The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frederick W. Bartel

File: B-233310

Date: February 9, 1989

DIGEST

Transferred employee owned property at the old duty station jointly with his wife who filed for chapter 7 bankruptcy. After filing for bankruptcy, trustee in bankruptcy took title to wife's interest in property. Therefore, upon subsequent sale of realty, employee may be reimbursed only one-half of real estate expenses since title was in name of employee and trustee in bankruptcy, a nonmember of his immediate family.

DECISION

Ms. Joanne Henry, Certifying Officer, Bonneville Power Administration (BPA), Department of Energy, Portland, Oregon, asks whether an employee of BPA, Frederick W. Bartel, may recover the total cost of expenses related to the sale of his residence where the wife's trustee in bankruptcy is listed as co-seller on the settlement agreement. For the reasons stated below, we hold that Mr. Bartel may not be reimbursed for the total amount of sale expenses.

After being transferred, in the interest of the government, Mr. Bartel sold his residence at his former duty station. At the time of transfer, title to the property was held by Mr. Bartel and his wife, Merilee Bartel, who had acquired the property through a property settlement agreement from an earlier divorce. The Internal Revenue Service (IRS) placed a lien against the property prior to the sale date, claiming that Mrs. Bartel was legally responsible for unpaid taxes owed the IRS by her ex-husband. Mrs. Bartel subsequently filed for Chapter 7 bankruptcy, and a trustee was appointed to represent the creditors. Upon sale of the property, the trustee in bankruptcy was listed as co-seller on the final property settlement statement and shared equally in the net proceeds. Mr. Bartel claims that he paid all sale expenses and should be reimbursed for the full amount. He agrees that the trustee was listed as co-seller of the property but suggests that the trustee did not have title to the property.

As recognized by Mr. Bartel, various documents relating to the sale of the residence list the trustee as a co-owner of the residence. While acknowledging that he held the property for the benefit of creditors, the trustee specifically states that:

> "Upon filing of a chapter 7 bankruptcy, the title to the real estate fell into the hands of the trustee subject to liens, encumbrances, exemptions and other set offs." (Emphasis added.)

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), as set forth in the Federal Travel Regulations (FTR), FPMR 101-7 (September 1981). Specifically, para. 2-6.1c requires in part that title to the residence sold must be "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 immediately family." Paragraph 2-1.4d(1)(a) includes "spouse" in the definition of "immediate family." The date for determining this is the date of settlement. Alan Wood, 64 Comp. Gen. 299 (1985). If on the date of settlement there is a co-owner who is not a member of the employee's immediate family, then the employee only receives half of the expenses of sale. FTR, para. 2-6.1f. See, e.g., B-184478, May 13, 1976.

On the date that Mrs. Bartel filed her petition in bankruptcy all her real and personal property became property of the bankruptcy estate and title to this property was vested in the trustee. In Re Tingle, 39 Bankr. 904 (S. D. Fla. 1984); In re Myers, 17 Bankr. 410 (E. D. Cal. 1982); In The Matter of Forester, 529 F.2d 310 (9th Cir. 1976). See 11 U.S.C. §§ 363, 541, and 704.

Accordingly, we hold that at the time of sale the trustee did have title to the property, and Mr. Bartel is entitled to receive 50 percent of the costs of selling that are reimbursable under the FTR. In so holding, we point out that both Mr. Bartel and the trustee equally shared the costs of the sale since the expenses of the sale were deducted from the proceeds and then the net equity in the house was divided equally between Mr. Bartel and the trustee for the benefit of Mrs. Bartel's creditors.

Milton J. Socolar

for Comptroller General
of the United States