

DECISION

13522 PLM-1
Mr. Schwimer
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-195462

DATE: April 22, 1980

MATTER OF: William A. Worochock - Temporary Quarters
Subsistence Expenses and Reimbursement for
Attorney's Fees] for Purchase and Sale of
Residence

DIGEST:

1. Employee was transferred from Guam to United States and authorized 60 days of temporary quarters subsistence expenses (TQSE). He moved into temporary quarters in Guam before traveling to United States. Upon arrival in United States he went on annual leave before reporting to official duty station in New York at which time he reentered temporary quarters. Employee is only allowed to receive TQSE for 60 consecutive days once entitlement to TQSE starts. However, he may opt to claim TQSE beginning at time he entered temporary quarters in Guam or when he reported to official duty station in New York.
2. Employee incurred attorney fees incident to both the purchase and the sale of a residence before April 27, 1977, the date of decision in George W. Lay, 56 Comp. Gen. 561. In connection with the residence purchase in 1974, he may not be reimbursed for lump-sum fee paid to his attorney. In connection with sale of residence in 1976 employee may not be reimbursed for services performed by his attorney which included correspondence with bank, broker, client and purchaser, since services were of an advisory nature. In both cases, the fees paid are not reimbursable for settlements prior to Lay decision.
3. Employee may be reimbursed for bank's attorney's fees incident to purchase of his residence in 1974 since those fees were for the review of documents at closing, were reasonable for the locality involved, and purchaser was required to pay them.

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This action is in response to the appeal of Mr. William A. Worochock of our Claims Division Settlement Certificate, Z-2621233, dated May 29, 1979, denying his claim for additional temporary quarters subsistence expenses (TQSE) and attorney's fees for the purchase and sale of his residence in New York. Our Claims Division found that Mr. Worochock had been overpaid \$728.85 in TQSE and that he was overpaid \$641 in real estate expenses for the purchase and sale of his home in New York.

Mr. Worochock, a civilian employee of the Department of the Navy, was transferred from Guam to New York in 1974, and was authorized TQSE for a period not to exceed the 60 day maximum. In Guam, Mr. Worochock secured temporary quarters from July 10 through 25, 1974, and then he traveled to the United States from July 26 to 29, 1974, at which time he went on annual leave. He reported to duty on September 2, 1974, and reentered temporary quarters until October 15, 1974. Although the Navy initially reimbursed Mr. Worochock for occupancy of temporary quarters until October 12, 1974, the Newport Navy Finance office determined that he had been overpaid and was only eligible for TQSE until September 11, 1974. That determination was sustained by our Claims Division based on regulations authorizing TQSE for a period of not more than 60 consecutive days for employees who transfer from a United States territory. See Federal Travel Regulations (FTR), para. 2-5.2b (FPMR 101-7) May 1973. *DLG 04/68 RI*

On appeal Mr. Worochock argued that he had been required to vacate his Government quarters in Guam and that when he arrived in the United States he had not been informed that he had to use his TQSE allowance immediately. Mr. Worochock went on annual leave at his own expense and did not claim TQSE for the period between July 29 to September 2, 1974. Mr. Worochock claims that an honest mistake was made and that he should not have to pay for it.

Paragraph 2-5.2e of the FTR provides that in order to be eligible for the temporary quarters allowance, the period of use of such quarters for which a claim for reimbursement is made must begin not later than 30 days from the date the employee reported for duty at his new official station, or if not begun during this period, not later than 30 days from the date the family vacates the residence at the old official station. We have construed this regulation as giving the employee the discretion to claim the

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allowable period for occupancy of temporary quarters of his choice. Ronald H. Brown, B-193412, August 3, 1979. Therefore, Mr. Worochock had the option to claim TQSE for 60 consecutive days beginning on July 10, 1974, when he vacated his old residence, or beginning on September 2, 1974, when he reported to his new duty station. Mr. Worochock was not advised of this option when he submitted his claim for reimbursement of TQSE.

In view of the above, our Claims Division has been directed to compute Mr. Worochock's TQSE entitlement for the period from September 2 to October 31, 1974. Insofar as his entitlement for that period exceeds TQSE payable for the 60 day period beginning July 10, 1974, Mr. Worochock will be advised of the reduced amount of his indebtedness for TQSE improperly paid.

In connection with his purchase of a residence in Huntington, New York, in 1974, our Claims Division determined that Mr. Worochock was improperly reimbursed for attorney's fees totaling \$475. Of that amount, \$125 represents unitemized fees charged by the bank's attorney and \$350 represents unitemized fees charged by his own attorney.

On appeal, Mr. Worochock states that his legal expenses were reasonable and required by law. He again raised the following points concerning attorney fees. The attorney's fee of \$125 was for the Heritage Federal Savings and Loan Association's cost for having its lawyer present at the time of closing to review the documents. As to his own attorney, Mr. Worochock states that he was required by New York State law to have legal counsel at closing and, therefore, he hired his own attorney. However, he has been unable to obtain an itemization of his attorney's fees.

We find that claimant is entitled to be reimbursed for the \$125 fee he paid at settlement to the bank's attorney. We have allowed reimbursement where an employee was required to pay the bank's attorney's fee for review of documents at settlement. B-183160, November 17, 1975; B-183807, August 30, 1976. Mr. Worochock was required to pay the fee for the bank's attorney which appears reasonable for the locality involved and is, therefore, an allowable expense.

Mr. Worochock is not entitled to reimbursement for his own attorney's fees. Our Office has held that the claim of a transferred

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employee for a lump-sum bill for attorney's fees incident to the sale or purchase of his residence, could not be paid absent an itemized statement since the only legal fees that may be paid are those listed in FTR, para. 2-6.2c. 54 Comp. Gen. 67, (1974); Stephen J. Petro, B-183160, November 17, 1975. Where an employee incurs fees for his own as well as the mortgagee's attorney in accordance with local custom, both fees are required to be itemized to determine whether the charges are duplicative or for services for which reimbursement is not authorized. B-174964, September 21, 1972. This general rule was changed by our Office to permit reimbursement of unitemized but customary legal fees, but the change applies only to real estate transactions closed on or after April 27, 1977. George W. Lay, 56 Comp. Gen. 561 (1977) and Donald Mitgory, B-190616, March 22, 1978.

Mr. Worochock states that New York law required each buyer to be represented by legal counsel. We are not aware of any New York State law that requires a seller or buyer of real estate to be represented by legal counsel, and since Mr. Worochock has failed to provide a reference to any such law, this argument does not provide a basis for reimbursement of his claim for attorney's fees for the purchase of his residence in New York in 1974.

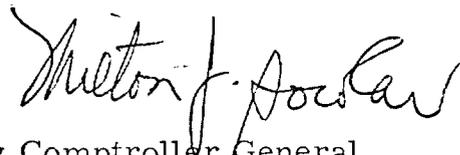
Mr. Worochock also claims reimbursement for attorney's fees for the sale of his residence in New York in December 1976. The attorney's fees were itemized in the following manner: review of title search results and preparation of required affidavits \$25; preparation of deeds, affidavits and power of attorney at closing since seller was not in area at closing \$150; correspondence regarding realtor's commissions and broker's agreement \$25; correspondence regarding termite inspection and obtaining certificate of occupancy which was needed to sell premises \$50; correspondence with attorney for purchasers, realtor and client with reference to contract preparation \$175; and correspondence with bank to pay off existing mortgage \$25. The Navy reimbursed Mr. Worochock \$175 for the first two listed items but refused to reimburse Mr. Worochock for the other services because they were advisory in nature.

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The settlement date of the sale occurred prior to April 27, 1977, and hence is subject to the interpretation applied by this Office prior to that date. George W. Lay, supra.

Based on our review of the itemization furnished by Mr. Worochock's attorney we concur with the Navy's determination that all of the services which were not reimbursed were advisory or representative in nature and not within the class of service contemplated by the cited regulation. See Francis E. Mucklin, B-186290, September 30, 1976, and 57 Comp. Gen. 669 (1978). Most of these services involved correspondence with the bank, client and broker to determine Mr. Worochock's rights and liabilities. Mr. Worochock's claim for fees for those services that are reimbursable under the regulations, including actual preparation of documents, has been paid.

In conclusion, the action taken by the Claims Division regarding real estate expenses for the purchase and subsequent sale of Mr. Worochock's residence is upheld, except that \$125 is allowable for legal fees in connection with the purchase. Our Claims Division will recompute Mr. Worochock's claim for TQSE based on this decision.



Acting Comptroller General
of the United States