

Phm-1  
Mr. Heitzman

12888

**DECISION**



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

FILE: B-196517

*[Request for Reimbursement of]*

DATE: February 19, 1980

MATTER OF: Calvin T. Westmoreland - Real Estate Broker's Commission

- DIGEST:**
1. Employee who sold condominium incident to permanent change of station may not be reimbursed 8 percent brokerage fee where HUD advised 7 percent was prevailing real estate commission in area. Information provided by HUD creates rebuttable presumption as to prevailing commission rate. Letter from broker does not rebut this presumption.
  2. Federal Travel Regulations require that applicable commission rate is rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee to sell his residence. If employee, to expedite sale, pays commission rate greater than that usually charged, he cannot be reimbursed for extra commission.

This decision is in response to a request for an advance decision submitted by Edwin J. Fost, an authorized certifying officer of the Drug Enforcement Agency (DEA), Department of Justice. The issue presented is the propriety of reimbursing an additional 1 percent real estate broker's commission to a transferred employee.

REC'D  
10010

Mr. Calvin T. Westmoreland was transferred from Washington, D.C., to Brownsville, Texas. Incident to the transfer, Mr. Westmoreland sold his condominium residence in Annandale, Virginia. He paid his broker an 8 percent commission of \$1,944, but was reimbursed 7 percent or \$1,701 by DEA. He has claimed reimbursement for \$243, representing the additional 1 percent commission.

The DEA's refusal to reimburse in excess of 7 percent was based on its informal inquiry to the Department of Housing and Urban Development (HUD) regarding the customary and normal real estate commission charged by brokers in the Washington, D.C., area. HUD stated that 7 percent was the normal and customary commission.

HUD-23

~~60874~~ 111601

B-196517

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724a(a)(4) (1976), which provides for reimbursement of expenses of the sale of the residence of the employee at the old station, but limits reimbursement for brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-6.2a (May 1973), which provides in part that:

"\* \* \* A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station." (Emphasis added.)

In considering similar claims, our Office has concluded that, in accordance with FTR para. 2-6.3c, where HUD is consulted to determine what charges are customary in the locality, the information provided by HUD creates a rebuttable presumption as to the prevailing commission rate. Donald J. Jolovich, B-190902, February 14, 1978.

Mr. Westmoreland has presented as evidence a letter from his broker which states that condominium property is difficult to sell and obtain financing for in the Washington area. In addition, the letter states:

"\* \* \* It costs a great deal more money to advertise them heavily and gives an incentive to other Agents to show and sell. Therefore it is not at all unusual to charge 8% commission to sell a condo."

Mr. Westmoreland also says that his conversations with HUD reveal that no set percentages are given for any locality; only average rates are given. He also says that the decision as to what percentage was reimbursable under the FTR was arbitrary on DEA's part.

B-196517

We disagree. We have consistently held that the regulations require that the applicable commission rate is the rate generally charged by all of the real estate brokers in the area, not the rate charged by the particular broker used by the employee to sell his residence. George C. Symons, B-188527, January 26, 1978; Robert W. Freundt, B-181129, August 19, 1974. While, as Mr. Westmoreland says, it is true that only average rates are given, we would point out that the average rate is the customary commission rate generally charged by brokers in the area. Thus, DEA's use of that rate is not arbitrary but is in accordance with the FTR.

We note also that the letter from Mr. Westmoreland's broker indicates that the extra percentage gives an incentive to other agents to show and sell. We have held that where a commission rate greater than that usually charged is paid to expedite the sale of the property, there can be no reimbursement for the extra commission. George C. Symons, *supra*; David R. Hoffman, B-182431, July 14, 1975.

This case involves real estate broker's commission for the sale of a condominium and, therefore, a question could be raised as to its uniqueness. Cf. Alvin A. West, B-194668, September 17, 1979. However, we were informally advised by HUD that a survey was made on condominium brokers' fees 2 months ago and the average at that time was 6 percent. We will not, however, require that that percentage be used since DEA was advised by HUD that 7 percent was the prevailing rate at approximately the time of the sale.

Accordingly, the additional 1 percent claimed may not be reimbursed and the reclaim voucher may not be certified for payment.



Deputy Comptroller General  
of the United States