

DECISION



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

FILE: B-185069

DATE: JAN 2, 1976

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MATTER OF:

George T. Quinn - Reimbursement of forfeited deposit on house purchase

DIGEST:

Employee who was in the process of purchasing a new residence incident to a transfer and was prevented from completing the purchase transaction by a second transfer may have the deposit forfeited included as a miscellaneous expense allowance incident to his two transfers and he would be entitled to the maximum miscellaneous expense allowance for each transfer as provided in para. 2-3.3b of the FTR not to exceed the actual miscellaneous expense incurred.

This action is in response to a request for an advance decision by an authorized certifying officer of the United States Department of Justice as to the propriety of certifying for payment the reclaim voucher of George T. Quinn for expenses incurred in connection with the purchase of a house incident to his transfer to Tampa, Florida.

The record shows that Mr. Quinn was transferred from Washington D.C. to Tampa, Florida on April 7, 1975. On May 8, 1975, he entered into a contract to purchase a house at his new official duty station. Pursuant to the contract he deposited \$2,500 as earnest money and the settlement date was to be on or before June 30, 1975, but due to certain legal requirements the settlement date was rescheduled for July 18, 1975. On July 16, 1975, Mr. Quinn received official notification of his transfer from Tampa to Baltimore, Maryland. As a result of this transfer, he elected not to proceed with the settlement on the purchase of the house. He therefore, forfeited the \$2,500 he had deposited as earnest money.

Mr. Quinn states that his original voucher was returned by the administrative office with a copy of our decision B-162274, dated September 11, 1967, disallowing a claim by an employee for earnest money deposited. Reimbursement of the forfeited deposit in that case was disallowed on the ground that, had the sale of the realty been completed, the employee could not have been reimbursed under Public Law 89-516 (5 U.S.C. 5724a) or the regulations issued pursuant thereto for the earnest money deposited in accordance with the contract of sale.

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It is true that in B-162274, supra, the claimant was not reimbursed for the deposit that he had forfeited. However, it was not contended there that the forfeiture was a miscellaneous expense, and that theory of reimbursement was not considered. In more recent cases, the miscellaneous expense theory has been considered and adopted. See B-170632, September 10, 1970; B-177595, March 2, 1973; and B-180377, August 8, 1974.

Under the miscellaneous expense theory and the applicable regulations, mainly para. 2-3.2 and para. 2-3.3 of the Federal Travel Regulations, FTR (FPMR, May 1973), we would not object to the \$2,500 deposit forfeited being included as a miscellaneous allowance incident to both of Mr. Quinn's transfers to Tampa and Baltimore. He is, therefore, entitled to the maximum miscellaneous expense allowance for each transfer as provided in para. 2-3.3b not to exceed the actual miscellaneous expenses incurred. Any miscellaneous expense allowance already paid either under para. 2-3.3a or para. 2-3.3b for each transfer should be deducted from the maximum allowable.

Action on the reclaim voucher should be taken in accordance with the foregoing.

Paul G. Dembling
Acting Comptroller General
of the United States