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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mark D. Siipola
File: B-221434
Date: August 26, 1986

DIGEST

A transferred employee claims reimbursement for expenses incurred incident to the sale of a cooperative residence at his old duty station. Initially, the employee's future wife and father-in-law purchased a unit in a housing corporation which the employee occupied following his marriage. The employee claims entitlement to full reimbursement as a result of a purported oral transfer of his father-in-law's entire interest to the employee and his wife. The employee has not submitted documentation indicating the percentage of ownership held by himself, his wife, and father-in-law at the time he was notified of his transfer. Since reimbursement must be prorated to take into account the outstanding interests of non-dependent co-owners of property and the father-in-law is not claimed as a dependent, the employee's claim may not be allowed without further evidence.

DECISION

The issue in this matter is whether an employee is entitled to reimbursement of real estate expenses for sale of a residence incident to a permanent change of duty station.^{1/} The employee has provided no evidence indicating the percentage of ownership held by himself or his dependents at the time he was notified of the transfer of duty station. Since reimbursement of real estate costs is limited to the extent of the employee's and/or his dependent's interest in the residence, the employee's claim for reimbursement is denied.

^{1/} This action is in response to a request for an advance decision from the Acting Chief, Real Estate Division, Department of the Army, Baltimore District, Corps of Engineers, Baltimore, Maryland.

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BACKGROUND

On September 20, 1983, Mr. Mark D. Siipola, a civilian employee of the U.S. Army Corps of Engineers, was issued a permanent-change-of-station travel authorization in connection with his impending transfer from Baltimore, Maryland, to Castle Rock, Washington. Under these orders he was authorized, among other things, to be reimbursed real estate expenses incurred due to the transfer. The employee claims reimbursement for expenses associated with the July 1985 sale of a residence in Arlington, Virginia, near his old duty station.

The dwelling in which the employee resided upon his transfer was a unit in a housing corporation ("cooperative") where ownership interest is represented by stock issued by the entity owning the building. According to the employee, his future wife purchased the unit, with her father as co-signer of the purchase agreement. Apparently, this transaction resulted in an equal division between the father and daughter of the entire interest consisting of the 62 shares purchased; however, the employee did not submit the purchase agreement indicating the exact division of interest in the unit.

It is claimed that on October 9, 1982, as a wedding gift, "full ownership was bestowed" on the employee and his wife. Apparently, the employee and his wife resided in the property after their marriage. There is no documentation of the transfer of interest other than an affidavit executed by the father on October 4, 1985, stating that he did acquire half of the shares (31 shares) of the property in question on October 15, 1981, and that on October 9, 1982, he orally transferred his 31 shares and quitclaimed all of his interest to his daughter and son-in-law. Notwithstanding this affidavit, executed long after the claimed transfer of interest, is a settlement statement, dated July 25, 1985, which lists the employee, his wife, and her father as sellers thereby indicating joint ownership of the unit at the time of its sale.

Thus, we are presented with the anomalous situation of a father-in-law who has represented himself as a seller at closing, while stating that he had disposed of his interest years earlier, and an employee who claims full ownership with his wife on the basis of this purported transfer of interest from his father-in-law.

ANALYSIS AND CONCLUSION

The statutory authority for reimbursing a transferred Federal employee for expenses incurred in the sale and purchase of residences at the old and new duty stations is contained in 5 U.S.C. § 5724a(a)(4). The implementing Federal Travel Regulations spell out the title requirements for such transactions.^{2/} Volume 2 of the Joint Travel Regulations (2 JTR) restates and applies the implementing regulations for civilian employees of Department of Defense agencies. Chapter 14, 2 JTR, sets the criteria for entitlement to reimbursement for real estate expenses including that:

"* * * the title to the residence or dwelling at the old or new duty station, or the interest in a cooperatively owned dwelling, or in an unexpired lease, is in the name of the employee alone, or in the joint names of the employee and one or more dependents, or solely in the name of one or more dependents (* * * acquisition of the employee's interest in the property must have occurred prior to the date when the employee was first definitely informed that he was to be transferred to the new duty station)."^{3/}

We have held that an employee may be reimbursed only to the extent of the combined interest held by the employee and his dependents. Ferrel G. Camp, B-213861, May 21, 1984; James C. Bowers, B-195652, April 1, 1980. No claim has been made that employee's father-in-law is a dependent. No exception is made to allow full reimbursement when there is co-ownership by a close family member who is not a dependent; therefore, expenses must be prorated in order to take into account the outstanding interest of the non-dependent co-owner of the property in question. James A. Woods, B-184478, May 13, 1976. Thus, if the father-in-law's interest did not pass to the employee and his wife by gift, as claimed, the employee would be entitled to reimbursement only to the extent of his dependent spouse's interest in the unit.

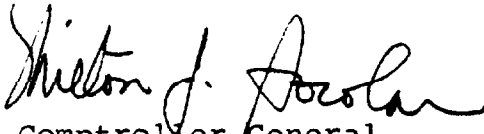
^{2/} Federal Travel Regulations (FTR), para. 2-6.1c (Sept. 1981), incorp. by ref., 41 C.F.R. § 101-7.003.

^{3/} See, Volume 2 (2 JTR), para. C14000-1, item 2.

The employee has provided no evidence indicating how the interest in the cooperative was distributed among himself, his wife, and his father-in-law in September 1983 at the time he was advised of his transfer to Washington. He has included no documents indicating the number of shares acquired by his wife when the unit was originally purchased. In addition, the validity of the father-in-law's "oral gift" as a transfer of interest is too doubtful for us to recognize.

As the record stands, the percentage of interest held by the employee, his wife, and his father-in-law when the employee was notified of his transfer in September 1983 is unknown. While it is probable that the employee is entitled to some measure of reimbursement, we are unable to determine whether the employee is entitled to full reimbursement or a pro rata share of expenses.

In the absence of other acceptable documentation, it would appear that a certified statement from the secretary of the corporation, based on the books and records of the corporation, as to who held the shares in the residence and in what proportions on September 20, 1983, would be acceptable evidence upon which to base the amount of the employee's reimbursement. We cannot, however, authorize payment on the present record.

for 
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of the United States