

5160

Faulkner
C.P.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188527

DATE: January 26, 1978

MATTER OF: George C. Symons - Real Estate Brokers'
Commission

DIGEST: Where transferred employee paid 7 percent real estate brokers' commission to firm because it advertised nationally and FHA data showed that 6 percent was prevailing real estate commission rate in area, employee may not be reimbursed in excess of 6 percent. FHA data creates presumption that must be rebutted by employee. Here, letter from broker does not overcome the presumption.

Mr. George C. Symons has requested reconsideration of our Claims Division Settlement Certificate Z-2584499, issued June 17, 1976, disallowing his claim for a 7 percent real estate commission, instead of the 6 percent for which he was allowed reimbursement when he sold his home at his old duty station incident to his transfer. For the reasons stated below, the disallowance of Mr. Symons' claim sustained.

Mr. Symons, an employee of the Small Business Administration (SBA), was transferred from Abilene, Texas, to Los Angeles, California, reporting to his new duty station on July 8, 1974. At settlement for the sale of his home in Abilene on January 2, 1975, he paid a real estate commission of 7 percent or \$3,115, to the Gold Key Company as the broker that handled the sale. Mr. Symons' claim was allowed only for a 6 percent commission because SBA found that that was the rate generally charged by brokers in that area. Our Claims Division disallowed Mr. Symons' claim for the additional 1 percent on the same basis.

In requesting reconsideration, Mr. Symons included a letter from the Gold Key Company, which states, in pertinent part, that:

"As of June 1, 1974, we raised our commission fee to 7% of the property selling price. Since that date we have taken all listings at 7%, and the majority of the local firms are also now at that figure.

B-188527

"This will affirm our 7% fee for handling the sale of your property at 1410 Circle Drive, Abilene, Texas. This was the standard fee at that time for about half of the real estate firms in Abilene."

In light of this statement, our Claims Division contacted SBA and requested evidence to support their finding that 6 percent was the commission rate generally charged by real estate brokers in the area. The SBA submitted copies of the Federal Housing Administration (FHA) schedule of closing costs for the Fort Worth area, which indicated that the generally used commission rate was 6 percent. Additionally, because Fort Worth and Abilene (Mr. Symons' old duty station) were about 150 miles apart, SBA requested assistance from its Lubbock, Texas, office. That office stated, in a memorandum of February 20, 1975, that:

"The typical or standard real estate commission prevalent in this area of Texas is 6% of the selling price of the property; therefore, on a sale of \$44,500, this commission would be \$2,670. I might add that there are a few brokers who charge a 7% commission; however, this would be an exception."

The reimbursement of real estate brokers' commissions is governed by Federal Travel Regulations, FPMR 101-7, paragraph 2-6.2a (May 1973) (FTR), which provides, in pertinent part, that:

"* * * A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. * * *"


Mr. Symons raises two points in support of his claim. First, he contends that the regulations only require that the commission rate charged be that generally charged by the particular broker used, and second, that if the rates charged by all brokers in an area must be considered, then the letter from the Gold Key Company establishes that 7 percent is the prevailing commission. It should also be noted that in his original claim, Mr. Symons stated his rationale for selecting the Gold Key Company to sell his home:

B-188527

"This was my authority for acting and incurring the expense as the real estate firm is a nationwide firm which advertises nationally. They do more, so they charge more. We had listed initially with a local firm with no national ties and they could not get an offer. After several months of no activity, the Gold Key National firm was given the listing and they were able to successfully sell the property during the initial listing."

We have consistently held that the regulations require that the applicable commission rate is the rate generally charged by all of the real estate brokers in the area, not by the particular broker used by the employee to sell his residence. Matter of Robert W. Frount, B-181129, August 19, 1974. The information obtained from the FHA regarding the prevailing commission rate creates a rebuttable presumption that the employee must overcome with competent evidence. Matter of David R. Hoffman, B-182431, July 14, 1975. This can be done by taking a survey of the real estate brokers in the area. This was done successfully in B-173091, July 22, 1971, and B-174022, December 28, 1971. The letter from the Gold Key Company does not overcome the presumption created by the FHA data that 6 percent was the prevailing commission rate.

We also note that Mr. Symons elected to list his home with the Gold Key Company because it was a nation wide firm that advertised nationally. In the above quotation from Mr. Symons' letter he states that "[t]hey do more, so they charge more." We have held that when an employee pays a commission rate in excess of the prevailing rate for extra services or expedited service, the extra commission may not be reimbursed. Matter of Hoffman, supra.


Deputy Comptroller General
of the United States