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

30985

B-170013

MAY 29 1973

Mrs. Theresa T. Williams
Authorized Certifying Officer
Finance & Grants Management Division
Office of Economic Opportunity

Dear Mrs. Williams:

We refer to your letter, with enclosures, dated February 6, 1973, in which you request an advance decision as to whether you may certify for payment items on a voucher submitted by Mr. Orville J. Anderson, representing claims for reimbursement for ~~the cost of~~ breaking a lease and ~~for~~ moving ~~movement of~~ household goods incident to a change of station under the circumstances stated below.

The record shows that on March 11, 1970, Mr. Anderson was officially notified that he would be transferred from the Office of Economic Opportunity New York regional office to the Boston regional office. Subsequently on July 1, 1970, Mr. Anderson and his family traveled from New York City to Needham, Massachusetts, where they set up a new residence, and Mr. Anderson reported for duty in Boston on July 13, 1970. Incident to such transfer Mr. Anderson claimed reimbursement of expenses of $397.33 incurred in terminating his New York residence and $815.68 for the transportation of his household goods. You apparently question the propriety of certifying these items for payment since a transfer of stock in a housing corporation is involved and the transportation cost was computed on the basis of reserved space instead of the actual weight of the household goods shipped.

On September 1, 1967, Mr. and Mrs. Anderson signed an Occupancy Agreement with Masaryk Towers Corporation whereby the Andersons, by purchasing stock in the corporation obtained the right to occupy an apartment at 89 Columbia Street in New York City for a term of 3 years, renewable thereafter for 3-year periods. This was in accordance with procedures outlined in Article 2 of the Private Housing Finance Law of New York, codified in 41 McKinney's Consolidated Laws of New York Annotated. Mr. Anderson states that under the terms of this agreement he was forced to sell his shares in the corporation when he vacated the apartment. In exchange for his shares Mr. Anderson was apparently paid $3,600 less expenses totaling $53%.33. Mr. Anderson claims reimbursement for the following-listed expenses included in the latter figure:

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Rent from 7/1/70 to 7/21/70	$113.13
Repainting plus tax:	206.70
2 cu. oven grates	6.00
1 cu. toilet seat	6.50
Parking space for July	15.00
Administrative fee	50.00
Total	$397.33

Although Mr. Anderson had an equity in the housing corporation, as evidenced by the shares of stock, we believe that for purposes of reimbursement Mr. Anderson's arrangement should be treated as a lease because the Occupancy Agreement was for a limited period of time, the parties were referred to as the lessor and lessee, and otherwise had the features of a lease.

Reimbursement for the costs of settling an unexpired lease at an employee's old station incident to a change of station was governed during the period involved herein by section 4.2f of Office of Management and Budget (OMB) Circular No. A-56, revised June 26, 1969, which provided that:

> f. Settlement of an unexpired lease. Expenses incurred for settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old official station may include broker's fees for obtaining a sublease or charges for advertising an unexpired lease. Such expenses are reimbursable 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 proposed transfer, and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. Itemization of these expenses is required and the total amount will be entered on an appropriate travel voucher. This voucher may be submitted separately or with a claim that is to be made for expenses incident to the purchase of a dwelling. Each item must be supported by documentation showing that the expense was in fact incurred and paid by the employee.

Concerning Mr. Anderson's claim for reimbursement for 21 days rent in July we note that the sixth paragraph of Article III of the Occupancy Agreement states that if the lessee's location of employment changes, he can, with the lessor's consent, sublet his apartment. There is no evidence in the record that Mr. Anderson attempted to sublet his apartment although he was advised in March 1970 that he would be transferring to Boston and he was not transferred until July 1970. Accordingly, reimbursement for this item must be denied because Mr. Anderson has not complied with the subletting provision of Circular No. A-56. See B-160959, March 23, 1967, copy enclosed.

As to reimbursement for repainting and tax, and the replacement of the oven grates and toilet seat, the seventh paragraph of Article III of the Occupancy Agreement provides in pertinent part as follows:

> SEVENTH: At or before the termination of this Agreement the Lessee will repay the Lessor the actual cost of repairing any and all injury to the demised premises occasioned wholly or in part by any act or omission of the Lessee or his family, guests, servants, assigns or subtenants, as well as the actual cost of repainting and redecorating should the Lessee fail to repaint or redecorate at reasonable periods (and in case of dispute or difference of opinions as to whether or when such repainting or redecorating should be done by the Lessee, the Lessor shall be the sole judge thereof and the Lessee shall be bound by the Lessor's decision) so as to restore the demised premises to their original state and at the end of the term will quit and surrender the demised premises in as good order or condition as they were at the beginning of the term, reasonable wear and use excepted.
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> The Lessee shall paint and redecorate the interior of the Apartment herein occupied not less then once every three years. The Lessee shall whenever necessary repair and replace ranges, refrigerators, venetian blinds, floor covering and fixtures of the Apartment. The Lessor shall have the right at any reasonable time to gain entrance to and inspect the demised premises for the purpose of ascertaining whether said demised premises and all the fixtures and appliances are in good repair. The Lessor shall have the right, in its sole discretion, to direct the Lessee to make such repairs to the demised premises or to the fixtures and appliances as and in the manner that the Lessor shall deem advisable.

> In the event of the failure of the Lessee to make such repairs within a reasonable time after demand therefor by the Lessor, the Lessor shall have the right to make such repairs at the Lessee's expense. The cost of such repairs shall be added on by the Lessor as "additional rent", payable on the first day of the month following the making of such repairs.
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> Notwithstanding anything else herein contained upon the termination of this Occupancy Agreement at any time by Lessor in any manner herein provided, including the expiration of the term hereof, or upon the termination thereof by Lessee, Lessor in its sole discretion may repaint and redecorate or decide to repaint and redecorate the demised premises so that such premises shall be put in a good and clean condition for any tenant, and in such event, Lessee agrees to reimburse Lessor for the cost incurred or to be incurred by Lessor for such repainting and redecorating.

It thus appears that even if Mr. Anderson had not transferred to Boston he would have been required, by August 31, 1970, to pay the cost of repainting his apartment, and replacing the oven grates and toilet seat. Since these costs were obligations which Mr. Anderson would have been responsible for regardless of a change in station they are not reimbursable items. See 52 Comp. Gen. 814 (B-176679, November 16, 1972), copy enclosed.

As to the parking fee the record does not indicate that such was a necessary charge incident to the rental of the apartment. It is therefore not reimbursable under Circular No. A-56.

Concerning the administrative fee, we note that the fourteenth paragraph of Article III of the Occupancy Agreement provides that the lessor, upon the transfer of the lessee's shares in the corporation, is entitled to charge the lessee a fee for services rendered. Since such fee is not predicated solely on the transfer of the shares prior to the term of occupancy, it may not be considered a fee incident to the breaking of a lease. Accordingly the $50 administrative fee is not reimbursable.

In view of the above the voucher may not be certified for payment as to the claim for $397.33 for breaking of the lease.

B-170913

The record shows that Mr. Anderson was authorized movement of household goods in accordance with the provisions of Circular No. 4-56. Section 6.f.1 of the Circular provides that under the constructed rate system, which is applicable to this case, that reimbursement for the shipment of household goods is computed by multiplying the number of hundreds of pounds charged (within the permissible allowance) by the applicable rate per hundred pounds for the distance shipped as shown in the constructed rate schedule. If the net or tare weight is less than the minimum weight charged in the applicable table, the reimbursement shall be at the minimum weight charged instead of the actual weight transported.

The record shows that on May 26, 1970, Mrs. Anderson received 1,200 cubic feet in an Allied Van Lines carrier for shipment of the Andersons' household goods to Needham, Massachusetts. The carrier's bill of lading indicates that it transported, on July 7, 1970, 6,320 pounds of the Andersons' household goods between New York City and Needham. However, charges for the shipping were based on a weight of 8,420 pounds as a result of the space reservation.

In B-159415, July 5, 1966, copy enclosed, an employee reserved space for 4,700 pounds of his household goods and had them moved within 5 days instead of having them placed in storage and held for consolidation with other goods. Transportation fees charged were based on the basis of the space reserved for 4,700 pounds instead of the actual weight of 3,020 pounds shipped. Our decision held that an employee was entitled to be reimbursed at the constructed rate for 4,700 pounds since he received prompt delivery in order to accommodate the stay of his four young children and 7-month pregnant wife at a hotel. However, it has also been held that an employee who, without justification, reserved space for household goods in excess of that needed for the goods actually shipped was entitled to be reimbursed at the constructed rate for the actual weight shipped. See B-158319, December 22, 1965, copy enclosed.

In the instant case there is insufficient evidence of record to make a determination as to whether the space reservation was justified. Accordingly, payment for the transportation of household goods should be at the constructed rate for the actual rate shipped unless additional information is obtained which indicates that reserving space for 8,400 pounds was justified.

The voucher is returned herewith for handling in accordance with the above.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States