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DECISION



21502
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20543

FILE: B-203413

DATE: April 13, 1982

MATTER OF: Manfred R. Kehr - Closing Costs in
"Guaranteed Purchase" Contract

DIGEST: Four separate charges, ordinarily classified as closing costs, were paid by a transferred employee to a real estate agency pursuant to a "guaranteed purchase" contract. Since these closing costs are ordinarily allowable, their inclusion in such a contract does not preclude reimbursement.

The issue in this decision is the entitlement of an employee to reimbursement for certain closing costs paid to a real estate agency pursuant to a guaranteed purchase agreement for sale of the employee's residence. We hold that these costs may be paid in addition to the customary real estate broker's fee or commission where the costs represent reimbursable closing costs and are not additional brokerage fees or commissions.

John M. Gregg, Chief, Financial Services Branch of the General Services Administration (GSA), has requested our decision whether Mr. Manfred R. Kehr may be reimbursed for four separate charges, commonly classified as closing costs. These charges were paid by Mr. Kehr to a real estate agency pursuant to an "Assured Equity Agreement" in connection with the sale of his residence upon his transfer from the General Accounting Office in Washington, D.C., to GSA in San Francisco, California. The agency has already reimbursed Mr. Kehr for \$6,600 for broker's fees and \$128.50 for recording and transfer fees.

On September 4, 1979, Mr. Kehr and his wife signed a "Assured Equity Agreement" with Realty World-Springfield which guaranteed the sale of their home if not sold by January 4, 1980. On this latter date, Realty World-Springfield purchased the Kehr home, and on February 27, 1980, they sold the property to a third party. The terms of the assured equity agreement required the Kehrs to reimburse Realty World-Springfield for the following charges: lender's inspection (appraisal) fee of \$75; attorney fees of \$150; termite inspection of \$25; and mortgage prepayment penalty of \$287.34, for a total of \$537.34.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724(a)(4) (1976), which provides reimbursement for the sale of the residence of the employee at the old station but limits reimbursement for the brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FPMR 101-7), paragraph 2-6.2, which more specifically details reimbursable and nonreimbursable expenses.

Our decisions have held that the four types of charges in this case are reimbursable closing costs to the extent such costs are customarily paid by the seller in the locality of the residence. See Glen A. Ballenger, B-187437, February 7, 1977 (lender's inspection or appraisal fee); George W. Lay, 56 Comp. Gen. 561 (1977) (legal fees and costs); Robert E. Grant, B-194887, August 17, 1979 (termite inspection); and David J. Connolly, B-194298, August 10, 1979 (mortgage prepayment penalty).

In the present case, however, GSA apparently believes that due to the nature of the assured equity agreement, these four charges may not be considered reimbursable closing costs as would ordinarily be the case. The agency views these costs as selling expenses in excess of a broker's commission which would not be reimbursable under our decision in Robert W. Freundt, B-181129, August 19, 1974. See also Doss H. White, Jr., B-197908, April 21, 1980.

In Freundt, a transferred employee entered into a "Guarantee to Purchase Agreement" which provided for the 6 percent real estate commission customary in that locality and which required that the employee pay a Guarantee Purchase fee of 2 1/2 percent and the sum of \$125 for the additional cost of resale. We held in Freundt that reimbursement of the 2 1/2 percent fee and \$125 for additional cost of resale was not authorized

since reimbursement of brokerage fees are limited to the amount customarily charged for sale of a residence in the locality where that residence is situated. See also White, supra, where we limited reimbursement to the customary 7 percent instead of the 10 percent commission paid for a guaranteed sale.

Our decision in Freundt, is clearly distinguishable on its facts from the present case. While the same type of guaranteed purchase contract was involved in both cases, the specific provisions were quite different. In Freundt, the charges of the extra 2 1/2 percent and the sum of \$125 for additional cost of resale constituted additions to brokerage fees in excess of the amount customarily charged for the sale of a residence in that locality. In the present case, the charges were for ordinarily allowable closing costs under a guaranteed purchase contract. The fact that these charges were payable under a guaranteed purchase contract does not make them nonreimbursable. Our decisions in Freundt and White are thus distinguished.

Accordingly, Mr. Kehr may be reimbursed for these charges to the extent they are reasonable and customarily paid by the seller.

Wilton J. Rowland
Comptroller General
of the United States