

DECISION

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

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FILE: B-184743

DATE: MAR 17 1976

MATTER OF: Larry D. Henson - Relocation Expenses:
Reimbursement of Broker's Fee

DIGEST: Transferred employee paid real estate commission on sale of residence. Realty agency voluntarily reimbursed employee for air conditioner and humidifier as a consideration of extending the settlement date. Under section 4.2a of OMB Circular No. A-56, employee may be reimbursed for commission, but only to extent he actually paid for such services. Reimbursed amount must be refunded to Government.

This matter was forwarded to our Office by a certifying officer of the United States Department of Agriculture who has requested a decision as to whether the Department should request Mr. Larry D. Henson, an employee of the Forest Service, to refund \$200 for excess relocation expenses reimbursed to him in connection with a change of official station from Atlanta, Georgia, to Russellville, Arkansas, in September 1971.

Incident to his transfer of official station, Mr. Henson sold his residence in Atlanta through Cloward Realty, Inc. The record discloses that Mr. Henson's house was sold for \$82,500 and that a sales commission of \$2,010 (6 percent) was paid to Cloward Realty, Inc. However, the closing date, September 20, 1971, could not be met by the purchaser because of delay in obtaining a loan. Mr. Henson informed the realtor that he did not intend to honor the agreement after September 20, 1971, unless the purchaser agreed to pay him an additional \$200 for the air conditioner and humidifier or allow him to remove them from the house. He was verbally assured by the realtor that he would receive \$200 for the two items. As a result Mr. Henson agreed to a 10-day extension of the closing date to September 30, 1971. There is no evidence in the record of a written notice to that effect adhered to by the purchaser. We therefore assume that there was no legal obligation on the part of the purchaser to pay the \$200 and that the verbal assurances of the realtor were for the purpose of keeping the sales agreement intact. In acquiescing to pay the \$200 for the air conditioner and humidifier, the realtor in effect agreed to a commission of less than 6 percent and ratified the agreement when he rendered a check for \$200 to Mr. Henson for the air conditioner and humidifier on the date of settlement. Mr. Henson claimed and was reimbursed the full amount of the commission (\$2,010).

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Section 4.2a of Office of Management and Budget (OMB) Circular No. A-56, Revised August 17, 1971, in effect at the time of the real estate transaction here involved, provided that "A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable." Under that provision, the employee was entitled to be reimbursed for a real estate commission, but only to the extent he actually paid for services in selling the house.

In the present case the records indicate that Mr. Henson paid the real estate agent a commission of \$2,610 and the realty company gave Mr. Henson a check for \$200. Thus, Mr. Henson was actually required to pay a real estate commission of \$1,910. Mr. Henson's contention that the realty company intended the \$200 to be the purchase price of the humidifier and the window air conditioner that were installed in the house and was to be paid for by the purchaser does not alter this conclusion since a payment of the cost of the house by the realty company cannot be considered a service in selling the residence for which reimbursement is authorized by section 4.2a of Circular No. A-56. B-171953, April 9, 1973; B-184901, October 9, 1975.

The voluntary payment by the realty agency to Mr. Henson was a reduction of the real estate commission paid by him and is not for reimbursement by the Government. In view of the above, Mr. Henson should be requested to refund the \$200 overpayment.

Deputy Comptroller General
of the United States