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United States General Accounting Office
Washington, DC 20548

B-288163

June 4, 2002

Leonidas Ralph Mecham
Director, Administrative Office
of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Subject: Relief from Liability for Erroneous Payment from United States
Bankruptcy Court's Registry Fund

Dear Mr. Mecham:

This responds to your request that we grant relief from liability for an improper payment of \$1,369.83 from the registry funds of the United States Bankruptcy Court for the District of Alaska. Your request sets forth your findings that the erroneous payment was not the result of negligence and that the court diligently attempted to recover the money. You also indicate that in the event relief from liability is granted you intend to restore the funds to the court's registry fund account from appropriated funds for the operation of the Judiciary. For the reasons stated below, we grant relief to both the clerk of the court, Wayne W. Wolfe, and the chief deputy clerk of the court, Jamilia A. George, and we concur in your proposed restoration from available appropriations.

Background

In 1986, the Bankruptcy Court had before it a case involving Pingo Corporation. In November 1986, Harvey J. Bell wrote to the court on two occasions asserting that he was owed back wages from Pingo and demanding payment in the amount of \$1,906.50. By letter of November 30, 1986, the clerk of the bankruptcy court wrote to Harvey J. Bell stating that at that stage of the bankruptcy the court could not require payment of the wages allegedly owed him. Harvey J. Bell's claim for wages was placed in the case file, but the court took no further action on it at that time. The unclaimed funds relating to Pingo were deposited in an external registry fund account in 1992. The unclaimed funds report filed by the trustee, which included a list of creditors and the amount of each creditor's entitlement, was kept with the clerk's financial records, separate from the case file containing the original claims. The unclaimed funds report included the name Harvey Bell, with no middle initial, on

the list of creditors and showed that he was entitled to \$1,368.83. The Pingo case was closed on March 19, 1993.

On June 1, 1993, SeaQuest Partners (SeaQuest), a “funds locator,”¹ submitted a letter on behalf of Harvey Bell requesting recovery of unclaimed funds from the Pingo case. Accompanying the letter was a “Petition for Return of Tendered Funds,” signed by SeaQuest’s general counsel, requesting the court to order the clerk to remit \$1,369.83 in unclaimed funds to it for Harvey Bell. In the petition, SeaQuest stated that it had been retained by Harvey Bell, one of Pingo’s creditors, to apply to the court for remission of the sum of \$1,369.83 that had been deposited into the court’s registry fund pursuant to an order of the court. SeaQuest also stated that it had made sufficient inquiry and had no knowledge that any party other than the applicant was entitled to submit an application for the claim. Attached to SeaQuest’s petition was a limited power of attorney, signed by Harvey Bell, authorizing SeaQuest to petition the court on his behalf for \$1,369.83 in unclaimed funds.² Also attached was a copy of the claimant’s driver’s license, showing his name as “Harvey F. Bell Jr.” As noted above, the original 1986 claim was made by “Harvey J. Bell.”

Upon review of the documents submitted by SeaQuest, the court’s financial deputy, Pamela A. Taylor, checked the unclaimed funds report for the Pingo case and noted that it did in fact list a previous claimant by the name of “Harvey Bell” as being entitled to \$1,369.83. At this point in time, the Pingo case was already closed and the records of the case had been put into an archive file that was stored in Seattle, Washington, and were not readily available to the financial deputy. Based on the information presented by SeaQuest, the financial deputy believed the claim to be legitimate and prepared a proposed order for payment to be made to SeaQuest. The financial deputy sent the proposed order and the claim documents to Bankruptcy Judge Donald MacDonald IV for review and signature. On July 16, 1993, the judge, acting upon the application of SeaQuest and Harvey Bell, ordered the clerk to remit

¹ Funds locators write to the court from time to time to request copies of unclaimed funds reports; the funds locators then try to locate creditors who may be entitled to funds that are being held by the court.

² It is not clear whether Harvey Bell submitted an affidavit in support of his claim. SeaQuest’s cover letter indicated that a creditor affidavit was attached. However, in response to our request that the agency provide us with a copy of Harvey Bell’s affidavit, you stated that there was no such affidavit in the court’s file. The clerk of the court stated “[T]his does not mean that the affidavit was not submitted. There was a lot of activity in the paperwork as the record shows, multiple copying and routing to law clerk, judge, financial, myself etc. It may have been lost or misfiled.”

to SeaQuest the sum of \$1,369.83 from the court's registry fund account. On that same date, because the clerk was absent, the chief deputy clerk issued a check in the amount of \$1,369.83 to SeaQuest and Harvey Bell.

More than 5 years later, on December 1, 1999, Harvey J. Bell, the original claimant, filed an application for payment of back wages owed to him by Pingo. Included with Harvey J. Bell's application was a supporting affidavit in which he stated, among other things, that he was a creditor of Pingo and that he was entitled to \$1,369.83 from unclaimed funds held by the court in the Pingo case. He also included some daily work reports to show that he had in fact worked for Pingo, copies of his two 1986 letters to the court claiming entitlement to back wages from Pingo, and a copy of his driver's license.

Based upon the information provided in Harvey J. Bell's December 1, 1999, application, the court concluded that its earlier order of July 16, 1993, had caused money to be paid to the wrong Harvey Bell. On December 2, 1999, the court issued an order stating that SeaQuest's earlier application on behalf of Harvey Bell had failed to establish that the applicant had filed a claim in the Pingo bankruptcy case and ordered SeaQuest to refund the full \$1,369.83 that had previously been paid to it and Harvey Bell. On January 10, 2000, the court issued a second order ordering both SeaQuest and Harvey Bell to refund all of the money that had previously been paid to them. Neither SeaQuest nor Harvey Bell responded to the court's orders. The clerk performed Internet searches for SeaQuest, its principals, and Harvey F. Bell, Jr.³ The clerk also requested that the United States Postal Service provide forwarding addresses for these parties. The Administrative Office reports that all of the court's attempts to locate Harvey F. Bell, Jr., SeaQuest, or its principals were unsuccessful; that Harvey F. Bell, Jr. has moved to an unknown address; and that Seaquest, a corporation, has been dissolved. You state that you believe it is unlikely that the funds will be recovered.

Discussion

You do not specify who the accountable officers were or for whom you are requesting the grant of relief. We have consistently defined accountable officer as any government officer or employee who by reason of his employment is responsible for or has custody of government funds. 62 Comp. Gen. 476, 479 (1983). Here, we have identified two accountable officers—the clerk and the chief deputy clerk. Registry funds are funds that are being held by the government as statutory trustee for the rightful owners. 28 U.S.C. § 2041; B-198558, B-200108, Jan. 23, 1981. In the case of a bankruptcy court, registry funds are disputed assets of the bankrupt

³ In attempting to locate Harvey F. Bell, Jr., the bankruptcy clerk performed computer searches of motor vehicle registrations, fishing license databases, real property records, and civil and criminal filings.

corporation that are paid into the court subject to disbursement in accord with the bankruptcy proceedings. We have held that the bankruptcy clerk is the accountable officer for the registry funds that are entrusted to him for the matters before the bankruptcy court. 64 Comp. Gen. 535 (1985). Where, as here, the chief deputy clerk made payment while the clerk was absent, the chief deputy clerk is also liable as a disbursing officer. See B-191440, May 25, 1979; B-261312, Feb. 5, 1995.

A government disbursing officer is personally liable for deficiencies of funds in his charge caused by incorrect payments, regardless of whether those deficiencies are the result of errors made by him personally or by his subordinate. B-215734, Nov. 5, 1984. Even though the clerk was absent when the erroneous payment was made, the clerk (in his supervisory capacity) and the chief deputy clerk (who actually issued the check to the wrong party) are both liable as disbursing officers for the improper payment. B-261312 supra; B-247164, Mar. 20, 1992. However, under 31 U.S.C. § 3527(c), this Office has authority to relieve accountable officers from liability when the record indicates that the officer acted with reasonable care and there is no indication of bad faith on part of the accountable officer. We may deny relief if we find that the agency did not make diligent collection efforts.

In cases similar to this one where the subordinate disbursed the funds, a supervisory accountable officer demonstrates due care upon a showing that he or she maintained an adequate system of procedures and controls to avoid errors and that appropriate steps were taken to ensure the system was effective. B-271017, Aug. 12, 1996; B-261312 supra. Typically, we have based our conclusions about proper supervision upon evidence such as the applicable standard operating procedures and agency statements explaining the procedures and how they were implemented at the time of the erroneous payment. B-234962, Sept. 28, 1979. The good faith and reasonable care of the subordinate who made the payment can be shown by evidence that the subordinate complied with these procedures and that nothing occurred which should have made the subordinate suspicious of fraud. See, B-261312 supra. For the reasons that follow, we are satisfied that the clerk properly supervised his subordinate and that the improper payment made by the chief deputy clerk was not the result of his bad faith or lack of due care.

Your letters, e-mail messages, and supporting documents outline the procedures that were in place at the bankruptcy court at the time of the erroneous payment. In particular, you provided guidelines that had been promulgated by the Administrative Office for the use of the courts in handling registry funds and that were in effect in 1993. Although very general in nature, the guidelines contained some procedures and controls that provided some protection against erroneous payments. Among other things, the guidelines required the court's financial deputy to maintain a ledger showing specific case identifiers and including entries for all deposits and withdrawals from registry funds. The guidelines also provided that funds could only be withdrawn from the registry fund account pursuant to an order of the court. The bankruptcy clerk points out that the guidelines did not require that the clerk or any

subordinate or any other court official check a claim against the case file before making a payment pursuant to a court order.

Additionally, you provided a statement and a portion of the Bankruptcy Court's internal controls manual outlining the court's standard operating procedures for claims made against registry funds at the time of the improper payment. Upon receipt of a request for a refund from the unclaimed funds, the financial deputy would compare the information included in the claim with information contained in financial records retained by the court after the bankruptcy case had been resolved to verify the accuracy of the claim. Next, the financial deputy would prepare a court order for the release of funds to the claimant. The proposed court order and information submitted by the claimant would then be given to the bankruptcy judge for review and signature. If the bankruptcy judge was satisfied that the claim was sufficiently supported, the judge would sign the order for the clerk to pay the claimant from the registry fund account. The clerk or chief deputy clerk would then issue a check to the claimant as ordered.

We are satisfied that the bankruptcy clerk implemented and maintained an adequate system of procedures and controls to reasonably safeguard the registry funds in his care, and it appears that the chief deputy clerk followed those procedures. Nothing in the record suggests that the chief deputy clerk (or any other court official) should have been suspicious of the fraudulent nature of the Harvey F. Bell, Jr. application for a refund. Absent any suspicion of wrongdoing, and because there was no requirement that officials retrieve the original claim from the Pingo files archived in Seattle, the financial deputy merely checked the illegitimate claim of Harvey F. Bell, Jr. against the unclaimed funds report as she was required to do. Moreover, as the original claim was not kept at the courthouse with the financial records from the Pingo case, the financial deputy could not easily compare the signature and driver's license contained in the illegitimate claim with the signature and driver's license contained in the original, legitimate claim. See B-137223-O.M., Jan. 18, 1960 (relief granted for erroneous payment where disbursing officer was not required under Navy payment procedures to compare signature on voucher submitted for payment with signature on original invoice).

In addition, the fraudulent claim and supporting documents were reviewed by a bankruptcy judge who, convinced that the claim was legitimate, ordered the clerk to remit the money to the false claimant. In B-198558, B-200108 supra, we granted relief for an erroneous payment in similar circumstances. In that case, a disbursing officer in a federal district court in California misunderstood a stipulation entered into by several litigants and erroneously drafted court orders transferring funds from the court's registry fund account for payment to litigants involved in a class action in a federal district court in New York. The proposed transfer erroneously included the funds of a California litigant that had neither agreed to nor signed the stipulation. In granting relief, we held that the disbursing officer had not failed to exercise due care because the stipulation was confusing and ambiguous. We also found that the disbursing officer's error in preparing the orders was not the proximate cause of the

loss because the monies could not have been transferred without the approval of the court; the disbursing officer's error was in effect adopted in the orders signed by the judges. In the present case, as noted above, there was no reason to suspect fraudulent activity, and the judge therefore reviewed the same documentation and signed the order for the clerk to pay the imposter. Accordingly, we reach the same conclusion--i.e., that neither the clerk nor the deputy clerk failed in his or her duty to exercise due care.

The record shows that, even though the court made diligent efforts to retrieve the money, it is unlikely that the money will be recovered from the original payees. Accordingly, we grant relief from liability for the loss to both the clerk and the chief deputy clerk. As we have granted relief, we concur in your proposal to restore the amount of the loss to the court's registry fund from currently available appropriations. See B-198558, B-200108 supra.

The clerk of the court points out that since this fraudulent claim was paid--and in part because of it--the court's internal control procedures were revised in an attempt to prevent payment to the wrong party from unclaimed funds. Among additional safeguards, the revised procedures require that copies of the original claim and supporting documentation be kept at the courthouse for use in determining the legitimacy of any claim that is filed after a case has closed. The procedures require that a claimant of unclaimed funds provide proof that the claim is valid, including a copy of the original claim where possible, in addition to an affidavit asserting that he or she has a legitimate claim. In addition, where possible, court personnel will compare the signatures on the original claim with those on the later-filed claim. Where the claim is for wages, the claimant is required to provide copies of W-2 forms and tax returns or other documentation to show that the claimant did, in fact, work for the company from which the wages are allegedly due. While even the most carefully established and effectively supervised system cannot prevent every conceivable type of criminal activity, we believe that the additional safeguards provide valuable protection against recurrence of this type of fraud.

Conclusion

In light of these facts, we conclude that the deficiency in funds was not the result of bad faith or lack of reasonable care on the part of the court's accountable officers. The improper payment in this case was the result of fraudulent activity over which the clerk, Wayne W. Wolfe, and the chief deputy clerk, Jamilia A. George, had no control. Furthermore, collection action is not possible, because Harvey F. Bell, Jr. cannot be located and SeaQuest has been dissolved. For these reasons, we relieve

Wayne W. Wolfe and Jamilia A. George of liability for the improper payment. We also concur in your proposal to restore the money to the registry fund from agency appropriations currently available. See B-198558, B-200108 supra.

Sincerely yours,

Susan A. Poling
Associate General Counsel

Digests

1. Registry funds deposited in the United States Bankruptcy Court are funds for which the clerk of the court and his subordinates are accountable.
2. Relief is granted under 31 U.S.C. § 3527(c) to the clerk and the chief deputy clerk of the United States Bankruptcy Court from liability for the loss of \$1,369.83 resulting from erroneous payment to a claimant who was not a true creditor of corporation that was the subject of litigation before the court.