

DECISION

094765
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

40985

FILE:

B-180811

DATE:

JUL 29 1974

MATTER OF:

→ Reimbursement of brokerage and attorney fees in sale of residence by transferred employee → Addressee Title

DIGEST:

1. Where an employee entered into a contract for the purchase of a residence at his old duty station, but did not occupy the residence because of a transfer, he may be reimbursed the costs of selling the residence since he was prevented from occupying the residence, as required by the Federal Travel Regulations, by the act of the Government.
2. Where an employee claimed reimbursement for a lump-sum attorney fee incident to the sale of his residence in connection with transfer, payment may not be made until he submits an itemized statement since only those legal fees may be paid which are listed in section 2-6.2e, FPMR 101-7, and the lump-sum fee may include unallowable items.

An Authorized Certifying Officer, Department of Justice, has requested a decision in a letter dated March 5, 1974, as to whether a transferred employee may be reimbursed for the expenses of selling a residence under the circumstances described below.

Mr. Jay Horowitz, an Assistant United States Attorney for the Southern District of New York, lived in an apartment in Brooklyn with his wife and children. In May 1973 he contracted to purchase a residence in New Rochelle, New York, depositing \$7,500, 10 percent of the purchase price, in accordance with the usual practice. Closing was set for August 1, 1973, and Mr. Horowitz arranged to terminate his apartment lease in August as well. After entering into the purchase contract, Mr. Horowitz accepted a transfer to the Watergate Special Prosecution Force in Washington, D. C. He began his work in Washington as scheduled on August 19, 1973. On or about August 10, Mr. Horowitz and his family, at the conclusion of the lease, left the apartment in Brooklyn. Rather than moving his furniture to the house in New Rochelle and a second time to the Washington area, Mr. Horowitz chose to put it in storage. Mrs. Horowitz and the children stayed temporarily with her parents in New Jersey. Mr. Horowitz stayed in hotels in Washington and traveled to

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New Jersey on weekends to be with his family. He purchased a home in the Washington area in October and sold the house in New Rochelle in November. The question presented for decision is whether the Government may reimburse Mr. Horowitz for the costs of selling the house in New Rochelle since he did not occupy that residence at the time he first was advised of his transfer.

The statutory authorization for the reimbursement of expenses of the sale of the employee's residence at his old duty station is contained in 5 U.S.C. 5724a(a)(4). Section 2-6.1d of the Federal Travel Regulations, FPMR 101-7, implementing that statute provides that reimbursement of expenses of selling the old residence may be made provided the dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he was first definitely informed by competent authority of his transfer to the new official station.

In decision B-168818, February 9, 1970, the employee had already contracted to purchase a home when he learned of his transfer. He resold the house soon after purchasing it. The regulation in effect at the time, Bureau of the Budget Circular No. A-56, 4.1d, contained the identical requirement. However, we held that it was not intended to apply where the employee has in good faith entered into a contract for the purchase of a residence at his old duty station prior to receiving his transfer order, is unable to cancel the purchase contract, and is precluded from establishing his residence in the house because of a transfer. A similar situation was involved in decision B-168186, November 24, 1969. In that case an employee contracted for the construction of a house to be used as his residence prior to learning of his transfer. The selling expenses were held reimbursable even though he never occupied the house because "the action of the agency * * * has precluded the employee from establishing his residence in the home when completed." Cf. B-172534, May 25, 1971, where reimbursement was denied because the employee was not living in his old house because of personal reasons when first notified of his transfer. Also, reimbursement was denied in B-177643, April 9, 1973, because the employee moved out of his old residence prior to the time he was first definitely informed that he was to be transferred.

In the instant case the record indicates that Mr. Horowitz contracted for the purchase of the residence at New Rochelle prior to being informed of his subsequent transfer and would have occupied the house had he not been transferred. Under such circumstances the voucher may be certified for payment if otherwise proper. In this connection we note

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that the attorney's fee in connection with the transaction is stated as a lump sum and may contain items which are not reimbursable under the provisions of section 2-6.2c, FPMR 101-7. Therefore, it will be necessary for Mr. Borowitz to obtain from his attorney an itemization of those portions of his fee allocable to the items reimbursable under the cited regulation before any part of the fee may be paid. 47-107127, March 31, 1970.

The voucher is returned for handling in accordance with the above.

R.F. KELLER

[Deputy]

Comptroller General
of the United States