

6024

DECISION



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

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FILE: B-190764

DATE: April 14, 1978

MATTER OF: David D. Lombardo - Forfeiture of Deposit
on House Purchase

DIGEST: Employee who forfeited \$4,000 of a deposit in return for release from a binding contract for the purchase of a new home at his old duty station after receiving notice of a transfer, may be reimbursed forfeited amount as a miscellaneous expense to the extent authorized under para. 2-3.3b of the FTR.

We have been requested by Victoria Curtin, Passenger Traffic Office, the Library of Congress, to render a decision as to whether David D. Lombardo, an employee of the Library of Congress, can be reimbursed \$4,000 which represents the amount he paid to be released from a binding contract for the purchase of a new home.

Mr. Lombardo was employed by the Library of Congress and officially stationed in New York. He sold the co-op apartment where he and his family resided and moved in temporarily with his wife's parents pending the purchase of a new home.

On November 29, 1976, Mr. Lombardo and his wife contracted to purchase a new home in Merrick, New York, and paid the builder \$6,800 as a down payment on the house. On December 17, 1976, 4 days before scheduled settlement on the house, Mr. Lombardo was offered the position of Recruitment and Placement Officer in Washington, D.C. After negotiations, the builder agreed to release the Lombardos from their obligation to purchase the house and the Lombardos agreed to forfeit \$4,000 of the deposit.

Mr. Lombardo has applied for reimbursement of the \$4,000 paid for the release. He argues that the payment of \$4,000 saved the Government money because he would have incurred more reimbursable charges if he had purchased the house, and then sold it immediately.

The statutory authorization for the reimbursement of expenses of the sale of an employee's residence at his old duty station is contained in 5 U.S.C. 5724a(a)(4). Section 2-6 of the Federal

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Travel Regulations (FTR) (FPMR 101-7, May 1973) implements the statute, providing guidelines for determining the propriety of reimbursement of real estate expenses.

We have consistently held that, under the above statute and regulations, a deposit on a residence forfeited in accordance with a contract of sale is not a reimbursable selling expense. We have, however, permitted reimbursement of forfeited deposits as a miscellaneous expense pursuant to paras. 2-3.1 et. seq., of the FTR. 55 Comp. Gen. 628 (1975); B-177595, March 2, 1973; and B-180377, August 8, 1974.

Accordingly, we will not object to reimbursement of the deposit forfeited by Mr. Lombardo to the extent authorized by para. 2-3.3b of the FTR which provides:

"Allowances in excess of those provided in 2-3.3a may be authorized or approved, if supported by acceptable statements of fact and either paid bills or other acceptable evidence justifying the amounts claimed; provided that the aggregate amount does not exceed the employee's basic pay at the time the employee reported for duty, for 1 week if the employee is without an immediate family or for 2 weeks if the employee has an immediate family. In no instance will the amount exceed the maximum rate of grade GS-13 provided in 5 U.S.C. 5332 at the time the employee reported for duty. The entire amount claimed under 2-3.3b (including the amount otherwise payable without such documentation under 2-3.3a) must be supported as required above."

Mr. Lombardo's claim for expenses in excess of the maximum amount reimbursable as miscellaneous expenses may not be paid.


Deputy Comptroller General
of the United States