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DECISION



Mr. Hubert
Civ. Pers.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187826

DATE: February 24, 1977

MATTER OF: William W. Treptow - Real estate expenses

DIGEST: Employee transferred on May 31, 1970, did not execute contract to sell former residence until May 1972, due to market conditions. Since BOB Circular A-56, section 4.1e requires existence of written contract for sale of residence within 1 year of transfer as condition precedent to eligibility for extension of time, extension may not be granted and claim is denied. Also, Government is not liable for the negligent or erroneous acts or statements of its officers and employees.

By a letter received in this Office on August 12, 1976, Mr. William W. Treptow has appealed the denial by our Claims Division of his claim for reimbursement of real estate expenses incurred incident to the change of his official station.

The record indicates that effective May 31, 1970, Mr. Treptow, an employee of the Food and Drug Administration, was transferred from Baltimore, Maryland, to Newark, New Jersey. Although Mr. Treptow listed his house for sale, he encountered difficulties in attracting a buyer due to high unemployment in the area where his house was located. Finally, in May 1972, he entered into a contract to sell his former residence, and settlement occurred on May 19, 1972, almost 2 years after he reported to the new duty station.

Mr. Treptow's employing agency denied his claim for reimbursement of real estate expenses on the grounds that he did not complete settlement on his former residence within 1 year of May 31, 1970, and that he did not meet the criteria for an extension of time. The claimant thereupon submitted a reclaim which was forwarded to our Claims Division. In Settlement Certificate No. Z-2542757, dated January 8, 1976, the Claims Division denied Mr. Treptow's claim for real estate expenses on the basis of section 4.1e of Bureau of the Budget Circular A-56, revised June 26, 1969. Since no contract for sale of the residence was executed during the first year after the transfer, and because the delay was not caused by litigation, the Claims

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Division concluded that Mr. Treptow was not entitled to an extension of time for the completion of his real estate transactions, and disallowed his claim. In appealing the Claims Division settlement, Mr. Treptow has requested a more specific explanation regarding the authorities on which his claim has been denied.

Bureau of the Budget Circular No. A-56, revised June 26, 1969, which was in effect at all times relevant to this action, contains the then-existing regulations governing the reimbursement of real estate expenses. Section 4.1e of the Circular provides that:

"The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than one (initial) year after the date on which the employee reported for duty at the new official station, except that (1) an appropriate extension of time may be authorized or approved by the head of the agency or his designee when settlement is necessarily delayed because of litigation or (2) an additional period of time not in excess of one year may be authorized or approved by the head of the agency or his designee when he determines that circumstances justifying the exception exist which precluded settlement within the initial one-year period of the sale/purchase contracts or lease termination arrangement entered into in good faith by the employee within the initial one-year period. The circumstances which are determined by the head of the agency or his designee to justify the exception under (2) above shall be set forth in writing."
(Emphasis added.)

Thus, section 4.1e requires as a condition precedent to eligibility for a 1 year extension that a binding contract for the sale of the residence be executed within the initial 1 year period. Since this provision was issued pursuant to the authority contained in 5 U.S.C. 5724a(a)(4), it has the force and effect of law and cannot be waived or modified either by the employing agency or

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by this Office. This is true regardless of the presence of extenuating circumstances, such as a depressed real estate market resulting from unusual social and economic conditions. B-177323, February 2, 1973; B-176990, November 9, 1972.

In the present case, Mr. Treptow did not enter into a contract for the sale of his old residence until more than 1 year after he reported to duty at his new station. Therefore, although we appreciate the difficulties encountered by Mr. Treptow, since the above-quoted regulation requires a sales contract to be executed within the initial 1 year period, there is no legal basis on which an extension of time may be granted.

Mr. Treptow has also argued that he was advised by competent administrative personnel in his employing agency that he could be reimbursed his real estate expenses if he sold his former residence within 2 years of his transfer, and that he should be granted a waiver based on such advice. While Mr. Treptow may have been misled regarding the extension of the 1 year period, it is well established that in the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. Robertson v. Sichel, 127 U.S. 507, 515 (1888); German Bank v. United States, 148 U.S. 573, 579 (1893); 19 Comp. Gen. 503 (1939); 22 id. 221 (1942); 44 id. 337 (1964); 46 id. 348 (1966). The reason for this rule is that the public should not suffer for the erroneous act or representation of a single Government agent.

In view of the above, the settlement by the Claims Division denying Mr. Treptow's claim for reimbursement of real estate expenses is hereby sustained.


Acting Comptroller General
of the United States



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

IN REPLY
REFER TO:

B-387826

OFFICE OF GENERAL COUNSEL

FEB 4 1977

Mr. William W. Trepton
405 West 23rd Street Apt. 14I
New York, New York 10011

Dear Mr. Trepton:

Further reference is made to your request for reconsideration of the denial by our Claims Division of your claim for reimbursement of real estate expenses incurred incident to the change of your official duty station. Since the regulations then in effect required the existence of a written contract within 1 year of transfer for the sale of the residence as a condition precedent to eligibility for an extension of time, the settlement by our Claims Division must be sustained under the circumstances of your case. A copy of our decision in this matter is enclosed for your reference.

In addition to your appeal, you requested under the Freedom of Information Act, "a copy of all audits of moving expenses made by your office in 1970 and 1971." Regarding that request, it should be noted that the General Accounting Office is not subject to the Freedom of Information Act, 5 U.S.C. 552 (Supp IV, 1974). We have, however, published regulations concerning information requests in Part 81 of title 4, Code of Federal Regulations (1976), and have considered your request under those regulations. We are therefore, enclosing herewith copies of our decisions in 1970 and 1971 concerning the time limitation placed on a transferred employee's eligibility for reimbursement of residence transaction expenses.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel

Enclosures