

DECISION



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

FILE: B-189659

DATE: ~~1974~~ ⁶⁰⁶¹⁷ 98507

MATTER OF:

Malvin E. Suess - Per Diem During Occupancy
of Leased Mobile Home

DIGEST:

Employee of Federal Aviation Administration, who leased mobile home which he occupied while on temporary duty, claimed per diem at rate which included total rental of home. Lease agreement was, in fact, conditional sales contract with option to purchase. Therefore, only that part of monthly payment which does not represent credit toward purchase may be used in computing lodging costs.

This action arises from the appeal of Certificate of Settlement No. Z-251933A, issued May 30, 1974, by our Transportation and Claims Division (now Claims Division) on the claim of Malvin E. Suess for per diem incident to temporary duty travel from May 1 to May 31, 1972.

The record shows that Mr. Suess, an employee of the Federal Aviation Administration (FAA), originally filed a travel voucher for the period May 1 to May 31, 1972, in the amount of \$768.75. The FAA disallowed \$338.25 of this amount. The basis of the disallowance was the fact that Mr. Suess had leased a mobile home at a rental in excess of the amount which would be payable under the usual rental agreement and the FAA could not determine the amount of rental to be used in computing the lodging cost.

Mr. Suess then filed a reclaim for \$338.25 with our Transportation and Claims Division (TCD). TCD determined that Mr. Suess was entitled to an additional \$92.25. In reaching its conclusion, TCD allowed \$65.07 of the \$346.05 monthly charge for the mobile home toward Mr. Suess' lodging costs. Mr. Suess contends that at least \$311 should have been allowed in computing his lodging costs.

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Applicable FAA regulations in effect at the time this claim arose define lodging costs for a rented or leased mobile home as the rent of the dwelling and/or rent for the space it occupies and utilities, if the latter are paid separately from the rent of the mobile home. Since TCD allowed Mr. Suess the cost of rental space and utilities toward his lodging costs in the Certificate of Settlement, those costs are not under consideration here.

The agreement between Mr. Suess and Car Lease of Colorado, Inc., which required monthly payments of \$346.05 for two years on its face purports to be a lease. However, the alleged lease is, in fact, a conditional sales agreement. The contract clearly shows that what is designated as rent to be paid for the use of the mobile home for two years is actually the purchase price (plus interest) to be paid for the mobile home and represents the full value of the trailer. Mr. Suess was given the option to purchase the mobile home at a minimal price at the end of the lease, if he complied with the contract in all respects.

When one who is called a lessee may become owner of leased property at the end of lease term on full payment of stipulated rent or by payment of a small additional amount, the transaction is generally held to be a conditional sale, even though it is couched in terms of a lease. Cf. Tishman Equipment Leasing, Inc. v. Levin, 202 A.2d 504 (1964).

Further, where the option price, that is the amount to be paid by a lessee in order to acquire full title to leased property at the end of the term, is disproportionately small in comparison with total rental already paid for property, the contract for lease or bailment of goods constitutes a conditional sale. In re Herold Radio & Electronics Corp., 218 F. Supp. 284 (1963), aff'd, 327 F.2d 564 (1964).

Under the conditional sales contract \$280.93 of the \$346.05 monthly rental represented credit toward the purchase price of the mobile home. Only the difference of \$65.07 between the monthly rental of \$346.05 and the credit of \$280.98 toward the purchase price which consisted of items, such as payments for insurance, tax, and

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license charges, was attributable to rent. Since the amount of \$65.07 was used in the computation of the lodging cost, the Certificate of Settlement was correct.

Accordingly, Mr. Suess is not entitled to any additional payment and the settlement of May 30, 1974, is sustained.

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Comptroller General
of the United States