DECISION

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

27376

FILE: B-210638 **DATE:** February 8, 1984

MATTER OF: Department of Army--Lienholder Claim Under Military Claims Act

DIGEST: 1. A lienholder is not a proper party under 10 U.S.C. § 2575 (1982) and is not entitled under that statute to proceeds collected from the Army's sale of unclaimed vehicle even though the vehicle should not have been sold when still subject to a lien.

2. Where Army erroneously sold vehicle subject to claimant's lien and deposited proceeds in Treasury, claimant may be paid in satisfaction of its secured interest from appropriation for moneys erroneously received and covered into the Treasury, 31 U.S.C. § 1322(b)(2), as there is no other specific appropriation or account available for this purpose.

The Chief of the General Claims Branch, Europe, APO New York, has referred to our Office a claim of the Fort Monmouth Federal Credit Union under 10 U.S.C. § 2575 (1982) and DoD Regulation 4160.21-M. The claim concerns the Army's disposal at public auction of a car belonging to a non-commissioned officer in which the claimant had a security interest. Since the Army should not have sold the car prior to the claimant signing a release form, the money collected from the sale was erroneously received and covered into the Treasury as a miscellaneous receipt and may be refunded from the permanent appropriation for moneys so received. 31 U.S.C. § 1322(b)(2). The claimant is not a proper party under 10 U.S.C. § 2575 and therefore is not entitled to the proceeds of the sale under that provision.

According to the material submitted with this case, in 1979 under military orders the non-commissioned officer shipped his automobile to Bremerhaven, Germany, from Bayonne, New Jersey. The automobile arrived in Bremerhaven and was kept in an Army terminal. Frequent attempts to contact the owner were unsuccessful. On December 8, 1980, the automobile was sold at public auction for $2,400 and this amount was deposited in the Treasury as a miscellaneous

receipt. Prior to this sale the Army did not conduct a title search on the automobile as required by its disposal regulations. If it had, it would have found that the Fort Monmouth Federal Credit Union held a $4,093 lien on the automobile. On February 8, 1982, the Credit Union filed a claim for $2,400.

The Army recommends payment of the claim inasmuch as it believes that its regulations governing the disposition of unclaimed property were not complied with.

Special provision is made in the regulations for situations in which the property is subject to a lien. Under these regulations, property such as an automobile subject to a lien placed on it by the institution that loaned money for purchase of the automobile may not be sold unless the release of the lien is obtained. DoD 4160.21-M, paragraph 56b(1)(c). Additionally, DoD 4160.21-M, paragraph 56c(2) provides that a vehicle with a lien should not be turned in unless release of the lien pursuant to subparagraph b(2)(c) has been obtained.

In the case before us, a title search would have revealed the claimant as a lienholder; however, this was not done. Consequently, no effort to obtain a release was made by the Board of Officers, as required by paragraph 56b(2), before the car was turned over to the Defense Property Disposal Office for sale. Because of the failure to ascertain and notify the claimant, the Army's Office of Staff Judge Advocate believes that the Board of Officers' actions caused the claimant to lose funds that it was entitled to and they recommend payment of the claim.

The Army comes to us based on the above cited regulations that implement 10 U.S.C. § 2575 authorizing the Secretary of any military department to dispose of lost, abandoned, or unclaimed personal property. In relevant part, subsection (b) of this section states that:

> "[T]he net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner, his heirs or next of kin, or his legal representative may file a claim for these proceeds with the General Accounting Office within five years after the date of the disposal of the property." (Emphasis added.)

DoD Regulation 4160.21-M para. 56e requires:

> "Any claims for proceeds received from the sale of personal property . . . will be referred to the GAO. . . ."

The authority of this Office to consider claims under 10 U.S.C. § 2575(b) is limited to those timely claims made by specified claimants to the net proceeds derived from the sale of unclaimed property. Although the lienholder may have had a possessory interest in the car, it is not within the enumerated classes protected by the statute. Id. Therefore, we cannot authorize the payment of the Credit Union's claim under this section.

However, since under DoD regulations the car should not have been sold by the Army without first notifying and obtaining a release from the Credit Union, we believe the Army must be considered to have received the proceeds for the benefit of the lienholder. In such a situation, we believe it proper to turn the proceeds over to the lienholder. See 60 Comp. Gen. 15 (1980). The fact that the proceeds were mistakenly deposited in the Treasury as a miscellaneous receipt under 31 U.S.C. § 3302(b) does not stand in the way of the Army correcting its earlier mistake. The permanent appropriation created by 31 U.S.C. § 1322(b)(2) entitled "refund of moneys erroneously received and covered" may be used to pay the Credit Union what it is owed. See 61 Comp. Gen. 224 (1982).

In the event that the owner of the car subsequently files a claim for the proceeds for the car under 10 U.S.C. § 2575, he would be entitled only to the amount remaining after the Army's costs and the amount owed the lienholder are deducted. Here, no proceeds would remain.

Milton J. Socolar

Acting Comptroller General
of the United States