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**DECISION**



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

04085

FILE: B-188265

DATE: November 8, 1977

MATTER OF: Virginia M. Armstrong - Claim for relocation expenses in selling cooperative apartment

- DIGEST:
1. Employee sold her interest in cooperatively owned apartment upon transfer to new duty station. Employee may be reimbursed under Federal Travel Regulations (FPMR 101-7) (May 1973) for certain expenses including settlement fee charged for transferring stock and assigning lease if such charges are customary and reasonable.
  2. Employee sold her interest in cooperatively owned apartment upon transfer to new duty station. Claim for legal fees may be allowed if charges are itemized so as to distinguish between reimbursable costs as provided under Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973) and nonreimbursable services such as legal representation and advice.

This action is in response to a request for an advance decision from Mrs. Dolores T. Hodges, an authorized certifying officer of the Department of Housing and Urban Development (HUD), concerning the claim of Miss Virginia M. Armstrong for reimbursement of certain expenses incurred in selling her interest in a cooperatively owned apartment upon her transfer from New York, New York, to Washington, D.C.

The record indicates that in order to sell her interest in the apartment it was necessary for Miss Armstrong to sell 390 shares of stock in the corporation which owned the apartment building and to assign her proprietary lease to the buyer of the apartment. In connection with this transaction, Miss Armstrong claimed the following expenses:

|                         |                 |
|-------------------------|-----------------|
| Brokerage Fees          | \$3,230.00      |
| Legal and Related Costs | 365.15          |
| State Revenue Stamps    | 24.38           |
| Incidental Expenses     | 300.00          |
|                         | <u>3,919.53</u> |

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The claim for incidental expenses and all but \$5 of the claim for legal and related costs were administratively disallowed, and Miss Armstrong has filed a reclaim voucher for the incidental expenses.

The supporting documentation supplied by Miss Armstrong reveals that the claim for incidental expenses was based upon a \$100 fee charged by the managing agent of the apartment for transferring the stock and supervising the assignment of the lease and a \$200 fee charged by the law firm of M. S. & I. S. Isaac for "legal services rendered." The claim for legal costs was based upon a \$350 fee charged by the law firm of Tufo, Johnston & Allegaert for "professional services" in preparing documents, attending the settlement, advising and counseling Miss Armstrong, charges of \$10.15 for xeroxing and transportation, and \$5 for telephone calls.

The authority for reimbursement of expenses incurred by a transferred employee in connection with the sale of his residence at his old official duty station is governed by 5 U.S.C. § 5724a(a) (1970) and the provisions of the Federal Travel Regulations (FTR), chapter 2, Part C (FPMR 101-7) (May 1973). We have held that an interest in a cooperatively owned building, which is specifically referred to in paragraph 2-6.1c of the FTR, is a form of ownership in a residence for which real estate expenses may be reimbursed as provided in paragraph 2-6.2. Matter of Royce R. Newcomb, B-183812, May 4, 1976; and B-177947, June 7, 1973.

With regard to the settlement fee charged by the managing agent, our Office has recognized that reimbursement for such expenses is permitted under the FTR but limited to the expenses customarily paid by the seller in the area and to amounts customarily charged in the locality. See Newcomb, supra, and B-177947, supra. In determining the reasonableness of the charges and the custom in the locality of allocating the charges to the seller or buyer, the certifying officer must make a factual determination based upon an examination of the record and consultation, if necessary, with the local or regional office of HUD as provided in FTR paragraph 2-6.3c. See Matter of Robert A. Zich, 54 Comp. Gen. 857 (1975); and Matter of Glen A. Ballenger, B-187437, February 7, 1977. Therefore, the certifying officer may determine the reasonableness of the charge and allow payment, if otherwise proper.

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Under the provisions of paragraph 2-6.2c of the FTR, only the following legal and related expenses are reimbursable as follows:

"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: costs 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."

The record indicates that Miss Armstrong was charged for and originally claimed two separate amounts for what appear to be legal services. Based upon the record before us, it appears that Miss Armstrong may be reimbursed for some of these charges under paragraph 2-6.2c of the FTR if a detailed statement itemizing the list of services is provided with the dollar amount specified for each service so as to distinguish between reimbursable and nonreimbursable fees. See Ballenger, supra, and decisions cited therein. Charges for legal representation and advice, however, would not be reimbursable. 48 Comp. Gen. 469 (1969); and Matter of Thomas A. McDonnell, B-183443, July 14, 1975. Similarly, the itemized charges for transportation and telephone calls would not be reimbursable. Matter of Joe J. Baca, B-183102, June 9, 1976; Matter of James A. Morgan, B-183162, January 27, 1976; and McDonnell, supra. The charge for xeroxing would be reimbursable if reasonably related to the preparation of documents.

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We note that Miss Armstrong has not claimed the fees charged by the law firm of Tufo, Johnston & Allegaert on her reclaim vouchers. To the extent that the charges of this firm do not duplicate charges by the firm of M. S. & I. S. Isaacs and subject to the production of the necessary documentation as discussed above, it would appear that Miss Armstrong could claim and be reimbursed for fees charged by the law firm of Tufo, Johnston & Allegaert.

In our recent decision in Matter of George W. Lay, 56 Comp. Gen. 561 (1977), we reviewed the policy concerning the extent to which legal fees may be reimbursed, and we held that necessary and reasonable legal fees, except for the fees and costs of litigation, may be reimbursed if customarily charged in the locality of the residential transaction. This decision represents a departure from our prior decisions which required itemization of the legal fees to ensure that only certain enumerated services were reimbursed. However, our decision in Lay has been applied prospectively only to cases in which settlement of the transaction took place on or after April 27, 1977. See Matter of James B. O'Brien, E-185548, July 19, 1977. Since the settlement in the present case occurred on November 24, 1976, our decision in Lay would not be applicable to Miss Armstrong's claim.

Accordingly, after a determination has been made by the certifying officer regarding the reasonableness of the charges, the voucher may be paid in accordance with this decision and the determination of the certifying officer.

  
Deputy Comptroller General  
of the United States