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DECISION



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

FILE: B-198940

DATE: July 29, 1980

MATTER OF: Allan R. Irwin - Reimbursement for Real Estate Expenses

DIGEST: Employee, transferred from Griffiss AFB, New York, to Randolph AFB, Texas, was unable to sell his house at his old duty station and deeded it back to mortgagee bank. Employee is not entitled to broker's fee and legal expenses he would have incurred had he sold his house nor may he be reimbursed for difference between purchase price and amount of outstanding mortgage loan for reimbursement is authorized only for expenses which employee actually incurs and reimbursement for losses due to failure to sell residence are specifically prohibited by 5 U.S.C. 5724a(a)(4).

This decision is in response to a request from Mr. Allan R. Irwin, an employee of the Department of the Air Force, for reconsideration of his claim for certain real estate expenses, which was denied by our Claims Division on April 10, 1980.

By orders dated August 8, 1977, Mr. Irwin was transferred from Griffiss Air Force Base, New York, to Randolph Air Force Base, Texas, with a reporting date on or about September 12, 1977. He put his residence, located in Boonville, New York, on the market immediately. Mr. Irwin had difficulty locating a buyer so he requested and received an extension of the time limitation for real estate transactions to September 30, 1979. Unable to sell his home, Mr. Irwin deeded it back to the Rome Savings Bank, the mortgagee.

By a letter dated September 20, 1979, Mr. Irwin requested reimbursement from the Air Force in the amount of \$3,434. He claimed he was entitled to this amount because if he had sold his house at its FHA appraised value of \$48,900, the broker's fee would have been

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6 percent of that amount or \$2,934, and legal and other expenses would have been approximately \$500. Mr. Irwin's claim was denied by the Air Force, and on February 20, 1980, he wrote a letter stating his desire to appeal that decision to the General Accounting Office. In that letter, however, he requested reimbursement of \$2,900, which is the difference between the purchase price of \$42,500 and the outstanding mortgage of \$39,600.

Mr. Irwin may not be reimbursed for the broker's fee and legal expenses that he would have incurred had he sold his house. Paragraph 2-6.3a of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) which is among the regulations implementing 5 U.S.C. 5724a, which contains the statutory provisions allowing transferred employees reimbursement of real estate expenses, provides that amounts claimed must be supported by documentation showing that the expense was in fact incurred and paid by the employee. Paragraph Cl4004 of the Joint Travel Regulations (JTR) contains nearly identical language.

Nor may Mr. Irwin be reimbursed for the loss he suffered when he deeded his house back to the Rome Savings Bank. Reimbursement for losses on the sale of a residence are specifically prohibited by 5 U.S.C. 5724a(a)(4). FTR paragraph 2-6.2e and JTR paragraph Cl4002-1e, which implement that provision, provide that losses due to failure to sell a residence at the old duty station at the price asked, or at its current appraised value, or at its original cost, or due to failure to buy a dwelling at the new duty station at a price comparable to the selling price of the residence at the old duty station, and any similar losses, are not reimbursable.

In his letter appealing our Claims Division's settlement, Mr. Irwin claims that the transfer of the deed was effective on September 18, 1979, several days before the expiration of the time limitation on September 30, 1979. He also expresses the opinion that a waiver could be granted to allow payment of the \$2,900 loss that he incurred as a result of his transfer.

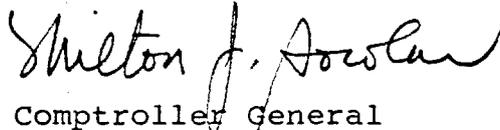
While it is true that Mr. Irwin signed the deed on September 18, 1979, it appears from the file that he sent

it to the Rome Savings Bank from his home in San Antonio, Texas, under cover of a letter dated September 30, 1979. In addition, the file reveals that by correspondence dated September 26, 1980, Mr. Irwin requested a 2-month extension of the time limitation for real estate transactions. He stated that, "I just received my first Purchase Offer on the house on 21 Sep 79. * * * I had planned on deeding the house back to the bank and filing a claim against the government for reimbursement of my expenses. I will hold this in abeyance until I find out if my prospective buyer can qualify for the loan or not."

Mr. Irwin has requested that the regulations be waived to allow his claim since it arose due to his employment with the Government, and the intent of the JTR is to reimburse employees for expenses associated with moving from one Government position to another.

The Federal Travel Regulations were made pursuant to law and have the force and effect of law. Therefore, the requirements of those regulations may not be waived. Furthermore, there is no authority for an agency to make reimbursement to an employee beyond that authorized by law.

Thus, Mr. Irwin's claim may not be allowed and we hereby affirm the settlement of our Claims Division.



For The Comptroller General
of the United States