



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Louis L. Berthold
File: B-222121
Date: September 19, 1986

DIGEST

An employee of the Department of Agriculture who was transferred to a new permanent duty station was unable to sell his residence at the old duty station and deeded the residence back to the mortgage holder. The employee was required to pay a \$5,000 charge to the mortgage holder in connection with the transaction. Such payment was essentially a loss sustained by the employee due to market conditions, and this is not a reimbursable relocation expense under the applicable statute and regulations.

DECISION

This action is in response to a request for an advance decision from the Department of Agriculture regarding the relocation expenses of Louis L. Berthold.^{1/} It is our view that under the circumstances presented the employee is not entitled to reimbursement of the amount he lost in the transaction due to market conditions, but that he may be allowed reimbursement of his expenses for legal services related to the transfer of title.

BACKGROUND

Mr. Louis L. Berthold, an employee of the Agricultural Marketing Service, U.S. Department of Agriculture, was transferred in 1984 from New Orleans, Louisiana, to Kansas City, Missouri. In connection with the transfer, he attempted to sell his residence in Louisiana on the open real estate market, but he was unable to do so. As a result, he deeded the residence back to the mortgage holder under a "Dation En Paiement" agreement under which he paid the mortgage holder \$5,000. He also paid \$200 in legal fees for the

^{1/} The request was made by W. D. Moorman, Authorized Certifying Officer, National Finance Center, Department of Agriculture.

services of his attorney in the transaction. He has claimed these amounts as relocation costs incurred for the sale of his old residence.

The agency questions whether the claimed expenses are reimbursable to the employee.

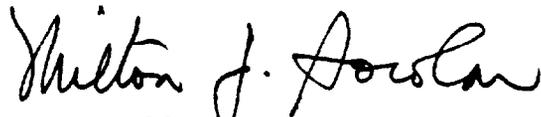
ANALYSIS AND CONCLUSION

Authority for reimbursement of relocation expenses for transferred employees is found in 5 U.S.C. § 5724a. The provision allows reimbursement of expenses "of the sale of the residence * * * of the employee at the old station." Implementing regulations are contained in the Federal Travel Regulations (FTR) para. 2-6.1 et seq., incorp. by ref., 41 C.F.R. § 101-7.003. The regulations provide reimbursement for transferred employees for expenses incurred in connection with the sale of a residence, including legal fees and related expenses. However, losses due to prices or market conditions are not reimbursable. 5 U.S.C. § 5724a(a)(4); FTR para. 2-6.2.

In the present case, the employee claims \$5,000 as reimbursement of the amount he paid to the holder of his mortgage under a "Dation En Paiement" agreement, which under Louisiana law, is a "giving in payment" of an amount by a debtor to a lender as an act of accord and satisfaction to extinguish the debt. See Bordes v. Bordes, 297 So.2d 512 (1974). The payment was not a fee for the performance of services related to the transfer of title to the mortgage holder, but was instead a loss incurred due to market conditions. Thus, the \$5,000 payment is not reimbursable under 5 U.S.C. § 5724a(a)(4) and the Federal Travel Regulations, and the claim for that amount is denied. Compare George W. Lay, 56 Comp. Gen. 561, 566 (1977).

With regard to the employee's claim for reimbursement of legal fees in the amount of \$200, FTR para. 2-6.2c allows reimbursement for legal expenses incurred in connection with the sale or purchase of a residence to the extent they are within the amounts customarily charged in the locality. This provision specifically prohibits reimbursement of legal fees which are the costs of litigation. However, the fees involved here appear to be those involved with preparation of conveyance of the property rather than litigation costs, even if the conveyance was made to forestall foreclosure on the property. Thus, to the extent they do not exceed amounts customarily charged in the locality, the legal fees and costs may be reimbursed to the employee. Compare John C. Bisbee, B-220736, April 10, 1986, 65 Comp. Gen. ____.

The voucher and related documents are returned for further processing consistent with the conclusions reached here.

for 
Comptroller General
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