

**DECISION**



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

9745

FILE: B-193004

DATE: April 10, 1979

MATTER OF: Bobby J. Fulks - Real estate sale expenses

*[Claim for Brokerage Fees and Prepayment Charges Incurred in Alleged Sale of Residence]*

DIGEST: Under FTR para. 2-6.1c, employee may not be reimbursed for expenses incurred in the purported sale of his former residence which he occupied under a lease-purchase agreement. The record indicates that the employee never exercised his option to buy the real estate and, hence, did not hold title to the property at the date he entered into a contract to sell the residence. The record does not show that he ever conveyed any property pursuant to that agreement.

This action concerns the request of E. Crippen, Finance and Accounting Officer, Department of the Army, for an advance decision concerning the claim of Bobby J. Fulks, a civilian employee, for brokerage fees and prepayment charges incurred in the alleged sale of his residence. The request was forwarded here by the Per Diem, Travel and Transportation Allowance Committee and is assigned PDTATAC Control No. 78-35.

Due to reorganization, Mr. Fulks was transferred from Lexington, Kentucky, to Sacramento, California, where he reported to duty on January 22, 1978. Mr. Fulks claims that he should be reimbursed \$2,100 for brokerage fees (6 percent of the selling price) for sale of his former residence and \$855 for prepayment charges.

On April 3, 1976, Mr. Fulks entered into a lease-purchase agreement with Mr. Neely for a house in Clark County, Kentucky. On that date Mr. Neely did not hold legal title to the property. The lease-purchase agreement states that Mr. Neely received and recorded the deed to that land on May 13, 1976. Under the lease-purchase agreement Mr. Fulks agreed to pay rent of \$275 per month for 1 year. He paid a deposit of \$1,500 and was given an option to purchase the property during the life of the agreement for \$31,500. The agreement was subsequently extended for an additional year. The record does not indicate that Mr. Fulks ever exercised the option to purchase the premises and, presumably, he paid rent throughout his tenancy. Nevertheless, on January 3, 1978, after

~~54891~~

his transfer orders were issued, Mr. Fulks entered into a sale-and-purchase contract by which he agreed to sell the same premises to Mr. Neely for \$35,000 under the following pertinent conditions:

"The balance of the purchase price shall be paid as follows: The buyer will assume the balance of the two loans which is \$30,000.00 and the \$855.00 penalty will be paid by the seller. This Contract of Sale voids the option to purchase agreement and the extension with dates of April 3, 1976, February 25, 1977.

\* \* \* \* \*

"A deed of General Warranty, with the usual covenants, and restrictions of previous deeds or subdivisions, if any, shall be executed and presented to Buyers not later than January 31, 1978 conveying to Buyers or any one designated by Buyers, title to said property and this transaction consummated. Option to purchase has been voided.

\* \* \* \* \*

"The sellers agree to pay to the said Jack H. Neely a commission of 6% of the total sale price.\* \* \*"

Notwithstanding that the property apparently was not deeded to Mr. Neely by Mr. Fulks, Mr. Neely, as realtor, provided Mr. Fulks the following closing statement:

"This is a closing statement for Mr. Bobby J. Fulks on the sale of the House and Lot located at 408 Harney's Drive in Clark County at Winchester, Kentucky, 40391.

B-193004

"Selling Price	\$35,000.00	
Balance of Loan		\$30,000.00
Penalty Fee		855.00
Commission		2,100.00
Earnest Money		<u>145.00</u>
TOTAL		\$33,100.00
Balance Due Seller	\$ 1,900.00"	

We have examined the documentation provided by Mr. Fulks and are at a loss to understand the purported sale transaction. The recitation in the sale-and-purchase contract that it voids the option indicates that Mr. Fulks never exercised that option or acquired title to the property. This indication is bolstered by Mr. Fulks' failure to furnish a copy of a deed transferring title of the property to him. The sale-and-purchase contract, which is nothing more than an agreement to convey property, does not itself transfer legal title and Mr. Fulks has not furnished a copy of a deed transferring title of the property to Mr. Neely.

Under para. 2-6.1c of the Federal Travel Regulations (FTR), an employee is entitled to be reimbursed for expenses required to be paid by him in connection with the sale of his residence provided that:

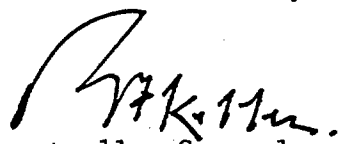
"\* \* \* The title to the residence or dwelling at the old \* \* \* official station \* \* \* is in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. \* \* \*"

While Mr. Fulks may have held an equitable interest in the leased property by virtue of his option, the lease-purchase agreement did not give him any title, either legal or equitable, to the property. Matter of Marion B. Gamble, B-185095, August 13, 1976. In the absence of evidence to show that Mr. Fulks acquired title to the property prior to his notification of transfer and then conveyed title, the expenses claimed may not be reimbursed. In fact, the record raises a question as to whether he in fact incurred the expenses claimed.

B-193004

As of January 3, 1978, it appears that Mr. Fulks was nothing more than a lessee with an option to purchase faced with the not unusual problem of being transferred some 2-1/2 months before expiration of the lease. Had he incurred lease cancellation costs, those costs, to the extent justified, would have been reimbursable as lease termination expenses under FTR para. 2-6.2h. Matter of Edward J. Jason B-186035, November 2, 1976. The terms of Mr. Fulks' option are ambiguous in regard to the disposition of his \$1,500 deposit in the event of his failure to exercise the purchase option. Had he suffered a forfeiture, at least a portion of the \$1,500 amount would have been reimbursable as part of the miscellaneous expenses allowance payable under FTR Part 2-3. B-177595, March 2, 1973. Instead of terminating the lease-purchase agreement in a conventional manner, Mr. Fulks entered into a purported agreement to convey the property. Through the workings of that contract Mr. Fulks appears not only to have avoided any lease termination costs but to have recovered \$400 in excess of his \$1,500 deposit.

On the basis of the record furnished, Mr. Fulks is not entitled to either real estate sale or lease termination expenses in connection with the disposition of his Kentucky residence.

  
Deputy Comptroller General  
of the United States