



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

Released

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TRANSPORTATION AND
CLAIMS DIVISION

B-180825-C.M. July 23, 1974

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PA Z-1542077-JGB-1

The Comptroller General

The Treasury Department, Division of Financial Management, Washington, D. C., has forwarded the file pertaining to an award made by the Foreign Claims Settlement Commission of the United States to [redacted], now deceased, pursuant to Title I of the International Claims Settlement Act of 1949, 22 U.S.C. 1625(c), as amended for determination of the person(s) entitled to payment now due.

The record shows that [redacted] was indebted to the United States at the time of his death in the amount of \$689.33, which represents an emergency financial assistance loan by the Department of State for transportation of himself and his two sons from Warsaw, Poland to Evanston, Illinois. The loan was received by the awardee from the Consular Section of the American Embassy at Warsaw, Poland on April 4, 1948, for repatriation expenses.

By letter dated November 30, 1973, we advised Treasury Department that the amount of \$409.67 now due under award No. FO-02206 is for deposit to the miscellaneous receipt account, 053040, in partial liquidation of the debt, leaving a balance due the United States of \$279.66. This office was further advised that after the indebtedness to the United States is fully liquidated, [redacted] is the party in interest entitled to the balance due as payer of the funeral expenses of [redacted] deceased, up to the amount of the expenses, \$1,463.00.

The Treasury by letter dated December 11, 1973, requested this Office to reconsider our determination on the matter in light of the materials attached and are holding our letter of November 30, 1973, in abeyance.

Since Treasury has requested this Office to reconsider our previous determination in the case, the matter is submitted for your consideration.

H. J. Spahn

Chief, Payment Claims Branch

Enclosure

max

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Indorsement

Director, TCD

Returned. The materials attached to your submission consist of copies of an informal memorandum dated December 18, 1966, a letter dated December 19, 1966, from the General Counsel of the Treasury Department to the Assistant Attorney General, Office of Legal Counsel, Department of Justice, and his reply dated December 22, 1966. Each of these, in effect, concludes that payment of awards under title I of the International Claims Settlement Act of 1949, as amended, are not subject to setoff against amounts due the United States. For the reasons discussed below we agree that it would not be proper for this Office to collect the amount due by setoff in this instance.

The right of setoff is inherent in the United States Government and is grounded in the common-law right of every creditor to apply unappropriated money of his debtor in his hands to the extinguishment of claims due him from the debtor. W. United States, 40 U.S. 336; W. United States, 98 U.S. 179. However, as stated in 8 A.L.R. 2d 209, it is also a well-settled general rule that:

"The terms set-off and counterclaim imply reciprocal demands existing between the same persons at the same time, and it is a well-settled general rule that if a demand or claim is to be set-off or counterclaimed in an action, the set-off or counterclaim and the action must be between the same parties, and between them in the same capacity * * *. While some limitations to this rule, real or seeming, have been made in a few instances, it may be safely stated that, generally, it is applicable in principle so as to deny the right of a trustee to withhold trust payments from a beneficiary in order to obtain payment of a personal debt of the latter to him, or to set off such debt against payment to the beneficiary."

See also W. Brown & Sons, 168 P. 2d 153 (1946); 80 C.J.S. Set-off §50.

Our Office recognized the general rule stated above in 48 Comp. Gen. 249 wherein we did not allow setoff against Federal prisoners' trust funds without the prisoners' consent. In that case only two parties were involved, Federal prisoners and the United States Government, whereas in the instant case three parties are involved. The claim in question is not against the United States Government, but against the Government of Poland since, as discussed below, the United States is not only a creditor, but also a trustee of a fund from which payment is to be made.

Pursuant to the Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. 1953, T.I.A.S. No. 4545 (hereinafter cited as Polish Agreement), that government agreed to pay, and the United States Government agreed to accept, \$40,000,000 in full settlement and discharge of all claims of nationals of the United States against the Government of Poland on account of nationalization and with respect to other rights and interests to property. The Foreign Claims Settlement Commission has authority pursuant to title I of the International Claims Settlement Act of 1949, approved March 10, 1950, 64 Stat. 13, as amended, 22 U.S.C. 1621 et seq., to receive, examine, and render final decisions with respect to these claims.

Title I was originally enacted to provide the Commission jurisdiction to receive, examine, adjudicate and render final decisions with respect to claims of the Government of the United States and of nationals of the United States against the Government of Yugoslavia and other foreign governments arising out of the nationalization or other taking of property. The Agreement with the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals, July 19, 1948, 62 Stat. 2658, provided that \$17,000,000 be paid to the United States in full settlement of such claims against that Government.

S. Rep. No. 800, 81st Cong., 1st Sess. 3 (1949), described the Yugoslavian payment as follows:

"This sum has been deposited and covered into the Treasury as a trust fund to be paid out to the respective claimants under the aforesaid agreement."

The payment was similarly described as a trust fund or escrow account with the status of the United States Government being that of trustee in House debates on July 5 and 6, 1949, 95 Cong. Rec. 8837 and 8979, respectively.

Title I, 22 U.S.C. 1623(a), provides in pertinent part:

"The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of * * * nationals of the United States * * * included within the terms of any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government * * * similarly providing for claims * * * against a foreign government, arising out of the nationalization or other taking of property * * *."

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FUNDS
TRUST
250-012

250-THP
PROPERTY
GENERALIST

The Polish Agreement falls within the purview of these provisions.
See also 22 U.S.C. 1627 which—

" * * * created in the Treasury of the United States
(1) a special fund to be known as the Yugoslav claims
funds; and (2) such other special funds as may, in the
discretion of the Secretary of the Treasury, be required,
each to be a claims fund to be known by the name of the
foreign government which has entered into a settlement
agreement with the Government of the United States * * *."

The section also provides for payment on account of awards certified
by the Commission from the appropriate fund created pursuant to the
section, with respect to claims included within the terms of a claims
settlement agreement concluded between the Government of the United
States and a foreign government as describe in section 1623(a) supra.

See further 22 U.S.C. 1626(b) express provision for
deductions from payments, and from amounts paid into any special
fund subsequent to July 24, 1968, as reimbursement for expenses
incurred by the United States, and for covering the amounts so de-
ducted into the Treasury to the credit of miscellaneous receipts.
Subsection (c) of that section also provides that payments shall be
made only to the person or persons on whose behalf the award was
made with certain stated exceptions. As stated in 35 Op. Atty. Gen.
541 (1929) which considered a somewhat similar statute and which
concluded that setoff was not proper:

"Congress having provided expressly for some de-
ductions and transfers, it is perhaps not unreasonable
to assume that it did not contemplate any others." See
also United States v. Weld, 127 U.S. 51 (1888).

In view of the foregoing, and absent any language to the contrary
in the Polish Agreement, it must be determined that the United States
Government holds the \$40,000,000 in trust to pay claims against the
Government of Poland as awarded by the Commission and without diminu-
tion except as expressly provided by Congress. Therefore, the award
is not subject to setoff procedures and your previous determination
included in your letter of November 30, 1973, to the Treasury Depart-
ment should be revised accordingly. Cf. 20 Comp. Gen. 618 (1941).

Paul G. Dembling

Paul G. Dembling
General Counsel

Attachments