



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bill Williams
File: R-247981
Date: July 24, 1992

DIGEST

Items which are or contain components that are restricted in availability to the public as a matter of national defense, but which are inadvertently sold as surplus by the government, are to be recovered under authority of section 793(d) of the Espionage Act, 18 U.S.C. § 793(d) (1988) and the legal possessor compensated, but the maximum compensation permitted is the out-of-pocket expenses incurred by the individual from whom recovery is made.

DECISION

Mr. Bill Williams has appealed our Claims Group's Settlement Z-2865862, Jan. 29, 1992. That settlement concluded that he was only entitled to be reimbursed for his out-of-pocket expenses in connection with retrieval by the government of several national defense devices erroneously cataloged and sold to him as surplus at sales auctions conducted by the United States Navy on several dates in April 1988. On review, we sustain our Claims Group's action in Mr. Williams's case.

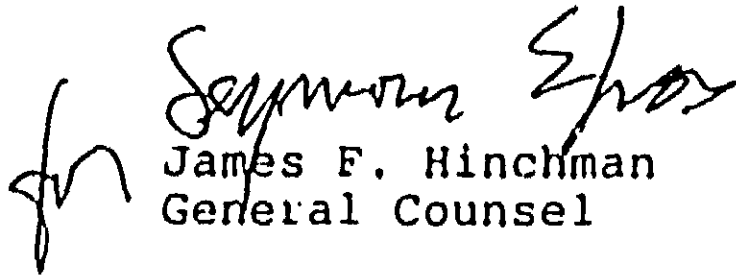
During 1988, Mr. Williams attended various public auctions conducted by the Defense Reutilization and Marketing Organization (DRMO) in the Norfolk and Williamsburg, Virginia areas. The articles sold at these auctions are government-owned articles which are being disposed of as excess. Mr. Williams successfully bid on two lots of goods, each of which contained a device which had been incorrectly cataloged. Had they been properly cataloged, neither device would have been permitted to be sold, since each, or parts thereof, were restricted in availability to the public and necessary for national defense.

Later that year, the Navy learned of its error. Because the devices had national defense components which had not been properly disposed of, the Navy retrieved these devices from Mr. Williams under authority of the Espionage Act of 1948,

as amended, 18 U.S.C. §§ 792 to 799 (1988), and a proper receipt was given to him.

The Navy thereafter offered to reimburse Mr. Williams for his out-of-pocket expenses. Mr. Williams rejected that offer and asserted a claim for the fair market value of the two devices, a finder's fee for their return, as well as punitive damage because of the manner in which the devices were retrieved.

Under section 793(d) of title 18, United States Code, any individual who lawfully possesses any instrument, appliance, or device relating to national defense which is inadvertently sold as surplus by the government, is required to deliver it on demand to an officer or employee of the United States entitled to receive it. When such a device is surrendered, the measure of recovery is not fair market value but out of pocket expenditures. AST/Servo Systems, Inc. v. United States, 449 F.2d 789 (1971); Dubin v. United States, 363 F.2d 938 (1966), cert. denied, 386 U.S. 956 (1966). Therefore, Mr. Williams's claims for market value of the devices surrendered in excess of his out-of-pocket expenses, a finder's fee, and punitive damages for alleged misrepresentations by naval personnel when they went to Mr. Williams' home, are denied.


James F. Hinchman
General Counsel