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DECISION



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

FILE: B-187493

DATE: April 1, 1977

**MATTER OF: Phillip R. Rosen - Reimbursement of
Incidental Real Estate Expense**

DIGEST: Department of Agriculture employee claims cost of Homeguard Service Contract incurred upon sale of his home incident to transfer from Albuquerque, New Mexico, to Milwaukee, Wisconsin. The contract was paid by the seller to protect the buyer against defects in the major systems of the home within 1 year. Even though the real estate agent required the seller to purchase the contract, it is not reimbursable because it was not a required service in selling the employee's residence. FTR paras. 2-3.1 and 2-6.2f.

By letter dated September 16, 1976, Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, requests an advance decision concerning the claim of Phillip R. Rosen, an employee of the Forest Service of the Department of Agriculture. Mr. Rosen claims \$156 representing the cost of a Homeguard Service Contract he purchased upon the sale of his home incident to his transfer from Albuquerque, New Mexico, to Milwaukee, Wisconsin.

The certifying officer disallowed Mr. Rosen's claim for the Homeguard Service Contract on the basis it was a form of insurance for the protection of the seller. Mr. Rosen agrees that the contract is a form of insurance, but assumed by a third party for the benefit of the buyer and claims he is entitled to reimbursement under Federal Travel Regulations (FPMR 101-7) para. 2-6.2f (May 1973).

Mr. Rosen's realtor, Hooten-Stahl, Inc., explained the Homeguard Contract as follows:

"* * * The \$156 for the Homeguard Contract is mandatory from the standpoint that we require our sellers to provide the aforementioned contract to our purchasers. In the Albuquerque area there are several home service contracts

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that protect the major systems of the home, and it is customary that the sellers pay for and furnish these contracts to the purchasers to eliminate any liability that the sellers may have in selling their property."

The Albuquerque Board of Realtors submitted a letter stating that "it is common practice in Albuquerque, New Mexico, for Real Estate offices to have a seller purchase a home warranty, which warrants the house for a year to the purchaser."

The Albuquerque office of the Department of Housing and Urban Development (HUD) offered a somewhat different opinion:

"* * * a Homeguard contract is an optional item in the sale of real estate in the Albuquerque area; and is, therefore, not considered a customary charge to either the buyer or seller of the property."

The Milwaukee office of the Forest Service interpreted this as follows:

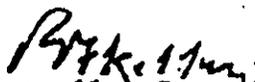
"* * * Although HUD states that the Homeguard Service Contract is optional, what they mean is that it is not required by all real estate companies in the area.* * *"

Paragraph 2-3.1a of the FTR states that the miscellaneous expenses allowance authorized in paragraphs 2-3.2 and 2-3.3 of the FTR is intended to defray various costs associated with relocation. Paragraph 2-3.1c of the FTR provides that the miscellaneous expenses allowance shall not be used to reimburse "costs or expenses incurred for reasons of personal taste or preference and not required because of the move." (Emphasis added.) Similarly, FTR para. 2-6.2f, upon which Mr. Rosen relies, provides for reimbursement of "[i]ncidental charges made for required services in selling and purchasing residences * * * if they are customarily paid by the seller of a residence at the old official station [or by the buyer at the new station] * * *." (Emphasis added.) Thus, the issue is whether the Homeguard Service Contract was required for the sale of Mr. Rosen's home.

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The regional office of HUD states that the Homeguard Contract is an "optional" item in the sale of real estate in the Albuquerque area. We agree with that statement. The contract was not required by law or custom, nor was it required by the lending institution as a condition of the loan. Instead, it was required by the particular real estate agent involved to eliminate the seller's contingent liability to the buyer for defects in the major systems of the home. See Maxey v. Quintana, 499 P.2d 350 (New Mexico Court of Appeals, 1972). It is, therefore, a means of affording additional security to the buyer against such defects and protecto the seller as well. As such, the contract undoubtedly is a desirable item in selling a house, but, as HUD states, it is optional and not mandatory.

Therefore, because the contract was not required for the sale of Mr. Rosen's home, the cost of the contract is not reimbursable as an incidental charge under para. 2-6.2f of the FTR. Accordingly, Mr. Rosen is not entitled to reimbursement for the \$256 expense of the Homeguard Service Contract.


Deputy Comptroller General
of the United States