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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-205849**

**DATE: June 2, 1982**

**MATTER OF Gerald J. Reihsen - Sale of Residence -  
Incentive Bonus**

**DIGEST:** Employee who sold residence in Madison, Wisconsin, incident to permanent change of station may not be reimbursed an incentive bonus of \$500 charged by the realtor who sold his residence, in addition to a 7 percent sales commission customarily paid in the Madison area. Claimant has not rebutted the presumption created by information supplied by HUD area office that payment of incentive bonuses is not usual or customary in the Madison area. Since employee has been reimbursed \$6,930 representing a sales commission of 7 percent, he is not entitled to additional reimbursement of \$500 paid as an incentive bonus to real estate company.  
Para. 2-6.2a, FTR.

Mr. Burton Gordon, an authorized certifying officer for Region Seven, Federal Highway Administration, United States Department of Transportation, has requested an advance decision as to the propriety of certifying for payment a reclaim voucher submitted by Mr. Gerald J. Reihsen, an employee of the agency, for reimbursement of an incentive bonus of \$500 included in the broker's fee incurred in connection with the sale of his residence at his former duty station.

Mr. Reihsen was notified of his impending transfer from Madison, Wisconsin, to Jefferson City, Missouri, in January 1981 and immediately placed his residence for sale on the real estate market. He reported for duty at Jefferson City in March, leaving his family in Madison pending the sale of his residence. Inasmuch as the residence had not been sold by July, Mr. Reihsen executed a new sales contract which provided for payment of a \$500 bonus to the selling company. An offer within \$900 of the asking price resulted. The property was sold in September and Mr. Reihsen paid the realty company a commission of 7 percent totaling \$6,930 for selling the residence, plus a bonus of \$500.

The Federal Highway Administration allowed payment of \$6,930, representing the 7 percent commission, but disallowed payment of the \$500 bonus. The FHA denied reimbursement of the bonus based upon information received from the Department of Housing and Urban Development that the customary broker's fee for selling a residence in the Madison, Wisconsin, area was 6 or 7 percent. The FHA recommends that reimbursement of this fee be allowed on the grounds that the employee has submitted convincing evidence that it has become standard practice in the Madison area to pay an incentive bonus to sell a residence.

The evidence submitted by Mr. Reihsen consists of letters from representatives of the real estate companies involved in the sale and purchase of the residences at the old and new duty stations. The representative of the realty company involved in the sale of the residence at the old duty station states that in the Madison area, for a period of time, it has been customary for sellers of real estate to offer an incentive to the selling realtor to sell their home versus selling another multiple-listed home. He further states that the practice is becoming more standard every day due to the soft real estate market caused by high interest rates and bad economic conditions. The realtor reports that the Reihsen home had been on the market for many months before the incentive was offered and once the incentive was offered, the home was sold rather quickly.

The realtor who handled the purchase of a residence by Mr. Reihsen at his new duty station reports that they have found that offering a cash incentive to the sales agents over and above the usual percentage commission has been very helpful. He states that a cash prize sets the home in question apart from the several other homes on the market with similar locations and sales prices. The representative adds that although the incentive bonus is an additional expense, his company has found that it is most effective and pays off in the long run. Mr. Reihsen has also submitted a copy of a brochure prepared for realtors by a real estate developer in the Madison area offering a \$300 gift certificate to any real estate agent who sells a condominium in that particular development.

Mr. Reihsen concludes that payment of the bonus was necessary in order to sell his residence. He states that

the selling price of his residence was consistently at or below its formal assessed value. Mr. Reihsen also reports that due to the length of time the property was on the market, he incurred considerable additional expenses and would have incurred more expenses had the bonus fee not been paid.

This Office has contacted the HUD area office in Milwaukee concerning the usual and customary commission charged in Madison for selling residences. We were informed that the usual commission charged is 7 percent. The HUD official was unaware of the practice of offering an incentive bonus to a real estate company for selling a residence.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. § 5724a(a)(4) (1976), which provides for reimbursement of expenses incurred in the sale of the employee's residence at the old duty station, but limits reimbursement for brokerage fees to the amount customarily charged in the locality. This provision has been implemented by the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), paragraph 2-6.2a, which provides that:

"\* \* \* A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. \* \* \*" (Emphasis added.)

In considering claims such as Mr. Reihsen's, we have consistently held that FTR paragraph 2-6.3c requires that the applicable commission rate is the rate generally charged by all of the real estate brokers in the area, not the rate charged by the particular broker used by the employee to sell his residence. Richard A. Furbish, B-197961, August 25, 1980. Further, where HUD is consulted to determine what charges are customary in the locality, the information provided by HUD creates a rebuttable presumption as to the prevailing commission rate. Without other evidence as to the prevailing rate, the presumption created by the HUD determination must stand and is controlling. Doss H. White, Jr., B-197908, April 21, 1980.

Based upon the rule as stated in Furbish, supra, the statement made by the representative of the real estate company involved in the sale of Mr. Reihsen's residence and the offer of a \$300 gift certificate by a developer in the Madison area are insufficient to support the conclusion that the charge of an incentive commission bonus is customary in the Madison area. The statement by the representative of the real estate company in Jefferson City, Missouri, is irrelevant in determining whether the payment of an incentive bonus is customary in the Madison, Wisconsin, area. Further the information supplied by the official at the HUD area office in Milwaukee that the customary commission for selling a residence in the Madison area is 7 percent and that he is not aware of the practice of offering incentive bonuses in the Madison area, creates a rebuttable presumption as to the prevailing commission rate and that the payment of incentive bonuses by the seller is not usual or customary in the Madison area. The evidence presented by Mr. Reihsen is insufficient to rebut the presumption.

Accordingly, the reclaim voucher may not be certified for payment.

*Milton J. Dowd*  
for Comptroller General  
of the United States