

11856 ✓

DECISION



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

FILE: B-205515

DATE: June 2, 1982

MATTER OF: Betty J. Fike - Real Estate Expenses -
Attorney Fees

DIGEST: Employee of Internal Revenue Service sold her home in Cincinnati, Ohio, in April 1980, in connection with official transfer and claims attorney fees incident to the sale in excess of the amount customarily charged in the locality. Under applicable law and regulations, necessary and reasonable legal fees and costs incurred by reason of the sale of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. Since the employee's claim for attorney fees is in excess of the maximum range established for residence transactions in her locality by the Department of Housing and Urban Development, her claim is denied.

A transferred employee incurred attorney fees in connection with the sale of her residence at the old duty station. The issue presented for our consideration here is whether the employee may be reimbursed for those costs in an amount which is greater than the customary range of charges for such services within the locality of the residence transaction. In determining that the employee is limited to the amount customarily charged in the locality, we sustain our Claims Group's adjudication in Settlement Certificate Z-2825413, August 24, 1981.

Ms. Betty J. Fike, an employee of the Internal Revenue Service, was transferred from Cincinnati, Ohio, to Seattle, Washington, in June 1980. Incident to her transfer Ms. Fike incurred \$751 in attorney fees during the period

from February through April 1980, in connection with her sale of residence at the old duty station.

The now-settled policy of this Office concerning the extent to which legal fees may be reimbursed was established in our decision George W. Lay, 56 Comp. Gen. 561 (1977). We held in Lay that for any settlement occurring after April 27, 1977, necessary and reasonable legal fees and costs, except for the fees and cost of litigation, incurred by reason of the purchase or sale of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. We based our opinion on the specific authority provided in 5 U.S.C. § 5724a(a)(4) (1976) and implementing regulations promulgated by the General Services Administration (GSA) and set out in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) at paragraph 2-6.2c. And we pointed out that, in accordance with paragraph 2-6.3c of the FTR, technical assistance in determining the reasonableness of an expense, including the customary range of charges for legal fees and costs, may be obtained from the local or area office of the Department of Housing and Urban Development (HUD) serving the area in which the expense occurred. See Steven M. Calhoun, B-200207, September 29, 1981.

Applying this precedent to the circumstances of Ms. Fike's claim, our Claims Group's adjudication of August 24, 1981, reasoned and concluded as follows:

"While we have been advised by the Cincinnati, Ohio area office of HUD that the attorney fees customary for the area range from \$125 to \$300, the legal counsel's office of the Columbus, Ohio area office of HUD has stated that in the instant case it is very possible that trying to get approval for a land Contract sale from Buckeye Federal of Columbus, Ohio would run into difficulties and could run the attorney's fee up to \$751 under the circumstances.

"However, since authority for reimbursement of attorney fees incurred in residence transactions provides that the cost are to be

within the customary range of charges for such services within the locality of the residence transaction, we have determined that Ms. Fike may be allowed additional reimbursement for legal fees not to exceed a total reimbursable amount of \$300. Therefore, since Ms. Fike has already been reimbursed \$193.50 for legal fees, she is only entitled to an additional amount of \$106.50. * * *."

In requesting reconsideration Ms. Fike does not point to any error of fact or law contained in the Claims Group's adjudication. Rather, she contends that the application of the term "customary" in the Claims Group's adjudication, as well as HUD's representation of customary charges for attorney fees, are restrictive and unfair. Emphasizing the unusual circumstances of her case, Ms. Fike in essence contends that our adjudicatory policy and HUD's process for establishing customary legal fees are inequitably stringent in view of prevailing economic conditions in existing real estate markets.

We are sustaining the adjudication of our Claims Group which limited Ms. Fike's reimbursement of attorney fees to the maximum of \$300 customary for the locality of her residence transaction. The regulatory provisions of paragraph 2-6.2c and 2-6.3c of the FTR--which are called into question by Ms. Fike--are not arbitrary, capricious, or contrary to law. They are clear on their faces and are clearly applicable to the residence transaction in issue here. Thus, even though the type of contract of sale utilized by Ms. Fike necessitated her attorney's extensive involvement and resulted in significantly higher expenses for attorney fees, we find no basis on which to justify payment of such fees in excess of the customary maximum charges established for the locality of the transaction. Our decision here follows the Lay and Calhoon decisions cited above.

Accordingly, Ms. Fike's claim for additional reimbursement of attorney fees is denied.

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