635.33 overcharge assessment; (2) seeks the full \$79,500 claimed for detention in Bayonne; and (3) claims an additional \$520,000 for the detention of two trailers at Letterkenny Army Depot, Pennsylvania, between September 17, 1986, and May 29, 1987.

We have no authority to consider the Bayonne undercharge and the Letterkenny detention claims because they are time-barred. According to 31 U.S.C. § 3726(g)(1), a carrier may request the Comptroller General to review GSA's audit action if the request is received not later than 6 months after GSA acts or within the time stated in 31 U.S.C. § 3726(a). That section provides that a claim must be received by GSA not later than 3 years after the later of the following: accrual of the claim, payment for transportation, refund of an overpayment by the carrier, or deduction by GSA.

Since the 3-year limitation already had expired when GSA settled the Bayonne detention claims, Blue Diamond's request for review for each of the nine transactions had to be received by our Office within 6 months of settlement. The last claim was settled on December 19, 1991, but we did not receive a request for review on the nine claims until July 9, 1992, more than 6 months later. Also, our Office did not receive a request to review GSA's February 16, 1988, action on the Letterkenny detention claim by May 29, 1990, the third anniversary of the accrual of the claim.

Mr. Scott also argues that GSA could not legally set off the overcharge debt against the \$31,474.80 the agency found in fact was owed to Blue Diamond because the statute that allows set-off, 31 U.S.C. § 3726(b), prohibits such action after 3 years. The bills for the services resulting in the overcharge claims were paid in 1986 and 1987 but, as

---

<sup>1</sup>This amount includes \$82,627.77 in actual overcharges, plus \$9,007.56 in interest.

indicated above, GSA did not even settle the undercharge issue until December 1991. Mr. Scott argues that he therefore is entitled to immediate payment of the set-off amount irrespective of any claims the government might have against the company.

Mr. Scott is correct that the \$31,474.80 was not available for administrative set-off under 31 U.S.C. § 3726(b), for the reason argued. We nonetheless do not agree that the money should be paid to Mr. Scott.

The money is owed to Blue Diamond and, apparently, Blue Diamond no longer exists as a Georgia corporation. Moreover, the record shows that in 1992 the Scotts initiated action in the United States Court of Federal Claims (Action No. 92-791C) on claims against the government that involved some of the same issues as do the Bayonne/Letterkenny claims.<sup>2</sup> The Scotts based their standing to pursue money allegedly owed to Blue Diamond on the corporation's assignment of Blue Diamond's claims to the Scott Family Trust, and then to the Scotts.

The Court, however, dismissed the suit because the assignments did not comply with the Assignment of Claims Act, 31 U.S.C. § 3727. Under 31 U.S.C. § 3727(b), an assignment can be made only after the claim is allowed in a certain amount. Blue Diamond purportedly assigned all outstanding receivables, including those due from the government, to the Scott Family Trust on June 15, 1987, but none of the Bayonne claims was allowed until more than 4 years later. In light of the Court's determination, we do not believe it would be appropriate to pay the claimants amounts owed Blue Diamond.<sup>3</sup>

Moreover, as the record now stands, Blue Diamond owes the government \$91,635.33. According to GSA, the government was unable to litigate this debt due to Blue Diamond's dissolution.<sup>4</sup> The administrative set-off limitation in 31 U.S.C. § 3726(b) would not preclude a court from allowing the set-off against the \$91,635.33. It does not make sense

---

<sup>2</sup>Scott's claims were pending in our Office at that time. We suspended consideration of them in view of the litigation.

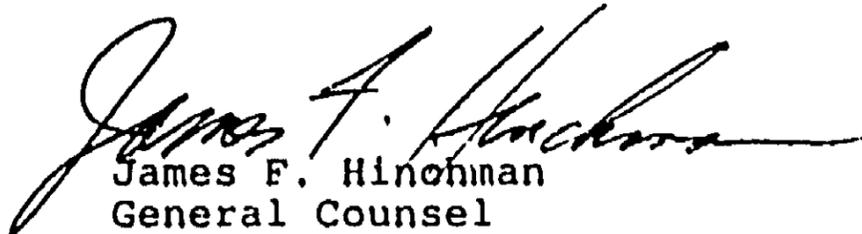
<sup>3</sup>We also note that the record indicates that in November 1992, the Internal Revenue Service issued a Notice of Levy against Blue Diamond in the amount of \$11,579.04.

<sup>4</sup>It is not clear whether, under Georgia law, the government could have still pursued collection. In any event, no litigation was actually initiated and GSA did not re-initiate its collection efforts.

to permit Blue Diamond to frustrate the government's claim for \$91,635.33 by failing to re-register in Georgia, and use the same action to force payment of \$31,474.80 by avoiding the prospect of a court-ordered set-off.

It appears that under Georgia law, Blue Diamond could be reinstated for purposes of pursuing its claims. See Ga. Code Ann. §§ 14-2-1421(c) and 14-2-1422. Should that happen, the corporation's (and the Scotts') right to the full \$79,500, the \$31,474.80, and the \$520,000, may be litigated. Similarly, GSA still may be able to initiate litigation to determine the propriety of its \$91,635.33 in overcharge claims, or to set off \$31,474.80. The competing claims of both parties are doubtful, and in the absence of litigation, we find it would be inappropriate for our Office to require GSA to release the set-off amount to the claimants.

GSA's audit actions are sustained.

  
James F. Hinohanan  
General Counsel