



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel
B-238955

April 3, 1991

Mr. Anthony A. Dudley
Associate Comptroller, Financial Operations
United States Department of State
Washington, DC 20520

Dear Mr. Dudley:

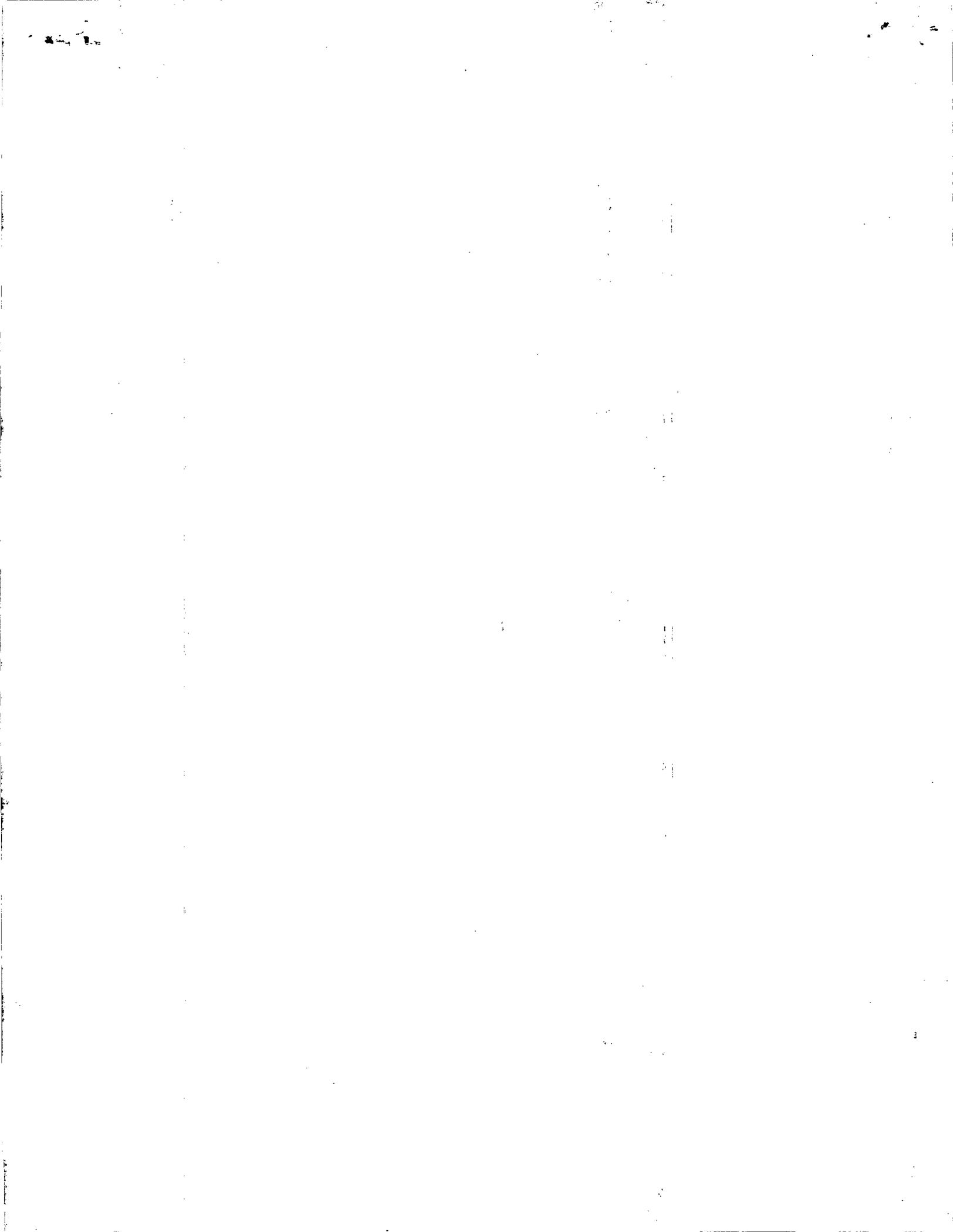
This responds to your request that Mr. David Sedney, a former Vice Consul, United States Embassy, Bucharest, Romania, be granted relief from liability for the unexplained loss of \$992.06 in funds from an Overseas Consular Service (OCS) trust fund. For the reasons set forth below, we deny relief.

BACKGROUND

In March 1989, Mr. Manta Baciu, an American citizen, died in a car accident in Constanta, Romania. Mr. Baciu's American wife and other relatives in the United States forwarded \$2,049 through the OCS trust fund for Mr. Baciu's hospital and funeral expenses. On April 8, 1987, 10,000 Romanian lei, the local currency equivalent of \$992.06, was paid out to Mr. Baciu's relatives in Romania through a voucher dated April 1, 1987. The record indicates that Mr. Baciu's Romanian relatives used their own funds to pay the expenses and therefore returned the 10,000 lei to the embassy on April 14, 1987. Mr. Sedney signed a standard form SF-1165, dated April 14, 1987, acknowledging that he received the 10,000 lei. The receipt is the only embassy record of the returned funds, which cannot be accounted for after this point. On the same date ~~the~~ the money was returned to the embassy, April 14, 1987, the voucher for the original disbursement of funds was forwarded to the Paris Regional Administrative Management Center for processing under a cashier transmittal. By the time the loss was discovered, Mr. Sedney had left his post at the embassy for another assignment.

According to the record of investigation, Mr. Sedney claims to have given the money to the embassy cashier, but cannot recall whether he obtained a receipt. The cashier claims never to have received the money from Mr. Sedney. The record also indicates that Mr. Sedney discussed with the embassy's administrative officer, Mr. Jim Robertson, how the money could be refunded to the trust account without a loss in view of a drop in the exchange rate after the funds were disbursed. Mr. Sedney states that Mr. Robertson decided that the original

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disbursal of money and its return were close enough in time that the payment voucher could be cancelled since it had not yet been sent to Paris for processing, thereby avoiding any loss to the depositor. Mr. Sedney states that he believes it was at this time that the paperwork was begun to have the money refunded, and that such transactions were handled directly by the embassy's administrative section. While the administrative officer recalls the general discussion, he cannot be certain whether it was decided to void the original voucher transaction rather than have a form OF-158 executed to show that the funds were redeposited with the cashier. The record indicates that the original voucher transaction was never cancelled.

You requested relief for Mr. Sedney under 31 U.S.C. § 3527(a) X You and the State Department's Committee of Inquiry into Fiscal Irregularities (Committee) conclude that Mr. Sedney was acting in discharge of his official duties when the loss occurred, and that the loss occurred without fault or negligence on his part.

DISCUSSION

Under 31 U.S.C. § 3527(a) X (1988), our Office is authorized to relieve accountable officers of responsibilities for the loss of public funds in their custody if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agency was carrying out official duties and (b) the loss was not the result of fault or negligence by the official. B-242772, Feb. 20, 1991 X An accountable officer is generally any government officer or employee who by reason of his or her employment is responsible for or has custody of government or public funds. 61 Comp. Gen. 313, X 314 (1982). Any such officer who receives or collects money for the government is accountable to the government for all money collected. 59 Comp. Gen. 113, X 114 (1979). In this case, the missing funds were entrusted to Mr. Sedney and accepted by him in his official capacity for redeposit in the OCS trust fund. Thus, since the United States had custody of the funds when they were lost, it may be considered a loss of "public money" for purposes of 31 U.S.C. § 3527(a) X See B-215477, Nov. 5, 1984. X

The shortage involved in this case is an unexplained loss. When an unexplained loss of public funds occurs, a rebuttable presumption of negligence on the part of the accountable officer arises, and the burden is on the officer to rebut the presumption with evidence to the contrary. 63 Comp. Gen. 489, X 492 (1984). The presumption of negligence may be rebutted by a finding that action or inaction on the part of the accountable officer was not the proximate cause of the loss. See B-182386, Apr. 24, 1975. X However, assertions of the

absence of negligence alone, or a mere administrative determination that there was no fault or negligence on the part of the accountable officer, are not sufficient to rebut the presumption if unsupported by evidence. B-221447, Apr. 2, 1986. B-209569, April 13, 1983.

The record offers no evidence to rebut the presumption of negligence on Mr. Sedney's part. First, he has not provided any evidence that someone other than himself had possession of the missing funds. Mr. Sedney maintains that he turned over the funds to the cashier, but cannot recall if he obtained a receipt for that transaction. The cashier has denied receiving the funds and the record does not reconcile the conflict between them. Department procedures require cashiers receiving collections for deposit to OCS trust funds to document those transactions by recording them on pre-numbered, general forms (OF-158) which are to serve as receipts for the persons from whom the collected funds are received. 4 Foreign Affairs Manual 396.3-2. Investigating officials reviewed both consular collection and embassy cashier collection documents and found no evidence of a receipt having been issued to Mr. Sedney. In addition, they found no break in the sequence of cashier receipt forms which would have indicated that a receipt was missing. Thus, since Mr. Sedney's claim that he gave the funds to the cashier is unsubstantiated by any documentary evidence, and is contradicted by other testimony in the record, we have no basis for ascribing control over the missing funds to other than Mr. Sedney.

Further, the record does not contain evidence adequate to support the agency's determination that the loss occurred without fault or negligence by Mr. Sedney. Your position is that the administrative officer's actions was the proximate cause of the loss. The actions you cite in your request are that when Mr. Sedney was about to redeposit the funds, the officer "seems to have suggested a deviation from the normal procedure" and "possibly [authorized] this change in procedure." However, your own request only speculates on the actual actions taken by the Administrative officer.^{1/} Also, Mr. Sedney states that he talked to the Administrative officer after returning the funds. He states that:

" . . . The transaction took place early in the day. I remember this because [another cashier] was amazed someone would return money they could have kept
 . . .

^{1/} Similar speculation is contained in the Committee's conclusion which attributes the loss in part to the change in procedure Mr. Sedney believed had been authorized.

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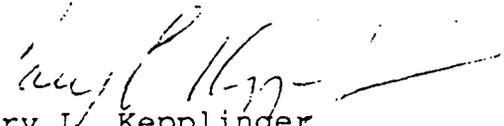
"I do recall discussing the case with [the cashier involved], she was the one who pointed out the exchange rate problem. I believe this discussion occurred when I turned the money over. I then went to talk to Jim Robertson about the exchange rate issue. My vague recollection is that my talk with Jim occurred around mid-day." (Emphasis added.)

Department regulations prescribing cash management procedures require that all financial transactions be documented on prescribed forms, and specifically require that a receipt be obtained when funds collected for deposit to an OCS trust fund are turned over to a cashier. See 4 Foreign Affairs Manual §§ 312.5, 396.3-2. However, Mr. Sedney's statement means that a failure to obtain a receipt at the time the funds were allegedly given to the cashier could not have resulted from reliance on the administrative officer's suggested change in procedure.

Information provided by the Department indicates that Mr. Sedney, as consular officer, was responsible for the embassy's American Citizen Services, which includes OCS trust fund operations. He was also responsible for supervising the consular cashier. Thus, as the accountable consular officer, Mr. Sedney was accountable for the OCS trust funds collected by his office. See id. §§ 311.3b, 312.8. As such, we believe he had a responsibility to be familiar with and adhere to proper procedures for safeguarding those funds. See id. § 313.

Therefore, we cannot agree with your request and the Committee's conclusions that Mr. Sedney relied on the change in procedure, that he was not in a position to require adherence to standard operating procedure, or that the change in procedure was the proximate cause of the loss. We conclude that Mr. Sedney failed to produce any evidence that would overcome the presumption of negligence on his part for the unexplained loss of the funds in this case and therefore deny relief.

Sincerely yours,


Gary L. Kepplinger
Associate General Counsel