



The Comptroller General
of the United States

Washington, D.C. 20548

Subject: B.M. II

Decision

Matter of: Barbara H. Burr

File: B-223907

Date: March 9, 1987

DIGEST

An employee of the Department of Labor was transferred from North Platte, Nebraska, to St. Louis, Missouri. She was unable to sell her residence at her old duty station. She defaulted on the mortgage payments, and the mortgage holder initiated foreclosure proceedings. She hired an attorney who settled the foreclosure on the residence through an agreement in which the mortgage holder took title to the residence and canceled the mortgage in exchange for payment of overdue interest. The employee claims reimbursement of the attorney fees and the interest payment on the basis that these were real estate expenses necessarily incurred on account of her transfer from Nebraska to Missouri. Her claim is denied, since the attorney fees were litigation costs for services to settle a court suit and the Federal Travel Regulations prohibit reimbursement of litigation costs, as well as interest on loans.

DECISION

In this decision we deny reimbursement of attorney fees as real estate expenses for the sale of the residence at the old duty station of Ms. Barbara Burr, an employee of the Department of Labor.^{1/} The attorney fees for settlement of a court suit in foreclosure proceedings instituted by the mortgage holder were litigation costs, reimbursement of which is prohibited by the Federal Travel Regulations. Reimbursement of overdue interest paid under the settlement agreement is also unauthorized.

BACKGROUND

Ms. Burr was transferred from North Platte, Nebraska, to St. Louis, Missouri, in April 1982. She and her husband were unable to sell their residence in North Platte within the

^{1/} The Assistant Secretary for Administration and Management, Department of Labor, requested our decision.

038228 / 132305

prescribed period of 1 year after the transfer, but received a 1-year extension of the maximum time to sell for entitlement to reimbursement of real estate expenses. According to her, she borrowed money to continue the mortgage payments. In October 1983 she could not borrow additional funds and began negotiating a sale to the mortgage holder at a purchase price equal to the loan balance, which was less than the appraised value of the home. She then discontinued making the monthly mortgage payments. The mortgage holder terminated negotiations for the purchase, however, and then initiated foreclosure proceedings before a local court.

Ms. Burr hired an attorney to represent her and her husband in the foreclosure action filed in court. Among other things, the attorney appeared in court and negotiated a settlement agreement with the mortgage holder, who thereafter dismissed the foreclosure proceedings. Under the settlement agreement the Burrs conveyed the home to the mortgage holder for the loan balance. In addition they paid to the mortgage holder overdue interest on the mortgage loan in the amount of \$3,500.

Ms. Burr claims reimbursement of the \$3,500 interest payment as a closing cost for the sale of the home. She estimates that if she had sold the home on the market through a real estate broker, at least this amount would have been reimbursed by the Government as a real estate selling expense. In addition, she claims reimbursement of the attorney fees of \$392 as an expense of conveying the home to the mortgage lender.

CONCLUSIONS

The present case involves foreclosure proceedings filed in a court. As indicated by the settlement agreement, the attorney fees were paid for a lawyer's representation in the defense of a lawsuit pending in court, notwithstanding that the mortgage holder ultimately dismissed the court action as the result of the settlement. Thus, the attorney fees the employee paid in connection with that settlement were costs associated with the judicial process of foreclosure. As such, they are considered litigation costs which are not reimbursable as real estate expenses under Federal Travel Regulations (FTR), para. 2-6.2c, incorp. by ref., 41 C.F.R.

§ 101-7.003. See 61 Comp. Gen. 112 (1981), involving a foreclosure sale through a court.^{2/}

Concerning Ms. Burr's payment of overdue interest in the amount of \$3,500 under the settlement agreement, FTR para. 2-6.2d(2)(b) expressly prohibits reimbursement of interest on loans as a real estate expense. Further, reimbursement on a constructive cost basis (the amount of allowable real estate expenses that might have been incurred had the home been sold on the market) is not permitted under the law or regulations. Allan R. Irwin, B-198940, July 29, 1980.

Accordingly, the employee's claim may not be allowed.

Milton J. Fowler
for Comptroller General
of the United States

^{2/} Where, unlike the present case, there has been no foreclosure proceeding or other petition filed in a court, we have allowed reimbursement of attorneys' fees charged for services provided to a transferred Federal employee in a sales negotiation leading to the conveyance of the home to the state agency guaranteeing the employee's mortgage loan in consideration of a principal payment and release from the mortgage contract. John C. Bisbee, B-220736, April 10, 1986, 65 Comp. Gen. _____.