



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donald C. Hazlewood

File: B-250070

Date: March 11, 1993

DIGEST

A transferred employee may not be reimbursed the costs he incurred incident to a canceled contract to purchase a residence at his new duty station. Only expenses incurred in connection with a completed sale or purchase may be reimbursed. Although the employee later was transferred, the second transfer had nothing to do with the canceled contract. Rather, the contract was canceled because it was contingent on the sale of the employee's old residence and that contract fell through when the buyer was laid off causing the bank to withdraw his loan application.

DECISION

A Department of Agriculture (USDA) certifying officer requests an advance opinion on Mr. Donald C. Hazlewood's claim for the real estate expenses described below. We conclude that the claim may not be paid.

BACKGROUND

The USDA authorized a permanent change of station (PCS) for Mr. Hazlewood from Fort Worth, Texas, to Portland, Oregon, in an order dated February 6, 1991. Mr. Hazlewood entered into one contract to sell his Texas home and a second contract to purchase a home in Portland, which was contingent on the settlement of the first contract. However, prior to closing the sale of the Texas home, the prospective buyer was laid off and the bank withdrew the buyer's loan application, resulting in the cancellation of both contracts. Incident to the canceled contract for the purchase of the Portland home, Mr. Hazlewood incurred expenses for a loan origination fee, credit report fee, and an inspection fee.

Subsequently, Mr. Hazlewood sold his Texas residence to an agency relocation contractor in August 1991 and the house in Portland was sold to another buyer. Mr. Hazlewood did not attempt to purchase another home in Portland because he knew before he reported for duty in Portland that he might be transferred to Fort Collins, Colorado, and he chose to wait

until that issue was settled. As we noted, USDA did transfer Mr. Hazlewood to Fort Collins, where he reported for duty on October 20, 1991. The certifying officer asks whether the expenses Mr. Hazlewood incurred incident to the canceled contract in Portland are reimbursable.

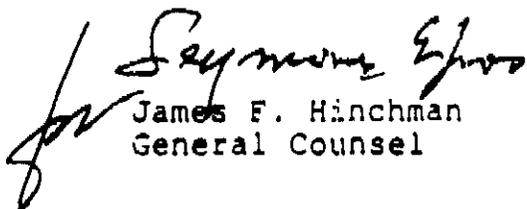
OPINION

The applicable statutory and regulatory authorities prohibit reimbursement for losses in real estate transactions due to market conditions. 5 U.S.C. § 5724a(a)(4)(A); 41 C.F.R. § 302-6.2(e) (1991). We have interpreted these provisions to permit reimbursement only for expenses from a completed sale or purchase of a residence. Ralph F. Pupo, B-187848, Aug. 23, 1977; John J. Mazzola, B-190122, Nov. 23, 1977. We have applied this rule even when the loss was not the result of any voluntary actions on the employee's part. Paul M. Foote, B-210566, Mar. 22, 1983.

Mr. Hazlewood suggests that his case is similar to other cases in which we allowed reimbursement for expenses where a transferred employee is retransferred and is unable to cancel a purchase contract because of the second transfer. B-168818, Feb. 9, 1970; B-168186, Nov. 24, 1969. In these cases, we reasoned that the employee should not have to incur the expenses associated with a canceled contract if the action of the government precluded the employee from performing the contract.

We believe the facts of this case fit more closely into the first line of cases described above than the cases suggested by the employee. Although Mr. Hazlewood argues that he chose not to purchase a home in Portland because he anticipated another transfer, the record shows that the cancellation of the Portland contract was directly related to the cancellation of the Fort Worth contract, and not to any government action. Indeed, had Mr. Hazlewood stayed in Portland and entered into a new contract for purchase of a home there, the prohibition on reimbursement for real estate losses would preclude payment for the expenses associated with the unconsummated purchase. Therefore, he would have had to bear these expenses regardless of his subsequent transfer to Fort Collins.

Accordingly, the claim may not be paid.


James F. Hinchman
General Counsel