

DECISION



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PLM-1
Schwimer.

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

FILE: B-200207

DATE: September 29, 1981

MATTER OF: Steven M. Calhoon - Real Estate Expenses -
Attorney Fees

DIGEST: Agency denied employee's claim for reimbursement of attorney fees on sale of residence since fees were excessive because employee sold his residence by a "land sale contract" whereby the purchaser takes equitable title in exchange for installment payments and seller retains legal title as security. We have held that expenses incurred incident to land sale contracts are reimbursable as long as the fees are within the customary range for such services. However, HUD area office advised us that the fees claimed were excessive for similar services rendered in that locality and therefore employee should only be reimbursed within the customary range of fees.

The National Treasury Employees Union (NTEU) has submitted the claim of Mr. Steven M. Calhoon for attorney fees incident to the sale of his residence. The issue presented is whether an employee may be reimbursed for attorney fees which are higher than what is customary in the normal transaction because the employee sold his residence by a land sale contract to satisfy the changing real estate environment. The answer is that the employee may be reimbursed for such expenses as long as the fee is customary for the services rendered.

This decision has been handled under our procedures at 4 C.F.R. Part 22 (1981) (originally published as 4 C.F.R. Part 21 at 45 Fed. Reg. 55689-92, August 21, 1980), and in this regard, we have received comments on this matter from the Internal Revenue Service (IRS).

Mr. Steven M. Calhoon, an employee of the Internal Revenue Service, (IRS) was transferred from Mundelein, Illinois, to Green Bay, Wisconsin, on January 14, 1980. Mr. Calhoon put his house on the market, but due to high

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interest rates he was unable to sell his home by traditional means. Therefore it became necessary to try a new and creative method to satisfy the changing real estate environment. Mr. Calhoon was forced to finance his own home and he sold his residence by a land sale contract (contract for deed) on February 28, 1980. By this arrangement, equitable title is conveyed to the purchaser, who agrees to pay the purchase price in installments, with legal title remaining with the seller as security. As a result of this method for selling his home, Mr. Calhoon incurred legal fees of \$750.

On or about March 3, 1980, Mr. Calhoon submitted a voucher in which he claimed, among other costs, \$750 for attorney fees. By memorandum dated March 20, 1980, the IRS denied reimbursement for the attorney fees since the amount claimed exceeded the amount customarily charged in the locality. The IRS stated that the maximum reimbursable amount for attorney fees in the Chicago area at the time of the sale of the residence was \$250. A supplemental voucher was submitted in which Mr. Calhoon reclaimed the \$750 attorney fee. The IRS again rejected this claim in a May 2, 1980, memorandum.

Both the NTEU and the IRS cite the case of George W. Lay, 56 Comp. Gen. 561 (1977) in support of their respective positions. In the Lay case we revised prior decisions of our Office and allowed reimbursement of a single overall attorney fee if it is within the customary range of charges for similar services in that locality. We based our opinion on Federal Travel Regulations (FTR) para. 2-6.2(c), FPMR 101-7 (May 1973) and held that necessary and reasonable fees and costs, except fees for litigation, customarily charged incident to the purchase or sale of a residence in the locality of the transaction constitute "similar expenses" within the meaning of the regulation.

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NTEU argues that the Lay decision resulted from a recognition that real estate transactions have grown more complex. NTEU alleges that a new real estate environment required a new approach by Mr. Calhoun to sell his house and that an attorney was required to provide the necessary services of preparing and negotiating certain documents. Finally, NTEU states that the \$750 fee paid by Mr. Calhoun is reasonable and does not exceed the amount customarily charged in the area for services rendered. Therefore, NTEU argues, Mr. Calhoun should be reimbursed for the entire attorney fee.

The IRS, in rebutting NTEU's argument, raised the following two arguments. First, they argue that travel regulations and decisions of our Office allow only reimbursement of attorney fees which are necessary, reasonable, and customarily charged for services that are "customarily rendered." Therefore, IRS alleges, Mr. Calhoun's new and creative financial arrangement by its very nature did not constitute a service customarily rendered by an attorney in connection with the sale of a residence.

Second, IRS states that Mr. Calhoun required additional services of an attorney due to market conditions at the time of the sale of his residence. IRS then pointed out that our Office held in the Lay decision that costs associated with incompleting contracts are analogous to losses due to market conditions which are not reimbursable under 5 U.S.C. § 5724a(a)(4). Accordingly, IRS contends that the disallowance of the additional expenses incurred by Mr. Calhoun should be sustained.

The fact that Mr. Calhoun sold his residence via a land sale contract does not bar reimbursement of attorney fees. Attorney fees incurred incident to land sale contracts are eligible for reimbursement under FTR para. 2-6.2c. See Philip G. Simonski, B-193945, April 29, 1980, B-174644, April 20, 1972, and B-165146, September 16, 1968.

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In Philip G. Simonski, supra, we allowed reimbursement for attorney fees of \$935.28 which an employee incurred since the sale of his residence involved both a "land sale contract" and an encroachment which could have clouded the employee's title. Reimbursement for both was allowed since FTR para. 2-6.2e does not require the type of transaction to be customary for that locality. Rather, it requires the services in question to be customarily paid by the seller in that type of transaction, and that the amount claimed not exceed the amount customarily charged for those services in that locality. See also, William I. Massengale, B-185863, August 25, 1976.

Therefore contrary to the agency's first argument, the fact that it is not customary for an employee to sell his residence by a land sale contract does not bar reimbursement of attorney fees, provided that the costs are within the customary range of charges for such services within the locality of the residence transaction.

IRS' second argument, that excess attorney fees are not reimbursable because the excess is analagous to losses due to market conditions is also contrary to pertinent regulations and our decisions in this area.

5 U.S.C. § 5724a(a)(4) (1976) states in pertinent part:

"* * * However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence * * *."

The regulation promulgated to implement this section is FTR para. 2-6.2e which provides that:

"Losses due to prices or market conditions at the old and new posts of duty. Losses due to failure to sell a residence at the old official

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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 official station at a price comparable to the selling price of the residence at the old official station, and any similar losses, are not reimbursable."

Both the statute and regulation bar reimbursement for losses incurred because of a change in the price or value of the residence which is attributable to market conditions. They do not preclude reimbursement of otherwise allowable expenses simply because the amount claimed may have been affected by market conditions.

Thus, in the Lay case, supra, the analogy to market conditions was with reference to an item which was not otherwise allowable. See also, Robert A. Benson, B-184869, September 21, 1976, Frank I. Belecky, B-185825, April 22, 1976. In those cases we also denied reimbursement based on the fact that it was the intent of the FTR to only reimburse one set of authorized expenses relating to one sale of one residence. We held that reimbursing an employee for attorney fees incurred when a contract was not completed leads to duplicate expenses. See Robert A. Benson, supra. Therefore in these incompleted contract cases, reimbursement for attorney fees was not denied solely because they were analogous to losses due to market conditions.

Mr. Calhoon's case is distinguishable from the incompleted contracts cases cited above. Mr. Calhoon is not requesting reimbursement of duplicate costs but instead his case involves one set of authorized expenses incurred to sell his residence. Also, in the incompleted contracts cases, the attorney fees which were not reimbursed were for services which did not directly lead to the sale or purchase of a residence. Here, Mr. Calhoon's attorney fees were incurred in the actual sale of his residence.

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Based on the above discussion, we hold that an employee may be reimbursed for attorney fees incurred in the sale of his residence by a land sale contract even if he entered into the land sale contract because of market conditions.

The remaining issue is whether the \$750 claimed by Mr. Calhoon is within the customary range of charges for attorney fees in that area as required by FTR para.2-6.2c. In making a determination on this issue, we sought the assistance of the HUD area offices in Chicago, Illinois, as suggested by FTR para. 2-6.3c. They reported that the maximum customary charge for a land sale contract was \$500 at the time Mr. Calhoon sold his residence.

Therefore, we hold that Mr. Calhoon necessarily incurred the attorney fees in question, but that the fees were not within the customary range of charges for the services rendered. Accordingly, Mr. Calhoon may be reimbursed \$500 for attorney fees incurred in the sale of his residence.



Acting Comptroller General
of the United States