applied to the downpayment. The election was to have been by written notice to the owner. Purchase would have required 10 percent downpayment with financing at a named savings and loan institution. Our files do not indicate that Ms. Beaton prior to her transfer had initiated any of these steps to purchase, including making arrangements for the necessary financing.

Ms. Beaton believes she is entitled to reimbursement for the forfeited $1,000 deposit. She relies on our decisions B-177595, March 2, 1973, and Matter of Lombardo, B-190764, April 14, 1978, which authorized reimbursement as part of the miscellaneous expenses allowance for deposits forfeited under contracts to purchase residences at the employees' old duty stations. The purchases were not completed and the deposits were forfeited because the employees were transferred prior to settlement.

The Chief, Accounting and Finance Division, Defense Logistics Agency, requested an advance decision from the Comptroller General through the Per Diem, Travel, and Transportation Allowance Committee, PDTATAC Control No. 82-12. The employing office declined reimbursement because Ms. Beaton had never signed a binding contract to purchase the residence.

As provided for in chapter 9 of Volume 2 of the Joint Travel Regulations (2 JTR) a transferred employee may be paid an allowance to defray various costs associated with the relocation of his residence. Paragraph C9007 states that the miscellaneous expense allowance will not be used to reimburse the employee for "expenses brought about by circumstances, factors or actions in which the move to the new duty station was not the proximate cause."

The evidence before us fails to establish that Ms. Beaton's transfer to Columbus was the proximate cause of the forfeiture. Ms. Beaton had no legal obligation to exercise the option either before or after the transfer and there is nothing in the record to establish that she in fact would have exercised the option had her duty station remained in Cleveland, Ohio.

We allowed reimbursement for forfeited purchase deposits as items of miscellaneous expense in B-177595,

and Matter of Lombardo, cited above. These cases are distinguishable from Ms. Beaton's because they involved real estate purchase contracts that, unlike options to purchase, obligated the employees to buy the residences. The transfers proximately caused the purchase deposits to be forfeited.

Real estate expenses incurred for the "sale" of the residence at the old duty station and "purchase" of a residence at the new duty station are authorized under 2 JTR, chapter 14. See 2 JTR para. C14000. We have disallowed real estate expenses incurred by a transferred employee in connection with the execution of a lease with option to purchase a residence at the new duty station. In Matter of Gamble, B-185095, August 13, 1976, the employee had not exercised the option, and the decision held that the mere right of election to purchase did not confer the requisite legal or equitable title to qualify as the purchase of a residence under chapter 2, Part 6, of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). For essentially the same reason Ms. Beaton is not eligible for reimbursement of real estate expenses associated with the disposition of the residence in which she had a lease-hold interest, notwithstanding the fact that she had an option to purchase that residence. Moreover, forfeited deposits are not the kind of costs authorized as real estate sale expenses by 2 JTR, chapter 14, or chapter 2, Part 6, of the FTR. See 55 Comp. Gen. 628 (1976).

Accordingly, the forfeited deposit may not be reimbursed as an item of miscellaneous expense under chapter 9 or as a real estate sale expense under chapter 14 of 2 JTR.

Milton J. Socolar

for Comptroller General
of the United States