

7343
DECISION



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

FILE: B-190750

DATE: August 11, 1978

MATTER OF: Douglas D. Walldorff - Reimbursement of Attorney's fees

DIGEST:

1. Employee claimed reimbursement for attorney's fees paid incident to sale of old residence and purchase of new residence incident to transfer of station. Claim for attorney's fees for services in connection with closing on purchase of new residence is allowed only to extent such fee represents the attorney's work in conducting closing or preparing closing documents. Charges for conferences, correspondence and review of documents are advisory in nature and are not reimbursable.
2. Legal fees for the preparation of a sales contract are not reimbursable where the sale is not consummated. Charges for title search, abstract of title, tax search and similar activities are reimbursable only if customarily paid by seller of old residence or purchaser of new residence in area where transactions take place.
3. All expenses arising from legal services related to items determined to be structural changes or capital improvements are not reimbursable as they are reflected in the purchase price of the residence and not provided for in the regulations.

This action is in response to a request from Ms. Dorothy Wells, an authorized certifying officer of the National Labor Relations Board (NLRB), for a decision on the entitlement of Mr. Douglas D. Walldorff, an NLRB employee, to reimbursement of certain attorneys fees incurred in connection with the sale of his old residence and purchase of a new one incident to a permanent change of station. The original request for reimbursement of attorney fees was disallowed in part by the agency resulting in an appeal by the claimant.

The record indicates that by a travel authorization dated April 19, 1976, Mr. Walldorff was transferred from Buffalo, New York, to Atlanta, Georgia. On or about August 27, 1976, Mr. Walldorff

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sold his Buffalo residence and incurred legal expenses from the law firm of Hodgson, Russ, Andrews, Woods and Goodyear. On or about September 2, 1976, claimant purchased a residence in Atlanta and incurred legal expenses from the law firm of Laura Ruth McNeil.

Upon claiming reimbursement of the legal fees, Mr. Walldorff was administratively disallowed \$900 from the sale of his old residence and \$125 from the purchase of his new one. The grounds for the disallowance were that the services claimed were advisory in nature, properly incurred by the purchaser in the case of the claimant's sale of the Buffalo residence or were connected with the capital improvement to his prior residence and therefore properly recoverable in the sales price.

In reclaiming the disallowed amount Mr. Walldorff has submitted a reclaim voucher accompanied with a detailed statement of the legal expenses involved. The items claimed as shown on copies of the reclaim voucher are as follows:

1. Real Estate Purchase

(a) Closing Fee.....\$125

2. Real Estate Sale

(b) Review proposed multiple listing agreement with real estate broker and prepare addendum thereto, conferences with client concerning initial sale contract with Mr. & Mrs. Norman Smith concerning termination of contract, conference with client concerning offer to purchase premises from Mr. & Mrs. Ritter and discussions with realtor concerning terms of purchase offer; review of purchase offer, review purchase offer and discuss with client prior to execution by client....\$150

(c) Obtain abstract of title and survey from mortgagee, order continuation of tax and title search and redatate of survey; obtain proof of payment of all real property taxes; complete all requirements of purchaser as to clearance of title including extensive discussions and negotiations with officials of the Erie County Health Department concerning septic system deficiencies.....\$350

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(d) Negotiations with attorney for purchaser concerning contract revisions resulting from the requirement of the Erie County Health Department that the premises be connected to a public sewer line and codification of contract as a result hereof; preparation of easement agreement and extensive discussions with purchaser's attorney and client's neighbor with respect to the terms of said agreement; obtain approval of the Erie County Health Department and Erie County Sewer District No. 2 as to the terms of the agreement; review contracts with contractor for the installation of the sewer line connection and obtain approval of the Health Department and sewer authority after the completion of the sewer line connection

.....\$250

(e) Prepare deed and closing statement; makes arrangement with respect to client's mortgage lender as to assumption of mortgage by purchaser; attend closing and record easement agreement; send all final documents after closing to client

.....\$150

Statutory authority for reimbursement of the legal expenses incurred by an employee in the sale of his or her residence at the old official station and purchase of a home at the new station is found at 5 U.S.C. §5724a (1970). Regulations implementing that authority at the time of Mr. Walldorff's transfer were contained in paragraph 2-6.2c of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Paragraph 2-6.2c provides that:

"c. Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of

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the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

In our decision in 56 Comp. Gen. 561 (1977), we reviewed the policy concerning the extent to which legal fees may be reimbursed. In that decision we held that necessary and reasonable legal fees and costs, except for the fees and costs of litigation, incurred by reason of the purchase or sale of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. Since, however, that decision is to be applied prospectively only to cases in which settlement of the transaction occurs on or after April 27, 1977, the present matter, being settled before that date, must be determined in accordance with the previously applicable laws and decisions.

Those previous decisions consistently held that only legal services of the type enumerated in FTR para. 2-6.2c are reimbursable. No reimbursement may be allowed for legal services of an advisory nature such as representation or counseling. 48 Comp. Gen. 469 (1969); B-183443, July 14, 1975; B-183102, June 9, 1972.

Regarding item (a), attorney's fees for preparing closing documents and conducting the same may be authorized for reimbursement. B-176876, November 27, 1972; B-174011, November 15, 1971. However, charges which are attributable to representation and services rendered at the closing are advisory and not reimbursable. B-186254, March 16, 1977; B-183443, supra. While the voucher itself merely states that \$125 is for closing, Mr. Walldorff states in his letter to our Office, dated October 17, 1977, that "the fee was for services provided at the closing." Therefore, item (a) is not reimbursable unless shown that the law firm of Laura Ruth McNeil conducted the closing and prepared the closing statement.

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The services provided by the firm of Hodgson, Russ, Andrews, Woods and Goodyear as described in item (b) were performed incident to the residence sale transaction. The items enumerated include office conferences with the claimant, correspondence, review of documents and discussions with the realtor. These items are advisory and representational and are not within the class of services contemplated by the cited regulation. B-186290, September 30, 1976. The fact that a prudent seller would require such services will not affect such a determination. See, B-183443, supra.

Included in item (b) are the preparing of two documents, services normally reimbursable under FTR para. 2-6.2c. First is the addendum to a multiple listing agreement. While we recognize the need for a broker and provide for the reimbursement of the cost in FTR 2-6.2(a), there is no recognition of the need for attorneys in the broker-client relationship. Any such involvement by the client's attorney must be viewed as advisory even when it includes the amending of documents used by the parties and, therefore, is not reimbursable. Second is the preparation of a sales contract. We have held that the intent of the Federal Travel Regulations relating to reimbursement of real estate expenses is to reimburse the employee for only one set of authorized expenses relating to one sale and one purchase. B-184869, September 21, 1976. Accordingly, legal fees relating to an unconsummated contract are not reimbursable. B-190122, November 23, 1977.

Paragraph 2-6.2c of the Federal Travel Regulations provides that, if customarily paid by the seller at the old residence, the costs of preparing an abstract and search of title are reimbursable. Such expenses are included in item (c) along with charges for a tax search and clearance of title as it relates to requirements imposed by the Erie County Health Department concerning septic system deficiencies. Services relating to discussions and negotiations with county officials are advisory in nature and not provided for in the regulations. We have been informally advised by the Buffalo office of the Department of Housing and Urban Development that the seller of real property has some obligation to furnish an abstract of title and, therefore, customarily pays for it. However, a complete title search is not required and is usually done to satisfy the buyer. Consequently, this expense is properly borne by the purchaser. Additionally, proof that the seller has paid all related taxes would be revealed in the abstract

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of title showing no liens. Other taxes would not be part of the real estate transaction and not properly paid by the seller as it relates to FTR para. 2-6.2c. To the extent that the claimant can further separate the services in item (c) to reflect the charge for furnishing the abstract of title, it may be reimbursed. The Buffalo office of the Department of Housing and Urban Development has informed us that \$100 is an acceptable and reasonable fee for such services.

The fees expenses contained on item (d) are all related to activities for sewer line corrections and construction imposed by the Erie County Health Department. These items involve costs incurred in connection with structural alterations which are excluded as miscellaneous expenses from reimbursement under FTR para. 2-3.1c(13). Attorneys fees connected with these structural alterations are likewise not reimbursable. Reimbursable costs are only those which are normally connected with a real estate action and not extraordinary costs which may arise in connection with a particular transaction. B-180945, August 29, 1974. In denying reimbursement for expenses related to structural changes, we have stated that the regulations do not contemplate underwriting the costs of new furnishings or equipment. For example, where the claimant has installed air conditioning wiring as in B-173572, August 23, 1971, or skirting around a mobile home as in B-183809, October 3, 1975, we have denied reimbursement. We see no distinction to be made between those alterations and the subject alterations involved here with the public sewer line. Additionally, improvements of this type properly can be characterized as a capital improvement which increase the value of the residence and thereby is reflected in the purchase price. B-183794, October 9, 1975. We agree with the administrative determination that the charges contained in item (d) are not reimbursable.

The charges contained in item (e) generally relate to the closing. As in our discussion on item (a), attorney's fees for attendance at the closing is advisory in nature and not reimbursable. However, a fee charged for conducting the settlement may be reimbursed. B-184599, September 16, 1975. The actual preparation of the deed is also reimbursable. B-176876, November 27, 1972. However, for the reasons discussed above, any charges resulting from the easement as part of fulfilling requirements imposed by county officials are not reimbursable. To the extent that the claimant can show that charges listed in item (e) are attributable to his attorney's work in actually drafting the documents, conducting the settlement and related expenses,

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reimbursement may be made. Negotiations and conferences held in anticipation of the drafting of such documents represent services by an attorney which are advisory in nature. As such, they are not reimbursable.

Accordingly, the voucher is returned for processing pursuant to the above.



Acting Comptroller General
of the United States