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DECISION



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

FILE: B-205550

DATE: March 11, 1982

MATTER OF: Jerome B. Knaebel - Real Estate Broker's
Commission

DIGEST: Where an employee sells a home incident to a permanent change of station he may not be reimbursed for a real estate broker's commission above the general area rate determined by HUD, even where the higher commission was needed to expedite the sale. Statutory provisions of 5 U.S.C. § 5724a(a)(4) (1976) and implementing regulations require that the applicable commission rate is the rate generally and customarily charged in the locality, and the information provided by HUD creates a rebuttal presumption regarding the prevailing commission rate. The employee has failed to rebut this presumption.

This decision is in response to a request from Anita R. Smith, an authorized certifying officer, Department of Agriculture (DOA), National Finance Center, as to whether a travel voucher submitted by Mr. Jerome B. Knaebel, a U.S. Forest Service employee, should be certified for payment. The issue presented is the propriety of reimbursing an additional 1-percent real estate broker's commission to a transferred employee. The claim is denied because the amount claimed exceeds the prevailing real estate commission in the area.

In a travel authorization dated February 5, 1981, Mr. Knaebel was authorized a permanent change of station from Boise, Idaho, to Washington, D.C. Mr. Knaebel placed his home on the market and after 3 months with relatively little sales activity he decided that, in order to expedite the sale in a depressed housing market, he would increase the sales commission from the original 6 percent agreed upon to 8 percent. The house was soon sold.

In an informal inquiry by the DOA with the Department of Housing and Urban Development (HUD), DOA was informed that the customary and normal real estate commission charged by brokers in the Boise, Idaho, area

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was 6 to 7 percent. Accordingly, DOA certified payment for a 7-percent commission, but refused to pay the remaining 1-percent commission of \$911.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724a(a)(4) (1976), which limits reimbursement of brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), which provides 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. * * *"
(Emphasis added.)

In claims such as this our Office has concluded that, in accordance with FTR paragraph 2-6.3c, where HUD is consulted to determine what charges are customary in the locality, the information provided by HUD creates a rebuttable presumption as to the prevailing commission rate. Calvin T. Westmoreland, B-196517, February 19, 1980.

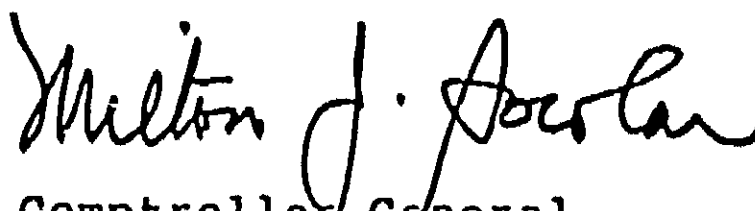
Mr. Knaebel asserts that the rates for real estate sales commissions in the Boise area are "very negotiable" and that they range anywhere from 5 to 15 percent. As evidence of this he relies upon a survey he made of three pages of the Boise Multiple Listings Directory where he found that 20 percent of the properties listed paid over the 7-percent commission rate indicated by HUD to be normal and customary for the area. Further, Mr. Knaebel claims that he knows of other Forest Service employees who have been reimbursed for 8-percent sales commissions by the DOA.

We do not find Mr. Knaebel's arguments to be persuasive in this case. Initially, it is clear that the commission rate reimbursable under these provisions, "the rates generally charged," is an area average rate which is not rendered invalid by the fact that some brokers charge a higher or a lower commission rate. Doss H. White, Jr., B-197908, April 21, 1980. Further,

these provisions do not allow reimbursement for sales commissions above the general area rate, even where the higher commission rate was needed to expedite the sale. Calvin T. Westmoreland, supra.

Additionally, we do not regard Mr. Knaebel's survey of three pages of the Boise area's Multiple Listing Directory as sufficiently authoritative to rebut the presumptive validity of the general commission rates for the Boise area as determined by HUD. Mr. Knaebel's assertion that he knows of other Government employees who have been reimbursed at the 8-percent commission rate is also unpersuasive since he has failed to specify even a single instance of this occurring. In any event, such information would only be relevant if the employees in question had sold houses in the Boise area at about the same time as Mr. Knaebel, and if the information is sufficient to show that the 8-percent rate was the normal and customary rate for the Boise area.

Accordingly, the voucher may not be certified for payment.

for 
Comptroller General
of the United States