



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

Comptroller

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October 13, 1981

B-204237

The Honorable Lawton Chiles
United States Senator
Federal Building
Lakeland, Florida 33801

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Dear Senator Chiles:

This is in reference to the correspondence between your constituent, John W. Shoemaker, and the General Services Administration (GSA) which you forwarded to us on July 15, 1981. We assume that you wished us to comment on GSA's denial of Mr. Shoemaker's claim for damages in the amount of \$4,000 resulting from the Government's alleged failure to timely vacate a leased building. For the reasons given below, we concur in the action taken by GSA denying Mr. Shoemaker's claim.

Mr. Shoemaker states in his letter of June 11, 1981, to Wesley L. Johnson, Regional Administrator, GSA, that Mr. Bernard De Wolfe engaged The Wm. H. Reynolds Company to sell a building he owned, which at that time (June 1980) was leased by GSA and occupied by the Social Security Administration (SSA). Mr. Shoemaker is an associate in The Wm. H. Reynolds Company. In November 1980, negotiations began with Mr. Lee Gibson to buy the property. Since GSA was in the last year of its lease (which expired on January 20, 1981) an inquiry was made as to whether GSA would continue to lease the premises. When no positive response from GSA was forthcoming, another tenant was located—Hospital Management Associates, Inc.—and the premises apparently leased to it, commencing sometime after the expiration of GSA's lease.

Mr. Shoemaker's letter states that Mr. Charles Bigelow, attorney for Mr. De Wolfe, promised delivery of the premises to Hospital Management Associates, Inc., on February 20, 1981. However, we have been informally advised by officials of GSA that Mr. Bigelow, by letter dated January 21, 1981, did demand that the Government vacate the building by February 20, 1981, but when the premises were not vacated by this date, Mr. Bigelow telegraphed GSA on April 1, 1981, demanding that the premises be vacated by April 5, 1981. The Government actually vacated later that month.

Mr. Shoemaker states in his letter that Hospital Management Associates, Inc., sought damages in the amount of \$4,000 for the Government's failure to vacate the premises. The amount appears to be based on the failure to vacate on February 20, 1981, without regard to the extended period of time granted by the building's owner, Mr. De Wolfe, in his attorney's April 1 telegram. In any case, after both Mr. De Wolfe and

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Mr. Gibson refused to pay the damages, the new tenant, Hospital Management Associates, Inc. was paid \$4,000 by Wm. H. Reynolds and John Shoemaker from their commissions in order to be sure that the building sale would be consummated.

Thereafter, Mr. Shoemaker filed a claim in this amount with GSA. Mr. Shoemaker's claim was denied by letter dated June 24, 1981, from Wesley L. Johnson, Jr., Regional Administrator, GSA—Region 4, which states as follows:

"General Services Administration cannot accept responsibility for your decision to pay \$4,000 in damages claimed by Hospital Management Associates, Inc., in order to consummate the sale of the building owned by Mr. De Wolfe. At no time were you or your associate a party to General Services Administration's lease."

We are unaware of any basis on which to justify approval of the claim for damages in these circumstances. Mr. Shoemaker was not a party to the contract (a lease is a contract for these purposes, see B-199451, October 7, 1980) and consequently there was no duty owing to him under the lease or any other contract, express or implied, between him and the Government which could have given him an actionable right against the Government. Compare Nickel v. Pollia, 179 F. 2d 160 (10th Cir., 1950). Nor was he a third party beneficiary of any contract made by the Government. Compare United States v. Huff, 165 F. 2d 720 (5th Cir., 1948). Furthermore, he was not a person entitled to possession of the premises, but merely the broker of the sale between Mr. De Wolfe and Mr. Gibson. Consequently, he is not one entitled to maintain an action for damages for failure to deliver possession since this entitlement is limited to either the owner or the lessor denied possession, depending upon the law of the particular state where the property is located. See American Law of Property, § 3.37 and 49 Am. Jur. 2d, Landlord and Tenant §§ 1123, 1124 and 50 Am. Jur. 2d, Landlord and Tenant § 1219.



Finally, Mr. Shoemaker did not become an assignee of any claim against the Government from either Mr. De Wolfe, Hospital Management Associates, Inc., or anyone else who conceivably could have brought an action for damages against the Government for holding over and failing to vacate on the date demanded. We note that the Assignment of Claims Act, 31 U.S.C. § 203, provides that claims against the Government cannot be assigned without the Government's approval prior to their being settled by the requisite Government authority. In Mr. Shoemaker's case, there has been neither an approval of the claim in the amount of \$4,000 against the Government nor an approval of its assignment to Mr. Shoemaker. Thus he is barred from presenting and receiving payment on any claim as assignee of any person who

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may have a claim for damages in this amount against the Government for failing to vacate the premises on the date demanded.

Consequently, Mr. Shoemaker's voluntary action in reimbursing Hospital Management Associates, Inc. the \$4,000 as reimbursement for alleged damages suffered as a result of the Government's failing to vacate the premises occupied by SSA, did not create a claim in that amount to which he is entitled to reimbursement by the Government.

Sincerely yours,


 **for the** Comptroller General
of the United States