

DECISION



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

FILE: R-205584

DATE: August 2, 1982

MATTER OF: Judi A. Williams - Real Estate Broker's
Commission - Document Preparation Fee

- DIGEST:**
1. Transferred employee of the Department of the Air Force seeks reimbursement of the 7 percent real estate broker's commission she paid in connection with the sale of her residence at her old duty station in Vacaville, California. Based upon para. C14002(1)(a), Volume 2, JTR, the Air Force determined that 6 percent was the prevailing commission rate customarily charged in Vacaville and reimbursed the employee at that rate. The FTR requires that the applicable commission rate is the rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee. If employee, to expedite sale, pays commission rate greater than that usually charged, she cannot be reimbursed for the extra commission. Her claim is denied.
 2. Loan document preparation fee required to be paid by transferred employee in selling residence at old duty station may be reimbursed where FHA guaranteed loan is involved and FHA regulations prohibit buyer from paying such fee. Payment of fee by employee-seller is considered to be customary in Vacaville, California, the locality of the old residence.

The issues presented in this case are whether a transferred employee is entitled to reimbursement of the 7 percent real estate broker's commission instead of a 6 percent commission reimbursed by the agency, and a loan document preparation fee she paid in selling her residence at her old duty station. For the reasons hereafter stated, she is not entitled to reimbursement of the broker's commission of 7 percent and is entitled to reimbursement of the loan document preparation fee.

At the request of the Per Diem, Travel and Transportation Allowance Committee, Department of Defense, we are providing an advance decision on the claim of Ms. Judi A. Williams, a civilian employee of the Department of the Air Force, for reimbursement of the real estate broker's commission she paid in connection with a permanent change of duty station. The request for advance decision was made under authority of 31 U.S.C. § 74 (1976) and was approved by the Committee as required by Department of Defense Directive 5154.20, July 28, 1978. Ms. Williams' claim was assigned PDTATAC Control No. 81-34.

Ms. Williams was officially transferred from Travis Air Force Base, California, to Wright-Patterson Air Force Base, Ohio, effective January 17, 1980. In connection with this transfer Ms. Williams sold her old residence in Vacaville, California, on May 12, 1981. Two expense items from this sale are placed in issue here, namely, the real estate broker's commission and the loan document preparation fee.

REAL ESTATE BROKER'S COMMISSION

First, Ms. Williams seeks reimbursement of the full 7 percent real estate broker's commission she paid in selling her Vacaville residence. The Staff Judge Advocate at Travis AFB, citing controlling entitlement authorities set out at paragraph C14002(1)(a) of Volume 2, Joint Travel Regulations (JTR), determined that the prevailing real estate brokers' commission for Solano County (including Vacaville) was 6 percent, and as such her entitlement was limited to \$5,700.15. Mr. Williams claims she is entitled to the additional 1 percent commission she paid.

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 an employee at the old station, but limits reimbursement for brokerage fees to the amount customarily charged in the locality where the residence is located. This provision has been implemented by the Federal Travel Regulations FPMR 101-7 (May 1973) (FTR), in paragraph 2-6.2a which provides:

"Broker's Fees or Real Estate Commission.

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 duty station. No such fee or commission is reimbursable in connection with the purchase of a home at the new duty station."

A similar provision applicable to civilian employees of the Department of Defense by paragraph C14002(1)(a) of Volume 2, JTR.

In addition, paragraph C14004(3)(b) of Volume 2, JTR, provides that agencies may obtain technical assistance in determining the reasonableness of an expense incurred in a real estate transaction, including a broker's fee, from the local insuring office of the Department of Housing and Urban Development (HUD) serving the area in which the expense occurred. In processing the claim under these regulations, the Air Force determined that 6 percent was the prevailing real estate brokers' commission rate, in Solano County, including Vacaville, and that a 6 percent commission was the proper rate for reimbursement. Calvin T. Westmoreland, B-196517, February 19, 1980; Donald J. Jolovich, B-190902, February 14, 1978.

Ms. Williams contends that the rates for real estate sales commissions in the area of Vacaville fluctuate between 3 and 10 percent due to prevailing economic conditions and the marketability of a particular property. In support of her contention Ms. Williams obtained documentation and guidance from her own broker, two other escrow companies in Vacaville, and the California State Board of Realtors. This information, combined with attendant difficulties in obtaining a final purchaser, is offered in support of Ms. Williams' contention that the 7 percent broker's commission "falls within the realm of normalcy prescribed by the Joint Travel Regulation and was a necessary expense for selling my home."

We do not agree, and must deny this portion of Ms. Williams claim. By showing that real estate commissions paid in the area ranged from 3 to 10 percent, and without showing that any rate other than 6 percent was dominant, Ms. Williams has not rebutted the presumption established under the JTR that 6 percent was the prevailing brokers' commission rate in the Vacaville locality.

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. Thus, it is clear that the commission rate reimbursable under these provisions, "the rates generally charged", is an area average rate which is not rendered invalid by the fact that some brokers charge a higher or a lower commission rate. Doss H. White, Jr., B-197908, April 21, 1980. Further, these provisions do not allow reimbursement for sales commissions above the general area rate, even where the higher commission rate was needed to expedite the sale. Calvin T. Westmoreland, supra.

LOAN DOCUMENT PREPARATION FEE

Ms. Williams also seeks reimbursement of the loan document preparation fee of \$60 which she paid in selling her residence. The Staff Judge Advocate at Travis AFB determined that the fee is not a normal closing cost for a seller in the Vacaville locality and thus was not reimbursable under paragraph C14002 of Volume 2, JTR.

Under 5 U.S.C. § 5724(a)(4)(1976), paragraph 2-6.2c of the FTR and paragraph C14002(1)(c)(3) of the JTR, the seller may pay and be reimbursed for certain expenses usually paid by the purchaser, provided that such expenses are customarily paid by the seller in that locality and then only to the extent they do not exceed the amount customarily paid in the locality.

Ms. Williams contends that the document was a beneficiary statement prepared in her behalf and necessary to

complete the loan. She points out that escrow instructions provided by the buyers' mortgage company precluded payment of the fee by the buyer. In this regard we independently contacted the Security Mortgage Group, of San Rafael, California, for an explanation of the entry on the escrow instructions to the First American Title Company dated May 8, 1981: "Document Preparation Fee (Cannot be paid by Buyer)". We were advised that Federal Housing Administration regulations prohibit the buyer from paying the document preparation fee and therefore the seller must pay the fee. In their opinion, since the loan here was guaranteed by the FHA and payment thereof by the buyer is prohibited, the payment made by the seller is customary.

In our decision James C. Steckbeck, B-196263, February 13, 1980, we stated that, in determining whether the seller or purchaser customarily pays the particular real estate expense in question, employing offices should obtain technical advice from the local or area HUD office. The record does not disclose that Air Force officials contacted the local insuring office of HUD concerning this interpretation of the loan document preparation fee. We therefore informally requested HUD's opinion in the matter. We have been advised that the practice of the seller paying the loan documentation fee is customary in the circumstances of Ms. Williams' case. Inasmuch as the loan to Ms. Williams was guaranteed by the FHA and FHA regulations prohibit the buyer from paying the loan document preparation fee, the payment made by the seller would be customary in the Vacaville area. William I. Massengale, B-185863, August 25, 1976.

Accordingly, the claim by Ms. Williams for additional reimbursement of the real estate broker's commission at the rate of 7 percent, instead of the 6 percent commission previously reimbursed by the Air Force, may not be certified for payment. However, the loan document preparation fee in the amount of \$60 may be certified for payment.

Milton J. Fowler
for Comptroller General
of the United States