

DECISION

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

FILE: B-219925

DATE: June 10, 1986

MATTER OF: Bobby O. Allen - Real Estate Broker's
Commission

DIGEST:

Employee who sold his residence in Sierra Vista, Arizona, incident to a permanent change of station may be reimbursed for all of 7 percent broker's commission.

According to the evidence, including HUD's determination, there is no single prevailing rate for the locale and the 7 percent falls within the range generally charged.

This action results from a request for an advance decision submitted by the Finance and Accounting Officer, Department of the Army, White Sands Missile Range. The request was submitted through the Department of Defense Per Diem, Travel and Transportation Allowance Committee and was assigned PDTATAC Control No. 85-26. The question presented is whether a transferred employee may be reimbursed for the full amount of a real estate broker's commission where the evidence of the customary rate in the area is conflicting and does not clearly support one prevailing rate. For the reasons set forth below, we hold the employee may be reimbursed for the full amount of the commission paid, since the rate charged falls within the range of rates for the area.

Mr. Bobby O. Allen was officially transferred from Fort Huachuca, Arizona, to White Sands Missile Range, New Mexico, effective August 27, 1984. Incident to his transfer, Mr. Allen sold his residence in Sierra Vista, Cochise County, Arizona. He paid his broker a 7 percent commission, \$5,635, but was reimbursed for only a 6 percent commission, \$4,830, by the Department of the Army, Fort Huachuca. Mr. Allen has claimed reimbursement for \$805, representing the additional 1 percent commission.

The agency's reduction of Mr. Allen's original claim by \$805 and refusal to reimburse in excess of 6 percent was based, in part, on an informal inquiry by the Claims Judge Advocate at Fort Huachuca to the Department of Housing and Urban Development (HUD) regarding the customary and normal real estate commission charged by brokers in the Phoenix,

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Arizona area. The Phoenix office of HUD reported that a 7 percent commission rate is customary in larger cities such as Phoenix and Tucson, but that 6 percent is reasonable in smaller communities. The Tucson HUD office also stated that 7 percent is typical for Tucson, but that the rate is lower in smaller communities. In addition, the Claims Judge Advocate contacted the Cochise County Board of Realtors, who indicated that although the real estate commission rate is negotiable, it is usually 5 to 6 percent. Before concurring in the HUD and Real Estate Board findings, the Claims Judge Advocate surveyed local real estate brokers and also noted that the great majority of claims received are for a 5 or 6 percent commission rate.

Mr. Allen, on the other hand, asserts that he initially contacted several real estate agencies in Sierra Vista and was quoted a sales commission rate of 7 percent by four of the largest real estate agencies. Furthermore, Mr. Allen states that he discussed the commission rates with the Claims Judge Advocate on several occasions. During their telephone conversations, the Claims Judge Advocate indicated that the means by which they arrived at the reasonable and customary figure of 6 percent was to average the 5 to 7 percent rates obtained from the sample of real estate agencies surveyed. The Claims Judge Advocate is reported to have said that he would not approve a rate higher than 6 percent since that was the average of the range of rates. In addition, the record contains a letter from the State of Arizona, Department of Real Estate which states that the average commission rate for the State of Arizona is 7 percent of the selling price on a residence. Based on his discussions with real estate agents and the Claims Judge Advocate and the information from the surveys, Mr. Allen asserts that a 7 percent commission rate is reasonable and customary and requests that it be allowed in his case. He has the support of all agency officers except the Claims Judge Advocate at Fort Huachuca who apparently has final approval authority.

The statutory authority for reimbursing real estate expenses is found at 5 U.S.C. § 5724a(a)(4) (1982) which provides for reimbursement of expenses incurred in the sale of an employee's residence at his old duty station. Under that section, the reimbursement for brokerage fees is limited to the amount customarily charged in the area in which the residence is located. This provision has

been implemented by paragraph 2-6.2a of the Federal Trade Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1984) (FTR) which states, in pertinent part:

"Broker's Fees or Real Estate Commission.

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. * * *


In addition, FTR para. 2-6.3c provides that agencies may obtain technical assistance in determining the reasonableness of an expense incurred in a real estate transaction, including a broker's fee, from the local office of HUD serving the area in which the expense arose. Where HUD has in fact been consulted to determine what charges are customary in the locality, we have consistently held that the information supplied by HUD creates a rebuttable presumption as to the prevailing commission rate. See, e.g., David R. Hoffman, B-182431, July 14, 1975; Jerome B. Knaebel, B-205550, March 11, 1982. In instances where the customary and reasonable broker's fee, as supplied by HUD, has been a 2-3 point range, we have not questioned, in the absence of evidence indicating a single prevailing rate, the agency's decision to allow an employee to recover an actual amount paid that corresponds to the maximum percentage in the range. See Jerome B. Knaebel, supra; Gerald J. Reihsen, B-205849, June 2, 1982.

According to the record before us, the customary and reasonable broker's fee for the Sierra Vista area appears to range between 5 and 7 percent with no evidence of a single prevailing rate. The information provided by HUD was that commission rates varied between 5 and 7 percent, depending on the size of the locale. In addition, the State of Arizona Department of Real Estate stated that a 7 percent commission rate is the typical broker's fee for the sale of a house in the State of Arizona. The record indicates that the Department of Real Estate provides the commission rates to the local HUD offices. Further, contrary to the Claims Judge Advocate's apparent belief, we have never required the

prevailing rate or the rate generally charged to be set by regulation or to be recommended by a local real estate board. See David R. Hoffman, supra.

Moreover, the record indicates that the approval of a 6 percent broker's fee from Fort Huachuca was based on an average of the 5 to 7 percent range that a sample survey of real estate agencies in the Sierra Vista area revealed. However, the FTR does not refer to an average fee as being the criteria for determining the reasonableness of the commission charged. Rather, commissions are reimbursable to the extent they do not exceed rates generally charged in the locality of the old duty station.

Under the circumstances of this case, as outlined above, we find that there is no single prevailing commission rate and that the 7 percent broker's fee paid by Mr. Allen did not exceed the rates generally charged in the Sierra Vista area. Therefore, Mr. Allen is entitled to be reimbursed for the additional 1 percent commission of \$ 805. Accordingly, the reclaim voucher may be certified for payment if otherwise correct.



Acting Comptroller General
of the United States