The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** William J. Fitzgerald - Relocation Services- Real Estate Title Requirements

**File:** B-222742

**Date:** November 28, 1986

## DIGEST

Agency questions whether a transferred employee wishing to use a relocation contractor's house sale services at no personal expense meets the applicable title requirements in paragraph 2-6.1c of the Federal Travel Regulations. These requirements are that an employee must have held title to his residence either alone or jointly with a member of his immediate family before receiving notice of his transfer. Here, the employee has met neither requirement because: (1) his separated wife's oral agreement to sell her interest in their residence to him was unenforceable under state law and thus did not vest him with sole title; and (2) his separated wife was not part of his household and, therefore, did not qualify as a member of his immediate family.

## DECISION

Mr. George R. Turner, Jr., Regional Federal Highway Administrator, Region 3, of the Federal Highway Administration (FHA), Department of Transportation (DOT), has requested our decision concerning Mr. William J. Fitzgerald, an FHA employee who was transferred from Tallahassee, Florida, to Baltimore, Maryland. Specifically, the FHA has asked us to determine whether Mr. Fitzgerald's ownership interest in his house in Tallahassee meets the title requirements specified in paragraph 2-6.1c of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, August 23, 1983), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR), so as to qualify him for house sale services under DOT's relocation service contract without personal expense to him. As explained below, the applicable title requirements in FTR para. 2-6.1c are that an employee must have held title to his residence alone or jointly with a member of his immediate family before receiving notification of his transfer. We hold that Mr. Fitzgerald has not met these requirements because: (1) his separated wife's oral agreement to sell her interest in the Tallahassee house to

him, although made before Mr. Fitzgerald received notification of his transfer, was unenforceable under Florida law and, therefore, did not vest him with sole title to the property; and (2) his separated wife was not part of his household, and therefore she did not qualify as a member of his immediate family.

BACKGROUND

On March 9, 1984, Mr. Fitzgerald was offered and accepted a transfer from Tallahassee to Baltimore. Six days earlier, on March 3, Mr. Fitzgerald's wife had vacated their jointly-owned house in Tallahassee in order to move into a separate residence she was in the process of purchasing.[1/] According to Mr. Fitzgerald, his wife had orally agreed on February 1, 1984, to sell her interest in the house to him. Mr. Fitzgerald states that his wife had "implemented" this agreement by immediately applying for and soon obtaining financing for her new residence on the strength of the payment owed to her.

Mr. Fitzgerald paid his wife $20,000 for her interest in the Tallahassee house on March 15, 1984, the date she settled on the purchase of her new residence. On May 4, 1984, Mrs. Fitzgerald executed a quit-claim deed conveying her interest in the Tallahassee house to Mr. Fitzgerald. Mr. Fitzgerald reported to his new duty station in Baltimore on June 25, 1984. On November 20, 1984, the Fitzgeralds were divorced.

Mr. Fitzgerald now wishes to sell the Tallahassee house by using house sale services available under the DOT's contract with ChemExec Relocation Systems, Inc., a relocation service company,[2/] but the FHA questions whether Mr. Fitzgerald

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[1/] Although the Fitzgeralds did not enter into a separation agreement at the time, they in fact became permanently separated beginning on March 3.

[2/] The DOT entered into this contract under the authority of 5 U.S.C. § 5724c (Supp. III 1985), which authorizes agencies to contract with private firms for the provision of relocation services to transferred employees.

would be eligible to use those services without any charge to him. The DOT's contract with ChemExec provides that the company will, for a fee charged to the agency, purchase a transferred employee's residence and assume responsibility for all costs associated with reselling it. Pursuant to DOT's written policy, as well as the government-wide relocation service guidelines contained in FTR para. 2-12.5d (Supp. 11, August 27, 1984), the agency may pay the relocation company's full fee for providing an employee with house sale services only if the extent of the employee's interest in the residence is such that, had he sold it himself, he would have been entitled to full reimbursement for his expenses under the FTR. The FTR's requirements with respect to the direct reimbursement of real estate expenses are contained in Chapter 2, Part 6, para. 2-6.1 of which provides in relevant part as follows:

> "Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him/her in connection with the sale of one residence at his/her old official station, * * * Provided, That:
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> c. Title Requirements. The title to the residence or dwelling at the old or new official station, * * * is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family. For an employee to be eligible for reimbursement of the costs of selling a dwelling * * * the employee's interest in the property must have been acquired prior to the date the employee was first definitely informed by competent authority of his/her transfer to the new official station."

In the event an employee wishing to use house sale services under the DOT's contract does not satisfy the title requirements stated above, DOT policy provides that the agency may pay only a prorata share of the relocation company's house sale fee and the employee will be responsible for paying the balance.

Mr. Fitzgerald contends that he meets the title requirements specified in FTR para. 2-6.1c, above, thus qualifying for house sale services at no personal expense. Specifically, he maintains that he acquired sole title to the Tallahassee house before March 9, 1984, the date he received notification of his transfer, because his wife had orally agreed on February 1 to sell her interest in the property to him. Mr. Fitzgerald argues that this agreement was effective to pass title to him, notwithstanding the lack of written documentation, because his wife had "implemented" the agreement when she relied on its terms to obtain financing for her new residence.

Alternatively, Mr. Fitzgerald suggests that, since he was still legally married to Mrs. Fitzgerald when he received notification of his transfer, she was a member of his immediate family within the meaning of FTR para. 2-6.1c. Thus, according to Mr. Fitzgerald, even the Fitzgeralds' joint ownership of the Tallahassee house would have satisfied the requirements of FTR para. 2-6.1c.

DISCUSSION

As indicated above, the applicable regulations in FTR para. 2-6.1c allow an employee full reimbursement for house sale expenses only if certain specific requirements are met. One requirement is that title to the house must be in the employee's name alone, in the joint names of the employee and a member of his immediate family, or solely in the name of a member of his immediate family. A second requirement, which qualifies the first, is that the employee must have acquired his interest in the property prior to the date he was definitely informed of his transfer.

Based on the second requirement in FTR para. 2-6.1c, we have stated that an employee's maximum interest in real estate is fixed on the date he receives his transfer notice.[3/] This interest may be diminished by subsequent events,[4/] but may

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[3/] Thomas A. Fournier, B-217825, August 2, 1985.

[4/] See Alan Wood, 64 Comp Gen. 299 (1985), and Fournier, cited in note 3, holding that events which occur between the date an employee receives notification of his transfer and the date he settles on the sale of his residence may serve to reduce his interest in the residence for reimbursement purposes.

not be expanded.[5]/ Accordingly, in order to determine whether Mr. Fitzgerald held sole title to the Tallahassee house for purposes of the requirements in FTR para. 2-6.1c, we must examine the status of his title on March 9, 1984, the date he received definite notice of his transfer to Baltimore. This requires us to determine whether Mrs. Fitzgerald's oral agreement on February 1, 1984, to sell the Tallahassee house to Mr. Fitzgerald effected a transfer of title to him.

Under a Florida law commonly known as the "statute of frauds," an agreement to sell real estate must be in writing or else it is unenforceable and does not pass title to the purchaser.[6]/ Courts interpreting this Florida law have recognized a limited exception to the requirement for written documentation based on the equitable doctrine of "part performance," which basically holds that an oral contract for the sale of land is enforceable if a party has performed actions which clearly evidence the existence of a such contract.[7]/ However, we are not aware of any Florida court case applying the part performance doctrine to enforce an oral contract for the sale of land where the only "performance" has been the seller's reliance on the claimed agreement in an unrelated real estate transaction.

Accordingly, Mrs. Fitzgerald's oral agreement to sell her iterest in the Tallahassee house to Mr. Fitzgerald was ineffective because it did not meet the statutory requirement for written documentation. Since the agreement was

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[5]/ See generally Joel O. Brende, B-217484, February 11, 1986, 65 Comp. Gen. ____.

[6]/ FLA. STAT. ANN. § 725.01 (West 1969).

[7]/ See Miller v. Murray, 68 So. 2d 594, 596 (Fla. 1953), stating that an oral contract may be enforced if a purchaser has paid at least part of the purchase price, taken possession of the property, and made valuable improvements. See also A. CORBIN, CORBIN ON CONTRACTS §§ 420-443 (1950). This latter authority recognizes that certain actions of the seller, such as the making of expensive alterations to suit the purchaser, may constitute part performance. A. CORBIN, above, at § 424.

ineffective, Mr. Fitzgerald did not acquire sole title to the Tallahassee house before he received notification of his transfer on March 9, 1984, as required by FTR para. 2-6.1c.

Nor, contrary to Mr. Fitzgerald's suggestion, did he hold title to the residence with a member of his "immediate family" for purposes of FTR para. 2-6.1c. The term "immediate family", as used in FTR para. 2-6.1c, is defined in FTR para. 2-1.4d as including an employee's spouse, children, and certain dependent relatives who are members of the employee's "household" at the time he reports to his new duty station. We have specifically held that a separated spouse is not a member of an employee's household, and, therefore, that such a spouse does not fall within the FTR's definition of an employee's immediate family.[8/]

In sum, Mr. Fitzgerald did not meet the title requirements specified in FTR para. 2-6.1c because he neither acquired sole title to the Tallahassee house before receiving notification of his transfer nor held the title jointly with a member of his immediate family. Under these circumstances, DOT's relocation service policy and FTR para. 2-12.5d, discussed previously, would preclude the agency from paying the relocation company's full fee for house sale services provided to Mr. Fitzgerald. Since Mr. Fitzgerald held a one-half interest in the Tallahassee house for purposes of the FTR, it appears that, under DOT policy, he would be responsible for paying one-half of the company's fee.

Milton J. Socolar

Acting Comptroller General
of the United States

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8/ See Wood, cited in note 3, and William A. Cromer, B-205869, June 8, 1982.