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Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Terrance L. Red Fox

**File:** B-257917

**Date:** September 12, 1994

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### DIGEST

An employee may not be reimbursed the full amount of a forfeited deposit, under a lease with an option to purchase agreement, since the deposit does not qualify as a real estate transaction expense under the provisions of 5 U.S.C. § 5724a(a)(4) (1988). The employee's claim was properly reimbursed by the agency as a miscellaneous relocation expense to the extent authorized by the Federal Travel Regulation, 41 C.F.R. § 302-3.1 (1993).

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### DECISION

Mr. Terrance L. Red Fox, an employee of the U.S. Department of the Interior, Bureau of Indian Affairs, claims reimbursement for a forfeited real estate deposit under a lease with an option to purchase agreement.<sup>1</sup> For the reasons that follow, Mr. Red Fox may not be reimbursed for the total amount of the deposit. He has been properly reimbursed the amount authorized as a miscellaneous expense under the Federal Travel Regulation.

Mr. Red Fox signed a 2-year lease on a residence in Phoenix, Arizona, on December 30, 1992, with an option to purchase, in consideration of an option fee of \$3,500. The lease/purchase agreement provides for a selling price of \$115,000, with the option fee to be credited against the selling price. However, if the option is not exercised, the \$3,500 is not refundable unless the sellers do not choose to complete the sale.

Mr. Red Fox lived in the leased premises approximately 6 months until he accepted a transfer in the interest of the government from Phoenix to Albuquerque, New Mexico. Since Mr. Red Fox did not exercise the option to purchase, he

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<sup>1</sup>The request was submitted by Chief, Branch of Quality Assurance, U.S. Department of Interior, Bureau of Indian Affairs, Albuquerque, New Mexico. Reference: 711/Branch of Payments.

forfeited the \$3,500 deposit under the terms of the Residential Lease/Purchase agreement.

The agency denied Mr. Red Fox's claim for the \$3,500 deposit on the basis that a forfeited deposit may not be reimbursed as a real estate transaction. However, the agency reimbursed Mr. Red Fox \$975.20 as a miscellaneous expense under a provision of the Federal Travel Regulation (FTR), 41 C.F.R. § 302-3.1 (1993). Upon reconsideration, Mr. Red Fox claims that the transaction he entered into should be treated as a lease, and that the agency's Travel Handbook was incomplete in that it did not provide him with enough information upon which to base his decision to transfer.

The provisions of 5 U.S.C. § 5724a (1988), authorize payment of relocation expenses to transferred employees. Subsection (a)(4) provides in part for the payment of expenses of the sale of a residence, or the settlement of an unexpired lease, of the employee at the old official station, and for purchase of a home at the new official station.

The execution of a lease with an option to purchase does not constitute a purchase of a residence under the meaning of 5 U.S.C. § 5724a(a)(4) (1988), since only an interest in property, rather than legal or equitable title, is passed. A purchase, for purposes of section 5724a(a)(4) and the implementing regulations, consists of the conveyance of some form of ownership. A mere interest, such as the opportunity to purchase the property, does not suffice. Until Mr. Red Fox exercised the option to purchase, he was under no obligation to purchase the residence at all. The lease/purchase agreement did not pass title to Mr. Red Fox. Therefore, reimbursement as a real estate expense is not authorized under 5 U.S.C. § 5724a(a)(4). Nathan F. Rodman, 64 Comp. Gen. 323 (1985); Peter D. Pendergast, B-204915, Jan. 15, 1982. The agency correctly reimbursed Mr. Red Fox for a portion of the deposit as a miscellaneous expense under the provisions of 41 C.F.R. § 302-3.1 (1993). See, Raymond J. Sexton, 65 Comp. Gen. 396 (1986).

It is unfortunate that Mr. Red Fox believes that he was not fully advised of his rights pursuant to his transfer; however, there is no statutory or regulatory authority to reimburse him beyond the amount that he has already received. Accordingly, Mr. Red Fox's claim for additional reimbursement of relocation expenses is denied.

*Seymour E. Fox*  
 Robert P. Murphy  
 Acting General Counsel