



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Guenther Moehrke - Relocation Expenses - Escrow Closing Fee -
Title Insurance
File: B-221059
Date: August 18, 1986

DIGEST

1. A transferred employee claims expenses for an escrow closing fee incident to his purchase of a residence at his new official duty station. His agency denied the claim based on erroneous United States Department of Housing and Urban Development (HUD) information on the local customs. Based on independent inquiry to the local HUD office, we allow the claim as being consonant with the local custom and within the local customary amount.
2. A transferred employee claims an expense for title insurance incident to his purchase of a residence at his new official duty station. His agency denied the claim because it was owner's title insurance and also based on erroneous United States Department of Housing and Urban Development (HUD) information on the local customs. While Federal Travel Regulations (FTR) para. 2-6.2d(2)(a) generally prohibits reimbursement of title insurance obtained primarily for the protection of the employee, FTR para. 2-6.2d(1)(i) allows reimbursement if it is a prerequisite to the financing or the transfer of property. Here, a portion of the owner's title insurance expense was a prerequisite to the financing. Based on independent inquiry to the local HUD office, we allow this portion of the claim as being consonant with the local custom and within the customary amount.

DECISION

Colonel M. S. Sirkis, Director, Per Diem, Travel, and Transportation Allowance Committee (PDTATAC), United States Department of Defense, has transmitted to us a request for an advance decision on the claim of Mr. Guenther Moehrke (PDTATAC Control No. 85-35). The claim is for the costs of an escrow closing fee and title insurance incurred in purchasing a residence incident to a transfer. The issue is whether the costs of the escrow closing fee and the title insurance are reimbursable in a sale-by-owner transaction. We conclude that these costs are reimbursable to the extent they do not exceed the amounts customarily paid in the locality of the residence.

BACKGROUND

Mr. Guenther Moehrke, an employee of the United States Air Force (Air Force), relocated in August 1984, incident to a transfer from Andrews Air Force Base, Washington, D.C., to Hill Air Force Base, Utah. He purchased a residence in Layton, Utah, in a sale-by-owner transaction. He incurred expenses of \$62.50 for an escrow closing fee and \$323 for title insurance. The Air Force denied his claim for reimbursement of these expenses in reliance upon advice from the local United States Department of Housing and Urban Development (HUD) office that these expenses are not customarily paid by the buyer of a residence at this new official duty station. Also, the Air Force believed that reimbursement of owner's title insurance was specifically prohibited by regulation.

Mr. Moehrke contends that what is customary in his situation should be determined in the context of sale-by-owner transactions, not real estate agent transactions. He states--in reliance upon advice from his title company and a realtor, an informal survey he conducted of local title companies, and his personal experience--that it is local practice for the buyer and seller in a sale-by-owner transaction to split the closing costs. Regarding the title insurance, he states--in reliance upon advice from a realtor--that there is no standard practice as to who pays for it in sale-by-owner transactions.

OPINION

A transferred Federal employee may be reimbursed certain expenses related to the sale of the residence at his old official duty station and the purchase of a residence at his new official duty station as provided by 5 U.S.C. § 5724a (1982), and the implementing regulations found in Chapter 2, Part 6, of the Federal Travel Regulations (FTR) (Supp. 1, September 28, 1981; Supp. 4, August 23, 1982; and Supp. 10, March 13, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Common to the regulations governing reimbursement of the two items claimed here is the concept of "local custom." Expenses are reimbursable to the employee, if they are customarily paid by the buyer of a residence at the new official duty station, or the seller at the old official duty station, to the extent they do not exceed amounts customarily charged in the locality of the residence. Escrow closing fees are covered under the general provisions of FTR para. 2-6.2f as "other expenses of the sale and purchase of residences." Title insurance is covered under the specific provisions of FTR para. 2-6.2d(1)(h).

Under FTR para. 2-6.3c, agencies are advised that they may obtain technical assistance from local HUD offices in determining whether the buyer or seller customarily pays the particular expenses and

whether the amounts claimed exceed the amounts customarily charged in the locality of the residence. We give great weight to information provided by HUD. Alan R. Fetter, B-218955, April 11, 1986. Since it is unclear from the record what the basis for HUD's advice to the Air Force was, we made independent inquiries about the local customs to the local HUD office for Layton in Salt Lake City, Utah. Our determinations are based on the information we received in response.

Regarding Mr. Moehrke's escrow closing fee, we were informed--contrary to what the Air Force had been informed by HUD--that the local custom for real estate agent-handled transactions would have been for the buyer and the seller to have split the escrow closing fee. Therefore, there is no practical difference in Mr. Moehrke's situation between what he contends is the local custom for sale-by-owner transactions and what is the local custom for real estate agent transactions. Mr. Moehrke's \$62.50 escrow closing fee claim was based on splitting the full fee with the seller. We were advised by HUD that the local customary escrow closing fee would have been between \$150 and \$250. Accordingly, Mr. Moehrke may be reimbursed the full \$62.50 escrow closing fee that he claimed.

Regarding Mr. Moehrke's title insurance, the Air Force observed that reimbursement of owner's title insurance is specifically prohibited by regulation (FTR para. 2-6.2d(2)(a)) and that the local custom is for the seller to furnish title insurance to the buyer. We agree with the Air Force's first observation if the insurance is obtained primarily for the protection of the employee. However, consonant with the "local custom" provisions considered above, owner's title insurance is reimbursable, if it is a prerequisite to the financing or the transfer of property, or if the cost of the owner's title insurance policy is inseparable from the cost of other insurance that is a prerequisite to the financing or the transfer of property. FTR para. 2-6.2d(1)(1).

We also made an inquiry about Mr. Moehrke's claim for the title insurance to the lending institution where Mr. Moehrke acquired the second mortgage on the residence he purchased. We were informed that they require the purchase of title insurance as a prerequisite to providing all second mortgages. We were advised by the local HUD office--again, contrary to what the Air Force had been informed by HUD--that this was the local custom; though this information was based on first mortgages, they saw no reason that this would not also apply to second mortgages. Since the general local custom supports the allowability of Mr. Moehrke's category of claim, it is unnecessary to address his assertion that there is no local custom for sale-by-owner transactions.

Mr. Moehrke claimed \$323 for his title insurance, though he informed us that in cooperation with the lending institution he acquired a title insurance policy based on the full purchase price of the residence (\$72,000) for his own protection--well beyond the title insurance required by the lending institution based on the amount of Mr. Moehrke's second mortgage (\$26,500). We were advised by the local HUD office that for a mortgage in the amount of Mr. Moehrke's, the average local customary cost of the title insurance would have been \$148, which the lending institution agreed would have been approximately the cost of the title insurance required by it. Accordingly, Mr. Moehrke may only be reimbursed \$148 of the \$323 that he claimed.

for 
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