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M. B. [unclear]
[unclear]

DECISION



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

FILE: B-190677

DATE: July 6, 1978

MATTER OF: Juan R. Rodriguez - Expenses incurred for settlement of unexpired lease

DIGEST: Drug Enforcement Administration policy requiring employees to obtain a no penalty clause for breaking a lease may not be asserted as a bar to employee's claim for reimbursement of expenses incurred in terminating a lease incident to a transfer. The agency admits that the employee had not been advised of the DEA policy, and that there was no way for him to have become aware of its existence under the procedures in effect prior to his transfer. Further, the Federal Travel Regulations impose no such requirement, and the authority of DEA to impose the requirement is questionable under the FTR.

This action is a request by the Chief, Accounting Section, Drug Enforcement Administration (DEA), of the United States Department of Justice whether the claim of Mr. Juan R. Rodriguez may be paid for reimbursement of \$931 for expenses incurred in terminating an unexpired lease incident to a change of official station.

The record shows that prior to April 1976, Mr. Rodriguez had been assigned to the New York regional office of DEA. On April 14, 1976, he entered into a 3-year lease for an apartment in Brooklyn, New York, to begin occupancy on May 1, 1976. In June 1976, he received orders to transfer to the Detroit, Michigan, office of DEA. Accordingly, Mr. Rodriguez was required to break his lease and report for duty in Detroit on October 4, 1976.

Subsequently, Mr. Rodriguez submitted a claim for reimbursement in the amount of \$931 for expenses incurred in terminating his unexpired lease. Upon examination of the April 14, 1976 lease agreement, the agency questioned whether payment could be made since the lease did not comply with the DEA policy regarding no penalty clauses, as set forth in the September 15, 1971 memo from the Assistant Director for Administration. That memo provides, in pertinent part, as follows:

"Subj: Leasing of residence quarters
Employees of BNDD who receive official notice of transfer with a reporting date on and after October 1, 1971 to a post of duty located within

B-190677

the fifty States, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico and the Canal Zone, requiring a change of residence beyond the limit of the metropolitan area, will not enter into a lease for residence quarters unless the lessor agrees to release the lessee from his obligations to complete the term of the lease provided that:

- "1. The lessee provides the lessor with proof of the proposed transfer.
- "2. The lessee gives the lessor 30 days' written notice of his intention to vacate the premises.
- "3. The lessee makes payment of the remaining portion of the rent due until the premises are vacated.

"In the event residence quarters cannot be leased without the above clause prior written approval will be obtained in advance from the office of the Chief Counsel to enter into lease agreement without clause.

"Reimbursement of expenses incurred for settling an unexpired lease (including month-to-month rental) dated on or after October 1, 1971 may not be authorized if lease is not entered into as outlined above. * * *

"Please inform all employees of the above. This change will be included in change of station procedures."

Mr. Rodriguez contends that, although his lease did not comply with this DEA policy, he should nonetheless be paid since the agency admits he had never been advised of the existence of such a policy, and had no knowledge of the no penalty clause requirement.

The authority for payment of expenses incurred in connection with residence transaction is contained in Part 6 of the Federal

B-190677

Travel Regulations (FPMR 101-7) (May 1973). Subpart 2-6.1 thereof provides for reimbursement of such expenses as follows:

"2-6.1. Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him * * * for the settlement of an unexpired lease involving his residence * * *."

Expenses incurred in connection with settlement of an unexpired lease are more specifically governed by Subpart 2-6.2, subsection h, which provides in pertinent part as follows:

"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 expenses by failing to give appropriate lease termination notice promptly after he had definite knowledge of the transfer, and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. * * *"

The Federal Travel Regulations' provisions cited above impose no requirement that employees obtain the type of "no penalty" clause described in the DEA memo, and there is some question as to whether the agency has the authority to impose this requirement on its employees. Compare 55 Comp. Gen. 613 (1976).

With respect to the claim of Mr. Rodriguez, we note the agency admits that he had never been advised of the existence of the DEA

B-190677

requirement regarding no penalty clauses, and also admits that there was no way for him to have become aware of such a policy under the procedures in effect prior to his transfer. Under these circumstances, and because the authority of DEA to impose additional restrictions on its employees is not evident from the applicable provisions of the Federal Travel Regulations quoted above, we find that the agency may not assert its policy as a bar to reimbursement of the claim of Mr. Rodriguez. Accordingly, without passing on the propriety of the DEA "no penalty" policy, we hold that the claim of Mr. Rodriguez may be paid if otherwise proper.

We are today referring the question of DEA's authority to make such a requirement to the General Services Administration, the agency vested with the statutory authority to prescribe regulations governing Federal travel matters, and requesting that DEA be advised directly as to the propriety of the policy.



Deputy Comptroller General
of the United States