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DECISION



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

FILE: B-193945

DATE: April 29, 1980
[Reimbursement of]

MATTER OF: Philip G. Simonski - Attorney fees
on sale of residence

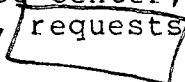
DIGEST:

1. Agency denied employee's claim for reimbursement of attorney fees on sale of residence since seller normally does not incur attorney fees in the area. However, the sale involved an encroachment which could cloud employee's title. Employee obtained additional legal services in order to ensure he had marketable title as required in local area. This Office has permitted reimbursement of attorney fees to remove cloud on title where required by contract or local custom. Thus, attorney fees may be reimbursed if within the customary range of fees in the local area.

2. An employee incurred attorney fees on the sale of his residence which he sold via a "land sale contract" whereby the purchaser takes equitable title in exchange for installment payments of purchase price and seller retains legal title as security. We have held that expenses incurred incident to land sale contracts are eligible for reimbursement. Since HUD area office reports that in "land sale contracts" it is considered prudent for seller to incur attorney fees, and fees were within customary range for such services, they may be reimbursed.

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H. Larry Jordan, Authorized Certifying Officer,
National Finance Center, United States Department
of Agriculture, requests a decision of this Office



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whether the reimbursement of attorney fees incident to the sale of a residence is limited by what is customary in the normal transaction, or whether the employee's particular circumstances may be taken into consideration.

Mr. Jordan reports that Mr. Philip G. Simonski, an employee of the Forest Service, sold his residence in Lakeview, Oregon, on June 28, 1978, in connection with a transfer to Baker, Oregon. He submitted a voucher for reimbursement of his sales expenses, including attorney fees in the amount of \$935.28. The Forest Service denied Mr. Simonski's claim for attorney fees based on the report of the Department of Housing and Urban Development's (HUD) area office in Portland, Oregon, that the seller does not incur attorney fees in the normal transaction in Oregon.

However, Mr. Jordan states that Mr. Simonski's transaction was not normal. A property survey showed that a certain structure on Mr. Simonski's property was encroaching on an adjacent lot. In order to close the sale without removing the structure, Mr. Simonski hired an attorney to negotiate with the purchasers and the owner of the adjacent lot and to prepare the necessary documents. The encroachment caused the purchasers to require changes in the sales contract. Extensive redrafting was necessitated which contributed to the increase in the attorney's fees.

This case involves another unusual circumstance. We have been advised by the attorney who handled the transaction that Mr. Simonski sold his residence in Lakeview, Oregon, under a "land sale contract" (contract for deed), whereby equitable title is conveyed to the purchaser, who agrees to pay the purchase price in installments, with legal title remaining with the seller as security. Thus, the question presented here is whether attorney fees incurred incident to a land sale contract complicated by an encroachment problem may be reimbursed.

Authority for the reimbursement of attorney fees incurred in residence transactions is found

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in the Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-6.2c (May 1973). In applying that paragraph this Office in the past required employees to submit an itemization of the attorney fees in order that a determination could be made whether the fee was for searching title and preparation of contracts, for which we permitted reimbursement, or for services which were advisory in nature, for which reimbursement was not allowed.

In a recent decision, George W. Lay, 56 Comp. Gen. 561 (1977), we revised the policy concerning the extent to which legal fees may be reimbursed. We held that, for any settlement occurring after April 27, 1977, 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.

At the outset, we note that attorney fees incurred incident to "land sale contracts" are eligible for reimbursement under FTR para. 2-6.2c. See B-174644, April 20, 1972, and B-165146, September 16, 1968. Thus, the fact that Mr. Simonski sold his residence via a land sale contract does not bar reimbursement of attorney fees.

Likewise, we have permitted reimbursement of attorney fees to clear the title where a clear title was required by sales contract or local custom. B-160040, July 13, 1976. In the case before us, the encroachment was a potential obstacle to Mr. Simonski providing the purchaser clear title.

The general rule regarding contracts for the sale of real estate is that, in the absence of any particular agreement or stipulation, the purchaser is entitled to have the walls of the building upon the land which he has contracted to purchase stand

completely upon the land conveyed. Where the building encroaches to a substantial extent upon adjoining premises, the title to the land to be conveyed is unmarketable. 77 Am. Jur. 2d Vendor and Purchaser § 218 (1975).

✓ The encroachment of one of Mr. Simonski's buildings did raise questions concerning the marketability of his title, requiring him to retain an attorney to resolve the matter. His attorney was able to resolve the matter to the satisfaction of all parties and the sale was subsequently completed. Hence, it was necessary for Mr. Simonski to incur the attorney fees in order to establish marketable title and complete the sale. Therefore, we hold that the attorney fees paid by Mr. Simonski are eligible for reimbursement under FTR para. 2-6.2c. ✓

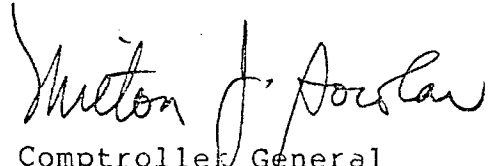
Furthermore, since the Department of Agriculture apparently was not aware that Mr. Simonski's residence was sold pursuant to a land sale contract when they contacted the HUD area office for assistance, we contacted that office and were advised that in situations involving "land sale contracts" in that area it is considered prudent for the seller to incur attorney fees. See B-174644, April 20, 1972, cited above.

The remaining issue is whether the \$935.28 claimed by Mr. Simonski is within the customary range of charges for attorney fees in that area as required by FTR para. 2-6.2c. In making a determination on this issue, we sought the assistance of the HUD area office in Portland, Oregon, as suggested by FTR para. 2-6.3c. They reported that the claimed amount was within the customary range of charges for a "land sale contract" involving an encroachment.

GA held We hold that Mr. Simonski necessarily incurred the attorney fees in question and that the fees were within the customary range of charges for

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the services rendered. Accordingly, the voucher may be paid if otherwise proper.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States