



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mimi J. Sanchez - Real Estate Expenses -
Title Requirements
File: B-231839
Date: February 9, 1989

DIGEST

A transferred employee who has remained legally married and whose husband resided with her continuously in the same household at the old duty station is entitled to receive full reimbursement of real estate expenses associated with the sale of her residence at the old duty station. Her filing of a petition for legal separation which was later withdrawn without any court action does not affect the result.

DECISION

This decision concerns the entitlement of Mrs. Mimi J. Sanchez to full reimbursement for expenses incurred incident to the sale of her residence at her former duty station. The Social Security Administration (SSA) reimbursed Mrs. Sanchez for only one-half of the expenses she claimed because it was unsure of whether she was legally separated from her husband, with whom she held title to the residence, at the time she reported to her new duty station. For the reasons that follow, we have determined that Mrs. Sanchez is entitled to full reimbursement of real estate expenses associated with the sale of her residence at the old duty station.

BACKGROUND

By travel order dated May 21, 1987, Mrs. Sanchez was authorized an official change of duty station from Seattle, Washington, to Albuquerque, New Mexico, and she reported for duty at the new location on July 13, 1987.

Homequity, an agent of the SSA, contracts to provide service to transferring employees. Mrs. Sanchez elected to use Homequity's guaranteed home sale service in order to sell her residence in Seattle. In compliance with its contract

with Mrs. Sanchez, Homequity performed a title search on Sanchez's residence and in August 1987 discovered a pending "Action for Separate Maintenance" between Mrs. Sanchez and her husband, Lorenzo Sanchez, which had been filed in King County (Washington) Superior Court. Mrs. Sanchez was informed by both Homequity and the SSA Relocation Coordinator that, because of the "Action for Separate Maintenance," only a pro rata share of Homequity's fee (50 percent) would be payable by SSA. Mrs. Sanchez was also advised that the other half would have to be borne by her or her spouse since the property was also titled in her husband's name. On September 8, 1987, Mrs. Sanchez had the "Action for Separate Maintenance" dismissed. The agency nevertheless expressed concern about what Mrs. Sanchez's marital status was at the time she reported to her new duty station (July 13, 1987).

On October 2, 1987, SSA formally notified Mrs. Sanchez that it could not make a legal determination regarding her status and, therefore, would send the case to our Office for further review of the propriety of payment. Mrs. Sanchez at that point decided not to proceed further with Homequity and withdrew from the guaranteed home sale program. She turned the sale over to a regular real estate company and the house was sold on December 17, 1987.

In submitting the claim to this Office, SSA explained that it had concerns about the claimant's legal status and the impact of the separate maintenance action on her entitlement. Mrs. Sanchez maintains that, in spite of the separation petition, she and her husband have remained legally married and have resided in the same household since February 1976. On that basis, Mrs. Sanchez is claiming full reimbursement for the expenses incurred incident to the sale of her residence in Seattle.

OPINION

The statutory authority for reimbursing an employee for real estate expenses incurred incident to a transfer is 5 U.S.C. § 5724a(a)(4)(A) (1982 & Supp. IV, 1986).^{1/} Paragraph 2-6.1c of the FTR provides that the government shall reimburse an employee for expenses paid by him/her in connection with the sale of a residence at his/her old official duty station which is in the name of the employee alone, or in the joint names of the employee and one or more members of

^{1/} As implemented in Part 6 of Chapter 2 of the Federal Travel Regulations, FPMR 101-7 (October 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1988) (FTR).

his/her immediate family. The "immediate family" includes the employee's spouse if the spouse is a member of the employee's household at the time the employee reports for duty at the new permanent duty station.^{2/} When an employee holds title to a residence with an individual who is not a member of his immediate family, he/she may be reimbursed only to the extent of his/her interest in the residence.^{3/} Furthermore, we have consistently held that if an employee and spouse are legally separated, the spouse is not a member of the employee's household and, therefore, such a spouse does not fall within the FTR's definition of an employee's immediate family.^{4/} Reimbursement of real estate expenses in such a case is limited only to the extent of the employee's interest in the residence.^{5/}

The question, then, is whether Mrs. Sanchez was legally separated from her husband at the time she was assigned to the new duty station. Mrs. Sanchez states that at all times since she and Mr. Sanchez were married in 1976, they have lived together in the same house as husband and wife. Since she and her husband continued to live together in the same household during the pendency of the petition, she contends that Mr. Sanchez was a member of her immediate family and she should receive the entire amount allowable for the sale of the house.

The petition to the court for legal separation did not create a legal separation. While Mrs. Sanchez had considered legally separating from her husband, she did not pursue the court action and there is no evidence to show that they were in fact separated. In the absence of any such evidence, we conclude that Mrs. Sanchez's marital status remained the same from the inception of her marriage and that Mr. Sanchez continued to be a member of her immediate family.

^{2/} FTR, para. 2-1.4d(a).

^{3/} William L. Klockenteger, B-216835, Feb. 22, 1985.

^{4/} William J. Fitzgerald, B-222742, Nov. 28, 1986; William A. Cromer, B-205869, June 8, 1982, and cases cited therein.

^{5/} Thomas G. Neiderman, B-195929, May 27, 1980.

Accordingly, Mrs. Sanchez is entitled to full reimbursement for allowable real estate expenses associated with the sale of her residence at the old duty station.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States