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**DECISION**



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

FILE: B-205412

DATE: April 15, 1982

MATTER OF: Richard C. Smith

- DIGEST:
1. Employee may be reimbursed deposit he forfeited to a builder who was to construct a residence for the employee before he was notified of his transfer. Such amount is a forfeiture loss within the meaning of para. 2-3.1 et seq. of the Federal Travel Regulations (FTR) and is payable as a miscellaneous expense.
  2. Although the employee intended to build a residence on a lot at his old duty station before his transfer, he is not entitled to real estate expenses for sale of the lot. The employee did not live in a residence on the lot when he was first notified by competent authority of his impending transfer as required by para. 2-6.1d of the Federal Travel Regulations (FTR). Real estate expenses are payable only for the sale or purchase of a lot integrated with a dwelling or used for a mobile home in accordance with para. 2-6.1 of the FTR.

May an employee be reimbursed real estate expenses for the sale of a lot and for a deposit that he paid to a builder for the construction of a residence at his old duty station which was forfeited because of his transfer? As we will explain, he may be reimbursed the amount he forfeited to the builder, but he may not be reimbursed the real estate expenses for the sale of the lot.

Mr. Richard C. Smith, an employee of the Social Security Administration, transferred from Storm Lake, Iowa, to Saint Joseph, Missouri, effective January 12, 1981. In late July or early August 1980, he and his wife sold their residence in Storm Lake and purchased a lot on which they intended to construct a new home. He and his family moved into rental quarters until their new home could be built. He paid a

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builder a deposit for preliminary blueprints and other plans. However, in late November 1980 he was informed that he would be transferred to Saint Joseph. He therefore sold the lot in early March 1981 and incurred selling expenses of \$764.30. He used the proceeds obtained from the sale of the lot to purchase a residence in Saint Joseph.

Mr. Smith claims the lot selling expenses as well as the deposit for blueprints and plans that he forfeited because of his transfer. He believes he is entitled to the selling expenses because he purchased the lot for his residence and had no plans to purchase it as an investment or income-producing property.

The case is submitted to us for decision by Martha R. Johnson, Director, Division of Accounting, Fiscal and Budget, Region VII, Department of Health and Human Services. She observes that paragraph 2-6.1 of the Federal Travel Regulations (FTR) expressly authorizes reimbursement for expenses incurred in selling a residence at the old duty station. She also points out that paragraph 2-6.1d of the FTR states that the dwelling sold must be the residence of the employee at the time he was first definitely informed by competent authority of his transfer to the new duty station. Although the lot in question did not include a residence, she feels that reimbursement would not conflict with the FTR since, if the time frame had been different, Mr. Smith's residence would have been on the lot which was not for investment or income-producing purposes. She requests a decision on the allowance of the forfeited deposit to the builder, as well as the lot selling expenses.

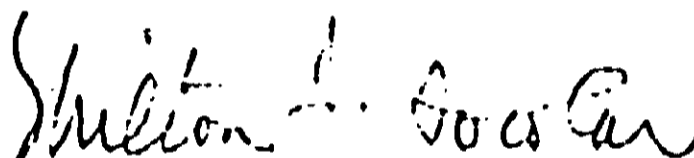
Under 5 U.S.C. 5724a(a)(4) an employee may be reimbursed for the expenses of selling a residence at his old duty station. We have held that a deposit on a residence forfeited in accordance with a contract of sale is not a reimbursable selling expense under chapter 2, part 6 of the FTR. However, we have held that a forfeited amount paid to a builder as a deposit is a forfeiture loss within the meaning of paragraph 2-3.1 et seq. of the FTR and therefore reimbursable as a miscellaneous relocation expense. See Matter of Lombardo,

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B-190764, April 14, 1978. We think the amount on deposit with the builder in this case should be treated similarly.

However, Mr. Smith is not entitled to real estate expenses for the sale of his lot at his old duty station, even though he intended to construct a residence on that lot before he was notified that he would be transferred. Selling expenses are limited to the sale of a lot integrated with a dwelling or used for a mobile home, as provided in paragraph 2-6.1 of the FTR. See Matter of Baskerville, B-195202, June 13, 1980 and B-164044, June 7, 1968. Further, in accordance with paragraph 2-6.1d of the FTR, the employee must have resided in the dwelling to be sold when he was first notified of his transfer by competent authority.

Accordingly, payment is limited to the forfeited deposit, and Mr. Smith may not be reimbursed selling expenses for the sale of the lot.

*for*   
Comptroller General  
of the United States