

DECISION

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

FILE: B-164746

DATE:

DEC 19 1975

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MATTER OF: James Y. Kurihara - Legal Fees, Recording Fees and Finance Charges

DIGEST:

1. Employee's claim for legal fees for attorney's service in reviewing option and sale agreement - services which involve legal advice and counseling - may not be paid under Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973). However, that portion of the legal fees attributable to recordation of option purchase agreement may be reimbursed under FTR para 2-6.2d (May 1973) to the extent such cost is customarily paid by the purchaser of a residence at the employee's new official station.
2. Claim for reimbursement of 1 percent loan fee paid to employee's mortgagee in connection with purchase of residence at new official station is for disallowance as a finance charge under Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973) and 12 C. F. R. § 226.4 (1973), in the absence of a statement by the mortgagee indicating the portion of the total fee representative of charges which are excluded in computing the finance charge under 12 C. F. R. § 226.4(e) (1973).

We are requested to consider the appeal by Mr. James Y. Kurihara from the administrative disallowance of his claim for reimbursement of legal expenses in the amount of \$162 and a \$750 loan processing fee. Both items of expense were incurred in connection with Mr. Kurihara's purchase of a residence in Hawaii incident to his official change of station to that location on August 26, 1973, as an employee of the General Accounting Office.

Mr. Kurihara's claim for reimbursement of legal fees is made pursuant to Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973). That section provides as follows:

"c. Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new

official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

The record indicates that Mr. Kurihara has been reimbursed legal fees amounting to \$377.68. The attorney to whom Mr. Kurihara paid the unreimbursed \$162 amount in question has provided the following itemization of services covered by that portion of the employee's claim for legal services:

"Professional Services Rendered:

"Re: Option Agreement, Sub-Agreement of Sale, Rental Agreement and review of DRCA re purchase of property at 91 Nawiliwili Street, Honolulu, Hawaii.....\$150.00

Recording fee, Option Agreement... 12.00
\$162.00"

In submitting his claim the employee stated that while he took occupancy of his Hawaii residence in October of 1973, the seller had stipulated that the sale was to be consummated in 1974. In order to accomplish the transfer of property both an option agreement and agreement of sale were executed. Mr. Kurihara explained that he had retained an attorney to "review and suggest changes to the language contained in the option agreement and the agreement of sale."

None of the costs in question fall within the categories of services for which reimbursement is authorized by FTR para. 2-6.2c (May 1973), quoted above, in connection with an employee's purchase of a residence at his new duty station. Moreover, with the exception of the \$12 recording fee, the legal fees in question appear to have been

B-164746

charged for legal advice and counseling. It has been held that the fee which an employee pays to retain an attorney to represent and counsel him in connection with a real estate transaction may not be reimbursed under the above-quoted regulation. 48 Comp. Gen. 469 (1969), B-175710, July 17, 1972. In view thereof we find no basis for payment of the \$150 portion of legal fees charged. However, the \$12 fee for recordation may be reimbursed under para. 2-6.2d of FTR 2-2-7 (May 1973), to the extent that it is customarily paid by the purchaser of a residence in Hawaii.

As a basis for reclaiming the \$750 amount paid by him as a loan processing fee, Mr. Kurihara relies on our decision B-165686, December 20, 1968, wherein reimbursement of a 1 percent charge to the purchaser by a lending institution was allowed. He relies additionally upon the statement by his mortgagee that the \$750 charge "is intended to reimburse the bank for the normal costs of processing mortgage loan applications and is not intended to increase the yield on the mortgage note."

With regard to the claimant's reliance upon B-165686, supra, it should be noted that the transaction involved in that case occurred prior to the amendment of the then controlling regulations, Bureau of the Budget Circular No. A-56, on June 20, 1969. The language of that regulation, as amended, now appears in the successor regulation, FTR para 2-6.2d (May 1973) which, insofar as pertinent, provides:

"d. Miscellaneous expenses. The following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if they are customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily paid in the locality of the residence * * *. Interest on loans, points, and mortgage discounts are not reimbursable. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. Property taxes and operating or maintenance costs also are not

B-164746

reimbursable. In cases involving construction of a residence, reimbursement of expenses would include those items of expense which are comparable to expenses that are reimbursable in connection with the purchase of existing residences and will not include expenses which result from construction."

Regulation Z, 12 C. F. R. § 226.4 (1973), cited therein, provides in pertinent part as follows:

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

"(1) Interest, time price differential, and any amount payable under a discount or other system of additional charges.

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.

"(4) Fee for an appraisal, investigation, or credit report.

* * * * *

"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of

B-164746

this part, shall not be included in the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Charges in the nature of the 1 percent fee paid by Mr. Kurihara to his mortgagee which are not identified as being in payment of otherwise allowable expenses are considered part of the cost of money under the Truth in Lending Act and the employee may not be reimbursed therefor. B-176431, August 11, 1972; B-173775, October 25, 1972; B-183177, March 17, 1975. In the absence of a statement by the mortgagee indicating the particular portion of the 1 percent loan fee attributable to services which are excluded in the computation of a service charge under 12 C.F.R. § 226.4 (1973), supra, Mr. Kurihara's claim for reimbursement of the \$750 fee is for disallowance.

R.F.KELLER

Deputy] Comptroller General
of the United States