Pool
PHM

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richard M. Poehling - Real Estate Expenses

File: B-223364

Date: October 24, 1986

DIGEST

Transferred employee sold single residence in two parcels to one purchaser. Although the second parcel not containing the residence was large enough to be used as a separate building site, the presumption that the second parcel was in excess of that reasonably related to the residence site within the meaning of Federal Travel Regulation para. 2-6.1 is successfully rebutted by the facts of this case. The subdivision of the property, which facilitated the sale to the buyer and protected the seller's interests, was done only to ensure the total integral sale of single residential property to sole buyer.

DECISION

The issue in this decision is whether an employee may be reimbursed for the expenses incurred in selling his former residence which was subdivided into two parcels. We hold that the employee may be reimbursed for the expenses for both parcels since the sale of the second parcel did not represent a collateral land transaction which may not be reimbursed under the applicable regulations.

Our Claims Group received the claim of Mr. Richard M. Poehling in the amount of $1,660 for real estate expenses incident to his transfer to the Naval Ocean Systems Center, Department of the Navy, San Diego, California. When Mr. Poehling sold his former residence in West St. Paul, Minnesota, in April 1985, he separated the rear portion of the lot and established it as a separate property. Both properties were sold to the same buyer. The brokerage fee for the newly established lot was at the rate of 10 percent since it was a land-only sale rather than the customary 7 percent for the sale of a residence. As a result, the cost of the separate sale for the rear property was $1,600 for the brokerage fee and $60 for legal fees related to the required deed update. The Navy certifying officer determined that

these two amounts were part of a collateral land transaction and therefore were not reimbursable. Mr. Poehling claims that the sale of his "backyard" was "an integral part of the sale of his sole residence" and should be reimbursed. The record shows that the initial denial by the local certifying officer was based on the theory that reimbursement is authorized only for expenses associated with one piece of real estate. In this regard, paragraph 2-6.1(f) of the Federal Travel Regulations[1/] limits the reimbursable real estate expenses paid by an employee to a pro rata entitlement when the employee sells or purchases land in excess of that which reasonably relates to the residence site.

In K. Diane Courtney, 54 Comp. Gen. 597 (1975), we discussed the proration requirement of this regulation insofar as it relates to an employee's purchase or sale of a large tract of land and held that reimbursement must be limited to those costs associated with conveyance of the residence itself and such land as reasonably relates to the residence site. The decision details those factors that may be considered in determining how much of the land relates to the residence site and how much is excess. These guidelines, while not exhaustively stated, include examination of zoning laws, appraisal by experts, and consideration of the location and topography of the land as ways of establishing reasonableness of the property size being sold. Courtney, cited above. Where the separate parcels are sold to separate purchasers, the analysis set out in Courtney will generally lead to a finding that the lot without the residence is in excess. See Franklin J. Rindt, B-199900, February 10, 1981, and Harold J. Geary, B-188717, January 5, 1978. However, in another line of decisions since our decision in Courtney, we have recognized that where separate parcels were conveyed to the same individual purchaser, the existence of separate transactions only gives rise to the rebuttable presumption that the parcel not containing the residence was excess. Thus, in those decisions we have considered the factors set forth in Courtney for determining the amount of property that reasonably relates to the residence site.

1/ See the Federal Travel Regulations (Supp. 1, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1985), which implement 5 U.S.C. § 5724a(a)(4) (1982) governing reimbursement for real estate expenses.

For example, in William C. Sloane, B-190607, February 9, 1978, we considered the claim of an employee who sold a 2-acre parcel on which the residence was situated and 3 days later sold the adjacent 5-acre parcel to the same buyer. Using the appropriate guidelines, the agency determined that the first parcel was deemed an adequate building site in the area and that the remaining property sold could be developed separately for residential purposes. We sustained the agency determination in Sloane and concluded that only the commission on the parcel of property containing the residence was reimbursable. In another case, a transferred employee sold his residence on a 1-acre lot to a single purchaser as two separate parcels to enable the buyer to obtain financing on the portion of land containing the residence. In that decision, W. Carl Linderman, 60 Comp. Gen. 384 (1981), we found that the portion of land not containing the residence was too small to use as a separate building site and that the 1-acre lot size was common acreage for single family residences in the area. We concluded in Linderman that those facts successfully rebutted the presumption raised by the separate sales that the smaller parcel was land in excess of that reasonably related to the residence site within the meaning of para. 2-6.1(f) of the Federal Travel Regulations.

The certifying officer in the present case found that Mr. Poehling's next door neighbor subdivided and sold his rear lot after a road was constructed allowing access to the rear lot. The certifying officer also found that both rear lots would support residences and could be used as residence sites. Since the actions of Mr. Poehling's neighbor tend to indicate that division of the property could result in separate residence sites, the certifying officer disallowed the expenses associated with the parcel not containing the residence.

Mr. Poehling explains, however, that he purchased the approximately 1-acre lot (100 feet by 440 feet) in 1978 and that he chose to build his residence on the front portion of the lot in order to avoid having a long driveway to the street. He further explains that regardless of his neighbor's action, it was his sole intent to build his home on a large, scenically buffered single lot to insure a greater measure of privacy from multiple-family housing units that had been built adjacent to the rear of his property. Mr. Poehling next points out that after he had accepted employment with the Navy, he agreed to sell his entire residential property to one buyer for the price of $137,400. To facilitate

the sale of his entire residential property, Mr. Poehling agreed to accept a $15,000 contract-for-deed on the piece of property constituting his "backyard." Mr. Poehling's realtor advised him that unless he surveyed and subdivided the rear portion of the property prior to sale, Mr. Poehling would not have any legal recourse if the buyers defaulted on the contract-for-deed payments for this portion of the property during the next 10 years. Thus, as an integral part of the sale of his single family residence to a single buyer, Mr. Poehling agreed to "split off" his backyard from the rest of his property to facilitate the sale. Mr. Poehling emphasizes it was done only for the convenience of the buyer, and his intent was not to speculate on a "collateral land transaction" as evidenced by the fact that his backyard had not been previously "split off" nor considered for sale individually.

We believe Mr. Poehling's careful explanation is compelling, and we are convinced that his property was not divided as a "collateral land transaction" indicative of speculation in the local real estate market. Rather, we conclude that subdivision of the property was designed to facilitate a complete and integral sale of his single residential property to a single willing buyer. We are aware that real estate transactions are often the subject of innovative and necessarily unique approaches to the execution of sales. A total property sale approaching $150,000 may reasonably require an artful compromise in the preparation of a fair financial package--such as the secondary $15,000 contract-for-deed utilized in this case for the buyer's benefit and the seller's protection. We have no basis to speculate on the future intentions of the purchaser in this case. Instead, we find only that the separate conveyances here were part of a single transaction in which the entire residential property was transferred to a single purchaser for use as a residence. Mr. Poehling's claim may be allowed on this basis.

for James F. Hinchman
Comptroller General
of the United States