

DECISION



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

FILE#: B-205891

DATE: July 19, 1982

MATTER OF: Charles R. Holland

DIGEST: Real estate selling expenses may be reimbursed to an employee who was not residing in his family home at the time he was first notified of his transfer of duty stations because a court had ordered him to vacate the home but continue mortgage and utility payments pending divorce. His absence is considered involuntary and temporary so that the home may be considered his residence. However, at the time the sale was consummated he was divorced and his former wife was, therefore, no longer a member of his household within the meaning of applicable regulations. Accordingly, the employee's reimbursement is limited to one-half of the real estate expenses--the extent of his interest in the home at the time of settlement.

The Accounting and Finance Officer, Wright-Patterson Air Force Base, Ohio, asks whether Mr. C. Reed Holland, a civilian employee of the Air Force, is entitled to real estate expenses for sale of his home near his old duty station at Warner Robins Air Force Base, Georgia, upon his transfer to Wright-Patterson Air Force Base. The matter was assigned Control Number 81-38 by the Per Diem, Travel and Transportation Allowance Committee.

As is explained below, we find that he may be reimbursed one-half of the allowable expenses since that appears to have been the extent of his interest in the property at the time of settlement.

Background

Mr. Holland states that as part of divorce proceedings, in which he and his wife were involved, a court ordered him to vacate the family home in Warner Robins, Georgia, by April 18, 1981. His wife and children were allowed to remain in temporary possession of the home. The order required him to continue mortgage payments, as well as pay all utility and telephone bills. He indicates that he had no choice but to comply with the order and did so

by moving into a nearby apartment. He also states, however, that he believes that the family residence remained his "legal abode" during the time in question.

On July 23, 1981, he received notice of his forthcoming transfer to Wright-Patterson where he was to report on September 2, 1981. We have not been furnished the date when he first contacted the realtor or took other action to sell the home; however, he signed a contract for the sale of his home, negotiated by a realtor, on August 20, 1981. Closing of the sale took place on September 1, 1981.

A copy of Mr. Holland's decree of total divorce dated August 26, 1981, provided that the family home was to be sold with the equity from the sale shared, one-third to Mr. Holland and two-thirds to his former wife.

Mr. Holland considers his absence from the family home to have been temporary and involuntary so that the family home remained his residence and he is entitled to real estate expenses. The Chief, Labor and Employee-Management Relations Section, Civilian Personnel Branch, at Wright-Patterson denied his request for approval of reimbursement of these expenses because Mr. Holland did not reside in the home when he first received notice of his transfer, as required by paragraph C14000, Joint Travel Regulations, Volume 2.

Applicable Law

The Joint Travel Regulations, Volume 2, cover civilian employees of the Department of Defense. They conform to the Federal Travel Regulations (FPMR 101-7) issued pursuant to 5 U.S.C. § 5724a as they relate to residence sales expenses. These regulations provide in paragraph 2-6.1 (May 1973) that the employee is entitled to selling expenses for--

"one residence at his old official station
* * * or for the settlement of an unexpired
lease involving his * * * residence * * *;
"Provided, That:

* * * * *

"c. Title requirements. The title to the residence or dwelling 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 immediate family, or solely in the name of one or more members of his immediate family. * * *

"d. Occupancy requirements. The dwelling * * * was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station."

The term "immediate family" is defined in FTR paragraph 2-1.4d (FPMR Temporary Regulation A-11, April 29, 1977) as an employee's spouse, children and certain other dependent relatives who are members of the employee's household at the time he reports to his new duty station.

We have applied these provisions in numerous cases involving the employee's absence from the dwelling sold at the time he was first notified of the transfer. In B-177343, March 7, 1973, the employee when first informed of his transfer lived in an apartment separated from his wife and children. A court order required him to remain outside the family home pending his divorce. We denied reimbursement of real estate expenses for sale of the family home since he had lived in the apartment and had been reimbursed his costs for terminating the apartment lease. Under regulations then in effect, as well as the provisions of paragraph 2-6.1 quoted above, the employee was entitled to either reimbursement for the sale of one residence or lease termination expenses, but not both. In Matter of Greer, B-189122, November 7, 1977, we pointed out factual differences distinguishing the case from the 1973 case--the employee had not received from the Government lease termination expenses when he vacated the apartment at the time of his transfer, the court required the employee to continue mortgage payments on the family residence when it barred him from living there pending his divorce, and the court eventually awarded him the home. We therefore allowed real estate selling expenses in Greer, since under the circumstances the employee did not voluntarily leave the home and would have returned there after temporary absence had it not been for his transfer.

Conclusion

The present case appears to be similar to the distinguishing fact pattern of Greer. The court apparently issued an order directing Mr. Holland to leave the family home, and Mr. Holland indicates that he did so in compliance with that order, not voluntarily. While the court did not award the full equity in the home to Mr. Holland as in Greer, he did receive the one-third interest. Also, he apparently did not claim any lease termination expenses on the apartment he had rented. Although it is not clear whether he put his house up for sale before he received notice of his transfer, it appears that he was not given authority by the court to sell the house until after he had received notice of the transfer.

Consequently we find that Mr. Holland's absence from the home was involuntary and temporary at the time he was first notified of his transfer, and he may be reimbursed real estate expenses. However, he was divorced from his wife at the time settlement on the sale of the residence took place. Therefore, at that time he held title to the property with a person who was not a member of his "immediate family." We have held that in these circumstances the employee may be reimbursed only to the extent of his interest in the property. Matter of Neiderman, B-195929, May 27, 1980; and Matter of Cromer, B-205869, June 8, 1982. In this case, although under the court decree Mr. Holland was to receive only one-third of the net equity in the residence after sale, at the time of settlement he presumably had a one-half interest in the property. Therefore, he may be reimbursed one-half of the real estate expenses.

Milton J. Aronson
for Comptroller General
of the United States