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DECISION



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

FILE: B-186035

DATE: November 2, 1976

MATTER OF: Edward J. Jason - Settlement of Unexpired Lease

DIGEST: Transferred employee executed contract for release from unexpired term of 13 months remaining on lease of rented apartment. Although lessor retained sole authority to relet premises, since employee reduced liability from total possible rent of \$2,574 to \$594, release constitutes reasonable effort to settle rental obligation. Employee, therefore, may be reimbursed full cost of lease settlement.

This action is in response to a request dated March 4, 1976, from Mr. Edwin J. Fost, Chief of the Accounting Section, Office of the Controller, Drug Enforcement Administration (DEA), Department of Justice, for a decision concerning a voucher submitted by Mr. Edward J. Jason, a DEA employee, for reimbursement of expenses incurred in settling an unexpired lease at the time of transfer of his official duty station.

The record indicates that the claimant, Mr. Jason, was transferred from New York, New York, to El Paso, Texas, effective June 10, 1974. Previously, Mr. Jason had executed a rental agreement in the amount of \$198 per month for an apartment in New York City for a term expiring on June 30, 1975. At the time of executing the lease, Mr. Jason paid to the lessor a security deposit of \$396. It should be noted that since the employing agency has stated the amount of the deposit to be only \$198, it has apparently confused the amount of the security deposit with that of the monthly rental obligation. Since a notation appearing on the claimant's March 28, 1975 memorandum of explanation to DEA Headquarters indicates that "the maximum amount we should pay is the security deposit (\$198) + one months rent (\$198)," and since the amount claimed is equal to the difference between the deposit paid by the claimant and the administrative error concerning the deposit amount, there appears only to be a computation error in this case, rather than a dispute concerning Mr. Jason's entitlement to reimbursement. However, the agency also denied this claim

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on the grounds that the claimant increased his liability by executing an unauthorized release agreement with his lessor.

Mr. Jason had been granted approval by his agency to execute a rental contract which did not include a clause for release and termination of the lease in the event of his transfer. Although the lease did not contain a provision governing premature termination, it did contain a paragraph prohibiting assignment or sublease without the lessor's consent. Accordingly, when informed of his transfer, Mr. Jason executed with his lessor an agreement of release dated April 19, 1974. The agreement provided that a new tenant may be obtained only by the landlord's rental agents. Further, the agreement required the claimant to pay \$396 as consideration for the release and obligated him to pay rent for the apartment to the commencement date of the new lease.

Mr. Jason and his family began travel to the new duty station on June 2, 1974. The apartment at the old duty station was relet by the lessor's agents on July 15, 1974. For the expenses of settling his unexpired lease, Mr. Jason submitted a voucher claiming \$594, representing the consideration of \$396 paid for the release plus 1 month's rent for the period before the premises were relet. As noted above, \$396 of this amount was allowed; the balance was suspended because the release agreement was not given DEA approval.

Reimbursement for the cost of settling an unexpired lease at the employee's old duty station incident to a change of station is governed by paragraph 2-6.2h of the Federal Travel Regulations (FPMR 101-7) (May 1973), which provides, in relevant part that such expenses may be reimbursed when:

" * * * (1) applicable laws or the terms of the lease provide for payment of settlement expenses, (2) such expenses cannot be avoided by sublease or other arrangement, (3) the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the transfer, and (4) the broker's fees or advertising charges are

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not in excess of those customarily charged
for comparable services in that locality.

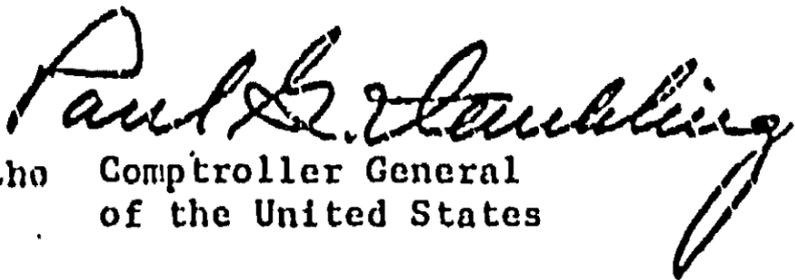
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Item 4 is inapplicable to this case because no claim is presented here for advertising or brokerage fees. Although item 3 is likewise inapplicable since the lease did not contain provisions for early termination, we note that Mr. Jason apparently notified his lessor at an early date of his transfer, and, in fact, executed the release agreement prior to the receipt of his travel orders.

We have repeatedly held that condition 1 above does not mean that there must be a specific provision in the lease for the payment of liquidated damages in the event of early termination. B-175938, November 16, 1972. Under New York law, a landlord has no duty to mitigate damages when there has been a premature termination of a lease. He may leave the apartment vacant for the remainder of the term of the lease, and may collect the entire amount of the remaining rent from the departed tenant. See B-182276, April 10, 1975. Thus, Mr. Jason's potential liability under the lease was \$2,574, representing rent for 13 months after he vacated the premises in May 1974.

With respect to condition 2, the release agreement entered into by Mr. Jason was properly executed since the DEA requirement concerning the termination clause is applicable only to the original rental agreement, and does not, on its face, govern release or termination agreements. Under the release agreement here, the claimant was precluded from assigning or subletting the premises because the lessor's rental agents were given sole authority to relet the apartment. Since Mr. Jason's potential liability was reduced under the agreement from \$2,574 to \$594, we find that the entire amount of the settlement was reasonable. In view thereof, the additional \$198 claimed here may be paid.

Accordingly, the voucher may be certified for payment.


For the Comptroller General
of the United States