



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bernard Mowinski - Real Estate Expenses - Title
Requirements
File: B-228614
Date: December 30, 1987

DIGEST

A transferred employee, who purchased a residence at his new duty station with his non-dependent brother, held title at settlement as a joint tenant and may be reimbursed only to the extent of his 50 percent interest in the residence. The fact that the deed referred to him as a married man did not serve to expand his right of ownership since the deed specifically listed him and his brother as joint tenants.

DECISION

Mr. Bernard Mowinski, an employee of the General Services Administration (GSA), has appealed our Claims Group Settlement Z-2864661, March 9, 1987, which denied his claim for full reimbursement of real estate expenses associated with the purchase of a residence at his new duty station. The GSA reimbursed Mr. Mowinski for only one-half of his allowable expenses (\$1,156.62) because he held title at settlement as a co-owner with his non-dependent brother. For the reasons that follow, we affirm the GSA and Claims Group determinations.

BACKGROUND

Mr. Mowinski transferred from Chicago, Illinois, to San Francisco, California, in March 1983. On October 12, 1983, Mr. Mowinski and his brother purchased a residence in Concord, California. The deed of purchase states that it was conveyed for a valuable consideration to "Bernard Mowinski, a married man as his sole and separate property and Thomas J. Mowinski, an unmarried man as joint tenants." On November 7, 1983, Mr. Mowinski's brother executed a Quitclaim Deed relinquishing all of his rights, title and

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interest in the property. Prior to this date, on October 29, 1983, Mr. Mowinski conveyed the residence by Grant Deed to himself and his wife as joint tenants.1/

Mr. Mowinski is claiming additional reimbursement on the basis of the language in the original deed which indicated that he was married, having a dependent spouse, and therefore possessed a two-thirds interest in the property at settlement. In addition, Mr. Mowinski states that decisions of this Office relating to the sale of a residence do not apply to the purchase of a residence.2/

OPINION

The statutory authority for reimbursing an employee for real estate expenses incurred incident to a transfer is 5 U.S.C. § 5724a(a)(4) (1982), and Part 6 of Chapter 2 of the Federal Travel Regulations (FTR) (Supp. 1, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Paragraph 2-6.1c of the FTR, as well as the statutory language, refers to costs incurred in connection with the sale or purchase of a home and requires that:

"[t]he title to the residence * * * 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."

Paragraph 2-1.4d of the FTR defines "immediate family" to include the employee's spouse, children, dependent parents, and dependent brothers and sisters.

The statutory and regulatory language refers to both a sale and a purchase, and this Office has decided many cases regarding title requirements as to both residence sales and purchases. Thus, in Transferred Employees, B-224593, Oct. 15, 1986, 66 Comp. Gen. _____, we limited real estate

1/ This conveyance appears to be out of sequence since Mr. Mowinski only possessed a one-half interest at that time; however, this issue is not crucial to our determination.

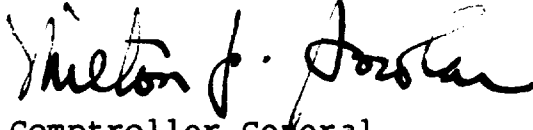
2/ Mr. Mowinski also claims that our Claims Group failed to address the issue of his shipment of household goods and travel to El Centro, California; however this claim is not part of the record.

expense reimbursement to 50 percent where the employee held title jointly with a friend when she purchased a residence at her new duty station. This was so even though she later married her friend. See also Anthony Stampone III, B-223018, Sept. 30, 1986, involving property jointly held with the employee's fiancée.

Turning to Mr. Mowinski's specific contention that he is entitled to a two-thirds interest based on the language of the deed, we find that this argument must fail. Mr. Mowinski and his brother held the property as joint tenants which is an estate owned jointly in undivided equal shares by two or more persons. Estate of Gebert, 157 Cal. Rptr. 46 (Cal. Ct. App. 1979). The fact that the deed referred to Mr. Mowinski as a married man did not serve to expand his right of ownership since the deed specifically listed him and his brother as joint tenants. See Short v. Milby, 64 A.2d 36 (Del. Ct. Chanc. 1949), where the court held a joint tenancy was created even though the deed conveyed to a single man, and a single woman, their heirs and assigns forever. The deed contained additional language which stated that the parties held jointly and not as common tenants. Thus, the additional words negated any attempt to create other than a joint tenancy.

One of the aspects of joint tenancy is survivorship, and upon the death of either party the other takes the whole and the heirs have no right to the property. Sams v. McDonald, 160 S.E.2d 594 (Ga. Ct. App. 1968). Thus, if Mr. Mowinski had died prior to the execution of the later deeds, his property would have passed solely to his brother and his wife would have no claim to the property. See Estate of Gebert, 57 Cal. Rptr. 46, supra.

Accordingly, since Mr. Mowinski held title at settlement with an individual who was not a member of his immediate family or his dependent, his reimbursement was correctly limited to his 50 percent interest. Gary M. Bria, B-217936, June 24, 1985. His claim for additional reimbursement may not be allowed.

for 
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