

DECISION

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

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FILE: B-183160

DATE: NOV 17 1975

MATTER OF:

Stephen J. Petro - Attorney's Fees on Purchase
of Residence

DIGEST:

Employee was required to pay the bank's legal fees in connection with purchase of residence at new official station. He is entitled to reimbursement of attorney's fees for the customary services necessary to complete the purchase under FTR para. 2-6.2c (May 1973). Employee also retained his own attorney because of complications with abstract of title. The portion of that fee paid to his attorney because of the title problem is reimbursable since independent legal services were necessary to assure clear title. The balance of the fee for survey and attending the closing are duplicative and may not be reimbursed.

This action is before us on a request from an authorized certifying officer of the Department of the Treasury, United States Secret Service, as to the propriety of certifying for payment the reclaim voucher of Mr. Stephen J. Petro for expenses incurred in connection with the transfer of his official duty station from Washington, D.C., to Buffalo, New York, on July 7, 1974.

The record shows that part of the expenses incurred by Mr. Petro in connection with the purchase of a residence at his new official duty station included legal fees charged by Diebold and Millonzi, attorneys for the mortgagee bank, which in New York are customarily paid by the purchaser. He also paid the legal fees charged by Flierl and Flierl, attorneys at law, whom he retained for the protection of his own interests.

Except for a \$50 charge for preparation of mortgage legal documents which was allowed, the certifying officer disallowed the claim for legal fees on the ground that they were both advisory in nature and duplicative. Mr. Petro reclaimed \$335 for the balance of the fee charged by Diebold and Millonzi, and \$300 for the fee charged by Flierl and Flierl. The certifying officer has requested our decision as to the amount of allowable attorney's fees.

The pertinent regulation applicable in this case is Federal Travel Regulations (FPMR 101-7) para. 2-6.2c (May 1973), which 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 statement of September 3, 1974, from Diebold and Millson, attorneys for the bank, advised Mr. Petro that the attorney's fee of \$125 represented 1 percent of the mortgage, and it covered standard charges which covered examination of the abstract of title, examination of the survey, preparation of mortgage documents, examination of the deed and tax receipts, supervision of the execution of the necessary legal documents at closing, and certifying title to the bank after the transaction was completed.

The fees charged by the bank's attorneys are charges for the examination of title and necessary legal services incident to the financing of the purchase as well as fees for conducting the closing since there is no indication in the record of any other charge for conducting the closing. Therefore, all of the items listed by the bank's attorneys may be certified for payment, if otherwise proper.

The statement from Mr. Petro's attorneys, Filari and Filari, although not itemized as to amounts for each service, indicates that their fee of \$200 primarily covered services arising from complications with the abstract of title. The title problem was caused by the fact that the property had been conveyed in 1952 to a trust whose purposes and beneficiaries were unidentified. The statement shows that the attorneys had to

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examine the title records and to negotiate an agreement with counsel for the seller that the seller would provide title insurance for the purchaser in order to assure a good and marketable title. It further shows that the attorneys obtained a corrected survey and attended the closing on behalf of the purchaser.

The attorney who handled the transaction for the bank has informally advised us that it was the bank's policy to require the seller and the purchaser to clear any title problems on their own before the bank would agree to lend money. We understand from this that the bank would not have made the loan if Mr. Petro had not taken care of the title complications and arranged the agreement with the seller. Under those circumstances we believe that the portion of the Flierl and Flierl fee which represents services in connection with the complications in the title is reimbursable. Since there were title problems, the employee was justified in obtaining independent legal services as necessary to assure a good and marketable title to the property. It appears that his attorneys were successful in this regard.

However, the portion of his attorneys' charges for the survey and attending the closing are duplicative of the services rendered by the bank's attorney and may not be reimbursed. See B-174964, September 21, 1972.

Upon submission of an itemized statement from the employee's attorneys, the certifying officer may, if otherwise proper, allow for payment the amount charged for the services involved in clearing the title. The balance of the fee should be disallowed.

The reclaim voucher is returned herewith for processing in accordance with the above.

R.F. KELLER

Deputy Comptroller General
of the United States