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United States General Accounting Office
Washington, DC 20548

B-288284

May 29, 2002

Mr. Ronald L. Miller
Chairperson
Committee of Inquiry into Fiscal Irregularities
United States Department of State
1800 N. Kent Street, 5th Floor
Arlington, VA 22209-2163

Subject: Relief of Accountable Officers - American Embassy, Brazzaville, Republic of the Congo

Dear Mr. Miller:

This responds to your Committee's request of June 20, 2001, that we relieve Ms. Sally V. Slocum at the American Embassy in Brazzaville, Republic of the Congo, from liability in the amount of \$5,701.43 resulting from her certification of an improper payment. We are unable to either grant or deny relief from liability as the record you have submitted is insufficient to support any determination. Furthermore, although the record does not identify the Kinshasa Embassy official who provided the guidance upon which Ms. Slocum relied or the disbursing official who actually made the improper payment, these individuals may share any liability for an improper payment with the certifying officer.

BACKGROUND

In the fall of 1991, due to widespread violence resulting from a military mutiny, most staff of the American Embassy in Kinshasa, Republic of the Congo, were evacuated to the Embassy in Brazzaville. At this time, Ms. Slocum, the Administrative Officer for the Brazzaville Embassy, was approached by or on behalf of Kinshasa Embassy personnel concerning the possibility of evacuating their household pets to safer locations. According to Ms. Slocum's account, she replied that the evacuation of pets was a personal expense and that government resources could not be used. Nevertheless, at some point the pets were evacuated to various locations by Agence Air Afrique ("Air Afrique"), although the record does not reveal who ultimately authorized or arranged for the pet evacuation. Ms. Slocum stated that she learned

nothing further about the pet evacuation until seeing subsequent cable communications indicating that various Embassy employees were being billed for the air evacuation of their pets.

In June 1993, violence again erupted in the Republic of the Congo, this time requiring the evacuation of Brazzaville Embassy personnel. During this crisis, Air Afrique apparently threatened to cut off its transportation services to the evacuating Brazzaville Embassy personnel unless a payment was made in the amount of \$27,634.07 for its services provided in the 1991 Kinshasa Embassy pet evacuation. Ms. Slocum sought advice from the Kinshasa Embassy staff as to how to proceed. On June 9, 1993, Ms. Slocum certified payment of this amount to Air Afrique, relying on the fiscal data provided over the telephone by Kinshasa staff and that Embassy's instructions to proceed with the payment and charge it to Kinshasa's Suspense Deposit Abroad (SDA) account.

You indicate that the SDA account is a fund maintained at overseas posts from which payments for personal expenses can be made on behalf of and as directed by the depositors, which include Embassy employees and other authorized individuals and entities. Embassy employees typically deposit money into the fund in order to make payments for telephone, gasoline, or utility bills. At the time Ms. Slocum certified the \$27,634.07 payment to Air Afrique out of the SDA account, no monies had been deposited into the SDA account for that purpose.¹

DISCUSSION

Our Office may relieve a certifying officer of liability for loss of public money where we find that the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information. 31 U.S.C. § 3528(b)(1)(A). We are unable to conclude whether relief is appropriate based on the information provided here.

As a threshold matter, your submission does not explain under what authority the Brazzaville Embassy holds and administers the SDA account. As the funds in the SDA account are personal funds, there is a question as to whether the government is accountable to the depositors and the extent of Ms. Slocum's liability for an improper payment made out of the SDA account. If there is some statutory basis authorizing the Embassy to hold these private funds in a trust capacity, then the SDA funds could

¹ It appears that no money was actually collected from (or deposited into the Kinshasa SDA account by) individuals whose pets were evacuated until shortly after the improper payment was discovered in August 1994. To date, all but \$5,701.43 has been collected and of this amount, \$2,326.07 is considered non-recoverable as there is insufficient information to identify the persons owing these payments.

be regarded as government funds within the meaning of the accountable officer statutes. In such a case the government could be required to reimburse a deficiency in the SDA account using appropriated funds and Ms. Slocum, as a certifying officer, could be held liable for any improper payments made out of the SDA account unless relief from liability is granted. See e.g., B-238955, April 3, 1991 (State Department's Overseas Consular Service trust fund was considered public money for purposes of 31 U.S.C. § 3527(a)); B-215477, November 5, 1984 (loss of patient funds by Veterans Administration hospital constitutes a liability of the Government for which an accountable officer may be liable); B-190205, November 14, 1977 (funds entrusted to and accepted by accountable officer pursuant to check cashing authority now codified at 31 U.S.C. § 3342 are government funds within the meaning of accountable officer relief statute).

However, not all nongovernment funds in the custody of a government official are held in a trust capacity. See B-164419-O.M. May 20, 1969 (comparing funds held in trust to an arrangement where an accountable officer held private funds of contractor for safekeeping as a favor to the contractor, which constituted a mere bailment and resulted in limited liability of the government for any loss). If in fact the Embassy is not holding these funds in trust but rather in a bailment capacity, the accountability of both the government and the certifying officer may be less extensive.

Even if we assume that the SDA funds were held in trust, we cannot make a determination regarding Ms. Slocum's diligence given the lack of information in the record addressing the funds control procedures in place, either pertaining to the SDA account or more generally, which should have guided her actions. There is no indication of the steps required to assure accountability to the depositors, including such things as confirming balances and ensuring payments are made as directed by the depositor. Specifically, there is no reference in the record to any procedures or guidelines that permit the practice of obtaining fiscal data over the telephone in order to certify payments. Without such information it is impossible for us to determine whether or not Ms. Slocum exercised reasonable diligence and inquiry. See 55 Comp. Gen. 297 (1975) (diligence required is a matter of degree dependent upon the practical conditions prevailing at the time of certification, the sufficiency of the administrative procedures protecting the interest of the Government, and the apparency of the error).

In this regard, we acknowledge that the circumstances under which Ms. Slocum certified the payment were less than ideal and may appropriately be taken into consideration when determining her obligations in this matter. It appears that Ms. Slocum based her certification exclusively on statements made to her by telephone, not on official records. In your submission you indicate that it was "common practice" for Brazzaville to obtain fiscal data over the telephone from Kinshasa in order to process payments for Kinshasa and that Ms. Slocum would have had no way of knowing that the SDA account contained no monies, nor would she have been expected to question that fact. Assuming that the procedures under which Ms. Slocum was operating affirmatively permitted her to rely upon the information

provided to her over the telephone by the Kinshasa Embassy, we question whether this was adequate to permit certification and Ms. Slocum should be liable for any improper payment.

You also stated that the Kinshasa Embassy had oversight responsibilities over the Brazzaville Embassy staff since the Kinshasa Embassy had a financial management officer, and the Brazzaville Embassy did not. It is not clear then why Ms. Slocum was the certifying officer for the Kinshasa SDA account when she was in Brazzaville and could not have direct access to information about the account's assets. If it was the financial management officer of the Kinshasa Embassy who relayed the instructions to pay Air Afrique, and procedures permitted Ms. Slocum to certify payments based on such instructions, this raises in our view the issue of whether the Kinshasa official, instead of Ms. Slocum, would be liable for the improper payment. See e.g., 67 Comp. Gen. 457, 466 (1988) (certifying official who accepted memorandum certification of supervisor and certified voucher schedule for payment is not liable for the loss resulting from the improper payment since she was entitled to rely upon her supervisor's certification). The record contains insufficient information at this time as to who in the Kinshasa Embassy provided the guidance upon which Ms. Slocum relied and whether her reliance was in compliance with appropriate guidelines in certifying the payment to allow us to determine who was at fault.

Finally, it is not clear what funds were used in making payment to Air Afrique. The record does not explain how it was that Air Afrique received its full payment since the funds for the evacuation of the pets had not been collected or deposited in the Kinshasa SDA account before that payment was made. The record is also silent as to the identity and actions of the Brazzaville Embassy disbursing official who would have issued the check to Air Afrique, including any indication that the State Department had initiated action against the disbursing officer. Since there did not appear to be sufficient funds in the SDA account to cover the bill, if the disbursing officer had used appropriated funds to pay Air Afrique, this would have been improper. Such funds could not be used for the personal expense of evacuating pets. Therefore, if there was an improper payment from either appropriated funds or the SDA account, the Brazzaville Embassy disbursing officer might also be liable for the improper payment. See B-287043, May 29, 2001.

In light of these questions we are unable to render an opinion on liability in this matter and can neither grant nor deny relief. In order for us to address whether relief is available to Ms. Slocum, you should provide us with the following:

- The authority under which the Embassy holds and administers the SDA account.
- The accountability guidance or procedures regarding the administration of the SDA account.

- The role/identity of the Kinshasa Embassy official who approved the payment and the State Department's view of his/her responsibility in this matter.
- The specific source of the payment and the role/identity of the disbursing officer who paid Air Afrique, and the State Department's view of his/her responsibility in this matter.

This additional, more specific information would better enable us to evaluate the circumstances of the Air Afrique payment, the liabilities of the parties involved, and whether any relief is warranted.

Sincerely yours,

Susan A. Poling
Managing Associate General Counsel