

**Matter of:** Percy W. Fountain  
**File:** B-253427  
**Date:** December 14, 1993

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**DIGEST**

A transferred employee, who held title to his residence in connection with his old duty station in joint tenancy with an individual who was not a member of his immediate family, asserted in his written application for relocation services that title to the residence was in his name only. The agency did not learn about the co-owner until after it had authorized use of its relocation service company and had reimbursed the service company for all expenses incurred. Under section 302-12.5(d) and 302-12.6(b)(2) of the Federal Travel Regulation and agency regulations, if title is not solely in the name of the members of the immediate family, the agency will pay only the proportional share of the relocation service company's fee.

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**DECISION**

This decision is in response to a request from the Chief Certifying Officer, Department of Energy (DOE)<sup>1</sup>. The question is whether a transferred employee is required to pay one-half a portion of the relocation services expenses incurred by DOE in connection with his transfer. For the following reasons, we conclude that repayment is required.

Mr. Percy W. Fountain, an employee of the Department of the Navy, stationed in Arlington, Virginia, accepted a position with the DOE in Germantown, Maryland, effective February 25, 1991. At that time, he resided in Mitchellville, Maryland. He informed DOE that he planned to relocate his residence to the Germantown area, and asserted in his written application for relocation services that title to his Mitchellville residence was in his name only. Based on that information, the DOE issued a short distance permanent change-of-station travel authorization, including the use of the agency's relocation service contractor for the sale of the residence.

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<sup>1</sup>Mr. V. Joseph Startari.

The agency's relocation service contractor initiated services and incurred expenses (\$1,609.45), which it billed to DOE and was paid. Subsequently, Mr. Fountain declined an offer made by the contractor to buy his residence. He thereafter listed the residence with a real estate agency, but, because he was unable to sell it during the following 6 months, he withdrew it from the market. In February 1992, he relisted the residence for sale with the real estate agency and sold it in May 1992.

The DOE later learned that title to the Mitchellville residence was in Mr. Fountain's name and the name of another individual who was not a member of Mr. Fountain's immediate family. Based on that information, DOE sought to recoup \$804.73 from Mr. Fountain, representing one-half of the amount DOE had paid to the relocation service company. Mr. Fountain has appealed that action.

Under the provisions of 5 U.S.C. § 5724c (1988), agencies are authorized to enter into contracts to provide relocation services to transferring employees, including, but not limited to, the arranging for purchase of an employee's residence at his old duty station. The regulations implementing this section are contained in Part 12 of Chapter 302, Federal Travel Regulation (FTR).<sup>2</sup> Section 302-12.6(b)(2) of the FTR<sup>3</sup> authorizes reimbursements to relocation companies only for those services that are analogous to allowable expenses authorized elsewhere in Chapter 302, and states that the statute and the provisions of Chapter 302 "contain certain limitations and restrictions which are not overridden by the new authority for relocation services." In addition, section 302-12.5(d) of the FTR<sup>4</sup> warns agencies not to make payments to relocation companies that will benefit ineligible individuals. The substance of that theme is carried forward into the booklet entitled "Employee Relocation Program Information" issued to transferring employees of the DOE, wherein it is stated on page 18:

"If title to your property is not solely in your name, or in the name of an immediate family member, your agency will pay only the proportional share of ARMC's<sup>5</sup> fees . . . ."

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<sup>2</sup>41 C.F.R. Part 302-12 (1993).

<sup>3</sup>41 C.F.R. § 302-12.6(b)(2) (1993).

<sup>4</sup>41 C.F.R. § 302-12.5(d) (1993).

<sup>5</sup>Associates Relocation Management Company.

In that context, an ineligible individual is any one who does not qualify as a member of the employee's "immediate family" as that term is defined in FTR section 302-1.4(f).<sup>6</sup> Thus, under FTR section 302-6.1(c)<sup>7</sup> where the co-owner of a residence does not qualify as a member of the employee's immediate family, the employee may be reimbursed only to the extent of his title interest in the residence.<sup>8</sup> In a case where the employee had a one-half interest in his residence, we held that he would be responsible for paying one-half of the relocation service company's fee.

Accordingly, the agency action to recoup from Mr. Fountain one-half of the expenses it paid the relocation service company is proper.

James F. Hinchman  
General Counsel

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<sup>6</sup>41 C.F.R. § 302-1.4(f) (1993).

<sup>7</sup>41 C.F.R. § 302-6.1(c) (1993).

<sup>8</sup>Sandra J. Staebell, B-233992, May 16, 1992, and decisions cited. See also Kathy L. Keszler, B-253460, Oct. 22, 1993.

<sup>9</sup>William J. Fitzgerald, 66 Comp. Gen. 95 (1986); Frederick W. Bartel, B-233310, Feb. 9, 1989; and Mark D. Siipola, B-221434, Aug. 26, 1986. See also Bernard Mowinski, B-228614, Dec. 30, 1987.