

DECISION

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

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FILE: B-216404**DATE:** March 25, 1985**MATTER OF:** Bryan H. Pridgeon - Forfeiture of Deposit
Incident to Lease with Option to Purchase**DIGEST:** An employee who entered into a lease and paid \$1,000 as consideration for an option to purchase the residence forfeited that sum when he failed to exercise the option prior to a permanent change of station transfer. Although the right to purchase under the option did not confer title so as to justify reimbursement of the sum as a real estate expense, the forfeited amount may be partially reimbursed as a miscellaneous expense if the transfer was the proximate cause of the forfeiture. See Nathan F. Rodman, B-216075, March 6, 1985.

This decision is in response to a request from a certifying officer with the Southwest Region of the Bureau of Reclamation, United States Department of the Interior, for our decision concerning the entitlement of Mr. Bryan H. Pridgeon to reimbursement of a deposit he forfeited when he failed to exercise an option to purchase a dwelling he was leasing at his old duty station. We hold that he may be reimbursed for the deposit to the extent authorized as a miscellaneous expense allowance if the transfer was the proximate cause of the forfeiture.

Mr. Pridgeon was stationed in El Paso, Texas, when, on July 15, 1983, he signed a lease with a 1-year option to purchase the residence. The agreement provided for \$1,000 as "option money," forfeitable if the agreement was not consummated. The option money was comprised of a \$360 security deposit, \$500 in earnest money, and \$140 in cash paid to the owner. Effective April 15, 1984, Mr. Pridgeon was transferred from El Paso to Albuquerque, New Mexico. The record shows that he signed a service agreement on March 8, 1984. He did not exercise the option prior to that time. Consequently, he forfeited the \$1,000 deposit when he was transferred.

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After his transfer, Mr. Pridgeon filed a travel voucher which included reimbursement of the forfeited \$1,000. He was found to be entitled to reimbursement of the \$360 security deposit as the cost of settling an unexpired lease and of the remaining \$640 as a miscellaneous expense allowance against the \$700 limit for miscellaneous expenses without receipts.^{1/} Since the travel voucher total amount was less than the sum Mr. Pridgeon was advanced for relocation, the Finance Officer issued him a bill for collection of \$671.45. Mr. Pridgeon protested this determination since he apparently felt that he should receive both reimbursement of the forfeited \$1,000 in full and an additional miscellaneous expense allowance of \$700.

Upon reconsideration, and based upon Comptroller General decision B-177595, March 2, 1973, the Regional Finance Officer determined that the \$360 could not be reimbursed as an unexpired lease termination expense since the security deposit was clearly incorporated as a part of the option contract. However, he concluded that the \$360 could be counted toward Mr. Pridgeon's miscellaneous expense allowance. He also concluded that Mr. Pridgeon was entitled to a miscellaneous expense allowance at the with receipts limit (\$807) instead of the without receipts limit (\$700) previously imposed. Thus, Mr. Pridgeon was allowed reimbursement of \$807, instead of \$700, and an additional bill for collection was issued in the amount of \$253, which represented the difference between the \$360 disallowed security deposit and the \$107 increase in the miscellaneous expense allowance.

^{1/} As provided in 5 U.S.C. § 5724a(b)(1) (1982), and its implementing regulation, paragraph 2-3.3 of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, effective October 1, 1982) (FTR), the limit without receipts for an employee with an immediate family is the lower of \$700 or 2 weeks basic pay (\$807 in Mr. Pridgeon's case). When receipts are provided, the higher of the two amounts applies as the limit.

The decision upon which the Regional Finance Officer based his final determination as to treatment of Mr. Pridgeon's forfeited \$1,000 involved an employee who entered into a lease-purchase contract, depositing \$1,500 and agreeing to lease the property until the date of settlement. The employee was transferred and he forfeited his deposit. He sought reimbursement for the \$1,500 deposit. We held that, although a forfeited deposit on a contract to purchase could not be reimbursed as a real estate expense since no legal or equitable title had passed, it could be reimbursed as a miscellaneous expense since the cause of the forfeiture was the employee's transfer. B-177595, cited above.

In the present case, Mr. Pridgeon entered into a 1-year lease with an option to purchase and he was not legally bound to purchase the property. Although Mr. Pridgeon had no legal obligation to exercise his option, we have held that an employee may be reimbursed for a forfeited deposit on an option contract as a miscellaneous expense, where the transfer was the proximate cause of the forfeiture. Nathan F. Rodman, B-216075, March 6, 1985.

We believe that, applying Rodman, and B-177595, cited above, Mr. Pridgeon was properly reimbursed for the forfeited option money as a miscellaneous expense, to the extent authorized by para. 2-3.3 of the FTR, assuming the agency is satisfied that his transfer was the proximate cause of the forfeiture. Mr. Pridgeon's claim for expenses in excess of the maximum amount reimbursable as miscellaneous expenses may not be paid.

for Larry D. Van Clave
Comptroller General
of the United States