12379 PL-I

DECISION

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

FILE: B-196494 **DATE:** December 26, 1979

MATTER OF: John W. Logan

DIGEST:

Request for reformation of lease based on allegation of unilateral mistake is denied where Government contracting official had neither actual nor constructive knowledge of mistake.

Mr. John D. Logan has requested our decision concerning a disagreement involving a lease agreement (GS-10B-03794) that he has with the General Services Administration (GSA). Mr. Logan agreed, by lease dated October 4, 1968, to lease to GSA office space in Walla Walla, Washington, at an annual rent of $22,325. That lease was for 10 years, with GSA having the option to renew for two 5-year terms with the same terms and conditions applying. The lease also provided that after 5 years the Government could terminate the lease by giving 120 days notice and that Mr. Logan could terminate the lease by giving 150 days notice.

After 5 years, Mr. Logan requested a rent increase and stated that he would terminate the lease if it was not granted. GSA agreed to renegotiate the lease, and on August 9, 1974, entered into a supplemental lease agreement with Mr. Logan. That agreement modified three terms of the original lease. The rent was increased by approximately 35 percent. Mr. Logan's termination rights were removed, and the old rental price was deleted from the renewal option clause.

At the appropriate time before the end of the 10-year term, GSA notified Mr. Logan that it was renewing the lease for 5 years. Mr. Logan responded

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with a request for an increase in rent, which GSA refused. At this time, Mr. Logan claims that he first noticed that his termination rights had been deleted by the supplemental lease agreement. In recognition of past good relations with Mr. Logan, GSA offered, as a compromise, to supplement the lease by adding the standard escalation clause, which allows for annual adjustment of rent to compensate for increases or decreases in operating costs and taxes. Mr. Logan refused the compromise offer and proposed alternate terms, which GSA rejected. Ultimately, GSA and Mr. Logan reached an impasse and then GSA notified Mr. Logan that it intended to enforce the lease as it was written, and that renewal would be for 5 years at the rental stated in the supplemental agreement.

Mr. Logan alleges that during the negotiations concerning the supplemental lease agreement he and GSA did not discuss changing his termination rights, and that he did not notice the change when he signed the agreement. Therefore, he alleges, GSA "purposely deceived" him. He claims that due to rising costs he cannot afford to continue the lease at the present rental rate. GSA states that the matter of changing Mr. Logan's termination rights was discussed during the negotiations, and deletion of those rights was consideration for the rent increase.

While Mr. Logan has not specified the relief that he desires, we assume that he wants the supplemental lease agreement reformed to include termination rights for him.

Generally, reformation of a contract may be permitted to correct a misstatement in the contract of the actual terms agreed upon between the parties, or to provide relief in situations where it is apparent that the contract, as written, does not express the actual intent of the parties relative to a particular matter. B-166235, March 25, 1969; B-154442, November 29, 1968. Relief may be granted for a unilateral mistake alleged after award of a contract, only if the Government contracting official had either actual or constructive knowledge of the mistake prior to award. Saligman v. United States, 57 F. Supp. 505 (E.D. Pa.

1944); 48 Comp. Gen. 672 (1969). We have applied these rules to a claim for reformation of a lease due to unilateral mistake. Martin W. Juster, B-181797, May 15, 1975, 75-1 CPD 297.

Here, there is no evidence that the GSA official knew or should have known that Mr. Logan was unaware that his termination rights had been deleted from the original lease provision by the supplemental agreement. If Mr. Logan was unaware, as he alleges, the error must be attributed to his negligence or oversight, since the supplemental agreement clearly deleted his termination rights. The supplemental agreement is a one page document stating which provisions of the lease were being changed, and giving the new language of each provision. The only change made in the termination provision was the deletion of Mr. Logan's termination rights. Therefore, there is no legal basis for granting reformation of the lease.

Additionally, this Office is without authority to consider a request for modification, reformation, rescission or cancellation of a lease on equitable grounds. Lessor's FIART, L.D.B. and ISMEIM, B-185960, August 19, 1976, 76-2 CPD 175. Moreover, no officer or employee of the United States is empowered to modify an existing Government contract or lease to favor another party, or to surrender or waive a right inuring to the United States, except in receipt of some compensating benefit by the Government. Ibid.

Milton J. Socolar

For the Comptroller General
of the United States