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Peter Iannicelli
Civ. Pers.

DECISION



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

FILE: B-186990

DATE: January 26, 1977

MATTER OF: Henry F. Holley - Relocation expenses - closing costs

DIGEST: Employee who purchased residence incident to transfer of duty station claims closing costs paid by seller but included in purchase price. Since closing costs are clearly discernible and separable from price allocable to realty and both buyer and seller regarded costs as having been paid by buyer, claim may be paid for full amount of closing costs upon proper documentation itemizing the costs, the amount of each item claimed, and claimant's liability therefor.

This action is in response to a letter dated August 31, 1976, from Mr. Thomas G. Gall, an Authorized Certifying Officer of the National Park Service, Department of the Interior, requesting an advance decision as to the entitlement of Mr. Henry F. Holley, an employee of the National Park Service, to reimbursement of real estate expenses in the amount of \$779.90 incurred in connection with his purchase of a new home incident to the transfer of his official duty station from Brooklyn, New York, to Washington, D.C.

The costs in question are closing costs on the residence purchased by Mr. Holley in the vicinity of his new official station which would clearly be allowable under 5 U.S.C. § 5724a (a)(4) (1970) and chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7, May 1973) but for the fact that they were included in the purchase price of the residence.

It appears that this form of financing was agreed upon between Mr. Holley and the vendor of the home in an effort to expedite closing since Mr. Holley did not have adequate funds to cover the required closing costs at the time of settlement. This arrangement would allow Mr. Holley to pay for the closing costs over the life of the mortgage. In support of his claim Mr. Holley has submitted a letter from the manager and a sales agent of Equia Realty (the real estate firm which handled the sale of the residence for the vendor) indicating that the final sales price of \$43,000 included

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an additional \$1,000 above the basic sales price to cover the costs of closing less prepaid items. Mr. Holley has also included, in addition to the actual settlement statement used at the closing, a settlement statement listing the closing costs that, according to Mr. Holley, would have been charged to him had they not been included in the sales price of the home.

In our decision in 52 Comp. Gen. 11 (1972), reimbursement of closing costs had originally been denied because closing costs were included in the purchase price of the real estate and hence were not regarded as having been paid by the purchaser. Upon reconsideration, we held that claims for reimbursement of closing costs in that case and in all future analogous cases would be allowed. See B-174527, August 23, 1974, and B-176439, August 17, 1972. In 52 Comp. Gen. 11 it was stated, at page 13, that:

"The closing costs which were added to the purchase price are clearly discernible and separable from the price allocable to the realty. Although the seller may have actually performed the act of initially paying the costs, the down payment and the amount paid at closing by the purchaser from his own funds exceeded the amount of those costs and the seller regards them as having been, in effect, paid by the purchaser. Also, the purchaser has supplied documentation of the amount of the costs and of his liability for them."

Paragraph 2-6.1 of the Federal Travel Regulations (FPMR 101-7, May 1973) states the general conditions and requirements under which reimbursement of expenses incurred in connection with residence transactions may be made. Paragraph 2-6.1 states, in pertinent part, that:

"* * * To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of a residence at his old official station, for purchase (including construction) of one dwelling at his new official station
* * *"

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The rule to be derived from our decision in 52 Comp. Gen. 11 (1972), and paragraph 2-6.1 of the Federal Travel Regulations, in claims in which closing costs have been included in the purchase price of a home and have been paid by the seller, is that the buyer may be reimbursed for such costs, if the costs are otherwise allowable under applicable law and regulations, where:

- (1) the closing costs are clearly discernible and separable from the price allocable to the realty;
- (2) both the seller and the buyer regard the costs as having been paid by the buyer; and
- (3) the buyer supplies documentation showing the amount of the closing costs and his liability for them.

The letter from Aquia Realty and informal discussions with the sales agent of that firm who handled the sale to Mr. Holley clearly indicate that it was understood by all parties concerned that Mr. Holley was actually paying closing costs as part of the purchase price. Since paragraph 2-6.1 of the Federal Travel Regulations indicates that expenses may be reimbursed so long as they are "required to be paid" by the employee and because Mr. Holley did incur a liability in the form of a mortgage which included the amount of the closing costs, our Office regards the closing costs as having been paid by Mr. Holley at closing and, therefore, reimbursable.

The sales agent representing Aquia Realty, also informed us that the closing costs for which Mr. Holley was liable could be itemized by the realty firm and the amount of each computed. We note, however, that as of now the required documentation has not been supplied and the closing costs are not, therefore, "clearly discernible and separable."

Accordingly, the claim submitted by Mr. Holley for closing costs in the amount of \$779.90 may be paid in full if otherwise proper. However, proper documentation itemizing the closing costs, the amount of each item claimed, and Mr. Holley's liability must be

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submitted to the Authorized Certifying Officer before payment
may be made.

W. K. Kellum
Deputy Comptroller General
of the United States