

DECISION

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

FILE: 8-184599

DATE:

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SEP 16 1975

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MATTER OF:

John O. Border - Closing Fee Incident to Sale of
Residence

DIGEST:

Employee of Federal Home Loan Bank Board claims reimbursement of prorated share of \$130 legal fee incurred in connection with the sale of his residence at his old duty station. The fee, listed as closing fee, is reimbursable to the extent that it represents services of the types enumerated in FTR para. 2-6.2c (May 1973) and to the extent that it is determined reasonable in light of the appropriate HUD Schedule of closing costs. See Comp. Gen. decs. cited.

An Authorized Certifying Officer, Federal Home Loan Bank Board, has requested a decision by letter dated July 21, 1975, as to whether a reclaim voucher submitted by John O. Border for legal fees incurred in the sale of his residence at his old duty station may be certified for payment.

Mr. Border's claim is for reimbursement of \$65 paid by him as his prorated share of a legal fee incurred in connection with the sale of his residence in Orlando, Florida, incident to his transfer to Charlotte, North Carolina, effective October 27, 1974. The \$65 item was suspended from the original voucher since no itemized statement showing the specific services performed and the amount applicable to each service performed had been forwarded in support of the claim. Mr. Border has attached in support of his claim a copy of his closing statement wherein the \$65 charge is listed simply as a "closing fee." However, on his reclaim voucher Mr. Border describes the charge as "Legal Fee (Loan Closing) Attorney." In light of the foregoing, we have been asked whether the legal fees incurred by Mr. Border incident to his transfer may be reimbursed in the absence of either a statement of itemization from the attorney or an applicable HUD (Department of Housing and Urban Development) schedule of closing costs.

The controlling regulation, Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973), provides as follows:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar

services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: cost of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

We have consistently held that only attorney's fees that represent services of the types enumerated in FTR para. 2-6.2c (May 1973) are reimbursable. B-183443, July 14, 1975; B-179482, March 21, 1974. Whether a charge for legal fees incurred in connection with the sale or purchase of a residence falls within the services enumerated in the regulation requires, as a practical matter, that the employee submit adequate documentation of the types of services performed and the amount allocated to each service. Thus, we have held on numerous occasions that where attorney's fees incurred in the sale of a residence are stated as a lump sum, no part of the fee is reimbursable until the claimant obtains an itemization of those portions of the fee allocable to the items reimbursable under FTR para. 2-6.2c (May 1973). 54 Comp. Gen. 67 (1974); B-180752, June 12, 1974; B-175328, September 21, 1972.

We are also asked whether, as an alternative to an itemized statement of legal services performed and the amount allocated for each service, a claim for legal expenses may be allowed on the basis of an applicable HUD schedule of closing costs. The certifying officer believes that our decision B-179659, dated April 4, 1975, 54 Comp. Gen. _____, indicates that, if no itemization of the closing costs was included with the claim but in its place a schedule of closing costs covering the time of sale could be obtained from HUD and found to be in line with the prevailing rates, the claim could be allowed. The foregoing is an incorrect reading of B-179659. That decision involved a claim by an employee of the Atomic Energy Commission for reimbursement of a charge of \$490

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incurred in connection with the purchase of a new home. The charge was described on the settlement statement as a "Service Charge." However, subsequent to the submission of his claim, the claimant procured an itemized statement of the \$490 service charge specifying the services performed and the amount allocable to each. Consequently, the question presented in that decision did not turn on whether the charges were sufficiently itemized to allow for reimbursement, but whether the charges for reimbursable items were reasonable in light of the customary charges of the area. In other words, the HUD schedule was obtained so that the certifying officer could make a proper determination of the reasonableness of the amount charged for each service for the purpose of certifying the reimbursement of each specific service under FTR para. 2-6.2c (1973).

The foregoing is made manifest by FTR para. 2-6.3 (May 1973) which details the control requirements to be followed in reviewing claims for reimbursement of expenses incurred in connection with residence transactions. In this regard, the review is intended to determine:

" * * * whether the expenses claimed are reasonable in amount and customarily paid by the seller in the locality where the property is located. If items of cost appear to have been inflated or are higher than normally imposed for similar services in the locality, any portion of such costs determined to be excessive shall be disallowed * * *" FTR para. 2-6.3b (May 1973).

To aid the review of such claims, FTR para. 2-6.3c (May 1973) provides that the items on the HUD Schedule of Closing Costs, applicable to the area involved, may be used "as guidelines and not as rigid limitations" for purposes of determining whether the expenses claimed are reasonable.

In the instant case the record does not clearly indicate the nature of the services performed by Mr. Border's attorney in connection with the sale of his residence in Orlando, Florida. Assuming that the closing statement correctly represents the \$65 as the cost of conducting the closing, as distinguished from services rendered at settlement which are advisory in nature, the fee is reimbursable. B-183443, July 14, 1975. However, it will be necessary for Mr. Border to clarify the nature of the service performed for which the \$65 fee was assessed and, if the fee was assessed for more than one service, Mr. Border should obtain from the attorney an itemization of the services performed and the charges allocable to each prior to certification of the reclaim voucher.

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54 Comp. Gen. 67 (1974). Upon receipt of the itemization, it is the duty of the certifying officer to resolve the issue of reasonableness with the technical aid of the appropriate HUD office. This should be done by considering the customary charges in the area for similar services and examining the entire record along with the appropriate regulations and cases. B-179659, April 4, 1975, 54 Comp. Gen. ____.

R.F. KILLICK

[Deputy]

Comptroller General
of the United States