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DECISION



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

FILE: B-197893

Request For

DATE: June 4, 1980

MATTER OF: Mathew Biondich - Reimbursement of Real Estate Sales Commission

DIGEST: Employee of Mine Safety and Health Administration who transferred from Utah to Colorado may not be reimbursed for sales commission paid to unlicensed individual in connection with sale of residence at former permanent duty station. Reimbursement of broker's fee may be allowed only where employee is legally liable for fee and Utah law not only prohibits any person from acting as real estate broker or salesman without first obtaining a license but also prohibits unlicensed person from bringing action for recovery of fee.

This action is in response to a letter dated February 13, 1980, from Sandra L. Schmick, Authorized Certifying Officer, Mine Safety and Health Administration, Department of Labor. Ms. Schmick requests our advance decision on the reclaim voucher of Mr. Mathew Biondich for reimbursement of a sales commission he paid in connection with the sale of his residence at his former permanent duty station.

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Mr. Biondich was transferred from Price, Utah, to Delta, Colorado, in June 1977. He reports that after he unsuccessfully attempted to sell his home himself, he listed it with two realty firms, and neither was able to locate a buyer. Mr. Biondich also states that he told the District Administrative Officer of the problems he had encountered in trying to sell his home and asked whether he could be reimbursed for a sales commission paid to an individual who was not a realtor. Mr. Biondich claims that the Administrative Officer informed him he could receive reimbursement for a commission paid to a non-realtor but that the individual might encounter difficulties if a realtor in Utah discovered the transaction.

Mr. Biondich states that subsequent to this conversation the individual he was referring to sold his

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house and closing took place on September 1, 1978. Mr. Biondich submitted a claim for reimbursement of \$2,100 which was supported by a copy of a cashier's check and a receipt from the individual who sold the house. The Mine Safety and Health Administration denied his claim on the basis of certain Comptroller General decisions which hold that reimbursement for a broker's fee is allowed only where the employee is legally liable for the fee.

The statutory provision which governs reimbursement of employees' relocation expenses, 5 U.S.C. 5724a(a)(4), authorizes reimbursement of those expenses which employees are required to pay. Chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7) (May 1973), which was issued pursuant to that statute, contains similar language. In accordance with those provisions we have held that a broker's commission may be reimbursed only where the employee has incurred a legally enforceable debt. John F. Curley, B-190107, February 8, 1978; and B-165747, January 7, 1969.

In determining whether a debt is legally enforceable in this type of situation we look to the State law. Under Utah law sale of property by an unlicensed individual does not create an enforceable right to a commission. Title 61, chapter 2, Utah Code Annotated 1953, as amended by Session Laws of Utah 1963-69, governs the enforceability of debts for real estate brokers' commissions. Section 61-2-1 provides as follows:

"License Required

"It shall be unlawful for any person, co-partnership or corporation to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a license under the provisions of this chapter."

Section 61-2-18 provides as follows:

"Unlicensed Broker--Action for Recovery of Compensation Prohibited - Action by Real Estate Salesman--

"(a) No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of commission, a fee, or compensation for any act done or service rendered the doing or rendering of which is prohibited under the provisions of this act to other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.

"(b) No real estate salesman shall have the right to institute suit in his own name for the recovery of a fee, commission, or compensation for services as a real estate salesman except where the action is against the broker but any such action shall be instituted and brought by the broker with whom the salesman is connected."

In light of the above it appears that the Mine Safety and Health Administration was correct in denying Mr. Biondich's claim. Mr. Biondich contends, however, that the cited Comptroller General decisions do not apply to his situation because he acted with the advice of his Administrative Officer. While it is unfortunate that Mr. Biondich may have been erroneously led to believe the commission would be reimbursable, it is a well settled rule of law that the Government is neither bound nor estopped by the erroneous advice and authorization of its officials, agents, or employees, even though committed in the performance of their official duties. William R. Walberg, 58 Comp. Gen. 539 (1979); and Michael W. Matura, B-195471, October 26, 1979.

Accordingly, Mr. Biondich's reclaim voucher may not be certified for payment.


For the Comptroller General
of the United States