

25443

DECISION



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

FILE: B-200402

DATE: June 10, 1983

MATTER OF: Claim of Mrs. Vu Thi Phu

DIGEST: 1. Notarized power of attorney and accompanying statement releasing the United States from all further claims arising from lease of property, owned jointly by claimant and her husband, provide sufficient protection of United States interests. The \$5,000 remaining to be paid on claim discussed in B-200402, November 6, 1981 and April 13, 1982 may now be awarded to claimant's designated representative.

2. Although anti-assignment provision of 31 U.S.C. § 3727 is applicable to power of attorney presented in this case, United States has option to waive requirements of statute when deemed appropriate. Only United States can challenge validity of defective assignment.

Mr. Tran Quy Minh has presented us with a notarized power of attorney and a statement of Mrs. Vu Thi Phu, his former wife, asking him to act in her name to collect \$5,000 of the \$10,000 claim discussed in B-200402, November 6, 1981, and April 13, 1982. For the reasons given below, we find that the document submitted by Mr. Minh provides a sufficient basis for paying him, as representative of Mrs. Phu, the remaining \$5,000.

In B-200402, November 6, 1981, we determined that Mr. Minh was entitled to \$5,000 on a claim against the United States for rent payments and damages of the premises at 65 and 65B Trinh Phong Street, Nha Trang, Vietnam, let by Mr. Minh to the United States between August 1965 and October 1971. We judged the reasonable value of the claim to be \$10,000; however, we awarded him only half of that amount because the record showed that his former wife, Mrs. Vu Thi Phu, might have been entitled to a portion of the payments under the lease as part of a divorce settlement with Mr. Minh. This finding was based on (a) Mrs. Phu being

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a signatory to several supplements of the lease; (b) Mrs. Phu apparently obtaining an order from the Saigon Court of First Instance, which, in effect, enjoined the Army from making rent payments to Mr. Minh pending disposition of the divorce proceeding; and (c) a communication from Mr. Minh to the Army Real Estate Office stating that both he and Mrs. Phu thought the amount due on the lease would be divided between them. We were reluctant to pay Mr. Minh the full amount determined to be due because we had not received a release from Mrs. Phu and would have been subject to any future demands for her share she or her representatives might have chosen to make.

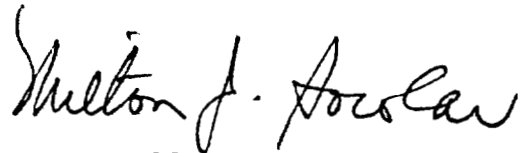
Mr. Minh has now presented us with a notarized power of attorney from Mrs. Phu in which she appoints him as her representative to collect her half of the \$10,000 claim. In the statement accompanying her grant of a power of attorney, Mrs. Phu asserts that while waiting for the divorce to proceed, a Vietnamese Court asked the United States to withhold the rent payments, and that in 1975 when the United States Army called Mr. Minh in order to make payment, Mr. Minh could not receive the money because of the Vietnam war then in progress. The last sentence of her statement (although phrased rather informally by the translator 1/) constitutes the necessary release, in our view.

Mrs. Phu's grant of a power of attorney to Mr. Minh constitutes an assignment of a claim subject to 31 U.S.C. § 3727 (formerly 31 U.S.C. § 203). Section 3727 states that assignments of claims, including authorizations to receive payment for part of a claim, may be made only after a claim is allowed and the amount of the claim is decided. Further, the assignment "must be made freely, and must be attested to by 2 witnesses." The power of attorney from Mrs. Phu to Mr. Minh does not strictly comply with these requirements-- there were no attesting witnesses other than the notary. However, it has been held that the sole purpose of 31 U.S.C. § 3727 is to protect the Government and that the

1/ "I promise to make no trouble nor claim against the Office which is in charge of payment."

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Government can waive its protection if it desires. E.g., 47 Comp. Gen. 522, 524 (1968). In this instance, we think waiver of section 3727 is appropriate. The assignee is the original claimant, and the assignor's signature matches the signature on several supplements to the lease on which the claim was based. Moreover, a claimant who signs a purported power of attorney is not free to impeach it later and seek further payments from the United States. See Bailey v. United States, 109 U.S. 432, 439 (1883). We are satisfied that the interests of the United States are protected and the remaining \$5,000 may now be paid to Mr. Minh as Mrs. Vu Thi Phu's authorized agent for collection.



Acting Comptroller General
of the United States