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SHIPMAN
LAW

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-200038

August 31, 1981

Albert L. Lefkowitz, Esq.
Attorney & Counselor at Law
90-30 Metropolitan Avenue
Rego Park, New York 11374

Dear Mr. Lefkowitz:

By your letter of April 20, 1981, you allege that the General Services Administration (GSA) through the Army Claims Service (Army) is withholding approximately \$14,000 due Ship-Rite Transporters, Inc. (Ship-Rite), for overcharges owing by Empire Household Shipping Company of New York, Inc. (Empire). You request review of the action of GSA under the provisions of 31 U.S.C. § 244(b) (Supp. III, 1979) and 4 C.F.R. § 53 (1981).

GSA reports it is not aware of any funds due Ship-Rite or being withheld on behalf of GSA. Section 322 of the Transportation Act of 1940, 54 Stat. 955, as amended, 31 U.S.C. § 244 (Supp. III, 1979), and our implementing regulations, 4 C.F.R. § 53 (1981), provide for review by the Comptroller General of action on a carrier's claim by the GSA. In the present instance there has been no action by GSA which would form the basis of a claim. Consequently, your claim is not a proper subject of review under these provisions.

We understand that Army recovered by set-off from Ship-Rite for loss or damage in transit on the lines of Empire. These claims have been referred to the Department of Justice and have been or will be included in United States v. Empire Household Shipping Company, et al., in the United States District Court for the Eastern District of New York, Civil Action CV-80-2014. Ship-Rite has been made a party-defendant in this proceeding.

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Since this subject matter is before a court of competent jurisdiction, it will not be considered by our Office in the absence of an expression by the court of interest in a decision by the Comptroller General.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel