

**DECISION**

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

60372

FILE: B-183018

DATE: JAN 8 1976

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MATTER OF: **Amilcare J. Ciarrocca - Settlement of  
Unexpired Lease**

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**DIGEST:**

Employee, who entered into 1-year sublease agreement for the sharing of an apartment with fellow employee but who was transferred to a new official duty station after 3 months, is not entitled to reimbursement of the rent he paid under the agreement for the balance of the term for lack of reasonable effort to relet the premises.

This action is an appeal from the Settlement Certificate issued by our Transportation and Claims Division on August 20, 1974, denying the claim of Mr. Amilcare J. Ciarrocca for reimbursement of expenses incurred in settling his unexpired lease upon transfer of official duty station as an employee of the Federal Aviation Administration (FAA).

The record shows that a fellow employee, Mr. Karl Rothfuss, leased an apartment on September 1, 1972, in Rosemont, Illinois, for 1 year at a monthly rent of \$195. Under the same date he sublet one-half of the apartment to Mr. Ciarrocca at \$97.50 per month. Approximately 2 months thereafter Mr. Ciarrocca was notified of a pending permanent change of station, and his orders to that effect were issued on November 20, 1972. The actual transfer took place on November 26, 1972, and Mr. Ciarrocca became liable for a settlement of the unexpired lease between himself and Mr. Rothfuss. This liability was discharged on May 1, 1973, by Mr. Ciarrocca paying \$877.50 to Mr. Rothfuss, representing one-half of the rent for the apartment for the period of December 1, 1972, to August 31, 1973.

Reimbursement for the cost of settling an unexpired lease at an employee's old duty station incident to a change of station was governed, during the period involved, by section 4.2h of Office of Management and Budget Circular No. A-56, revised August 17, 1971, which provided:

"h. 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."

Our Transportation and Claims Division disallowed the claim on the ground Mr. Ciarrocca had failed to show that he attempted to avoid the expenses by a sublease or other arrangement, as required by section 4.2h(2) quoted above.

From the submission, it appears that pending the closing of the FAA Cleveland Area Office, Mr. Rothfuss and Mr. Ciarrocca were notified of their transfer to Chicago. Mr. Rothfuss was the first to leave the Cleveland area, and an oral agreement was reached between the two that they would share an apartment in the Chicago area. In reliance on this agreement, Mr. Rothfuss rented an apartment in his name as of September 1, 1972. When Mr. Ciarrocca arrived in the Chicago area in early September, the sublease agreement was executed between the two of them as of September 1, 1972.

When it became apparent in November 1972 that Mr. Ciarrocca was going to be transferred to Canton, Ohio, he notified Mr. Rothfuss of his pending transfer and attempted to sublet his portion of the apartment by contacts with newly arrived FAA employees in the area and by posting "For Rent" cards on the bulletin board in his office area. These attempts to sublet were confirmed by Mr. Rothfuss.

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The record shows that no other attempts were made by the employee or his landlord to sublet the apartment and mitigate damages either through engaging the services of a real estate broker or placing advertisements in a newspaper of general circulation in the locality. The duty to mitigate damages is continuing and does not cease when the employee moves out of the premises. The record contains no evidence that Mr. Ciarrocca or his landlord made any attempts to relet after Mr. Ciarrocca left the area.

Accordingly, we find that there was a lack of reasonable effort to relet the premises, and the disallowance by our Transportation and Claims Division is hereby sustained.

R. F. KELLER

Deputy ; Comptroller General  
of the United States