

DOCUMENT RESUME

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[Reimbursement of Real Estate Sales Commission]. B-189375.
October 12, 1977. 6 pp. + enclosure (1 pp-).

Decision re: W. Jerry Goudelocke; by Paul G. Desbling, Acting
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Army: Corps of
Engineers.

Authority: 5 U.S.C. 5724(a). F.T.R. (FPMR 101-7), ch. 2, part 6.
B-165747 (1969). B-180986 (1974). Knight v. Watson, 221 Ala.
69, 127 So. 841 (1930). Waldrop v. Langham, 260 Ala. 82, 69
So.2d 440 (1953). Bickley v. Van Antwerp Realty Corp., 271
Ala. 117, 122 So.2d 275 (1959).

John H. Barnsby, Finance and Accounting Officer, U.S.
Army Corps of Engineers, requested an advance decision with
regard to the claim of an employee for reimbursement of a
broker's commission paid in connection with the sale of his
residence at his former permanent duty station. The employee was
entitled to reimbursement in an amount equal to the 6%
commission customarily charged in Mobile, Alabama, since he
failed to produce evidence to show that the broker performed
special services entitling her to 7%. (Author/SC)

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Jessica Bateman



DECISION

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

FILE: B-189375

DATE: October 12, 1977

MATTER OF: W. Jerry Goudelocke - Reimbursement of Real Estate Sales Commission

- DIGEST: 1. Employee, transferred from Mobile, Alabama, to Washington, D.C., is entitled to reimbursement for broker's commission paid to his mother who performed brokerage services in connection with the sale of his residence in Mobile. Although mother did not possess City of Mobile real estate license, she did possess Alabama state license. Her failure to possess city license did not make her son's debt unenforceable and applicable statute provides that employee may be reimbursed for expenses required to be paid in connection with transfers between duty stations.
2. Reimbursement to transferred employee for real estate commission on sale of residence should be made in amount equal to 6 percent commission customarily charged in Mobile, Alabama. Employee failed to produce evidence to show that broker performed special services entitling her to 7 percent.

This action is in response to a letter dated June 13, 1977, from Mr. John H. Bransby, Finance and Accounting Officer, United States Army Corps of Engineers (Corps). Mr. Bransby requests an advance decision regarding the claim of Mr. W. Jerry Goudelocke for reimbursement of a broker's commission that he paid his mother, Mrs. Willie L. Goudelocke, in connection with the sale of his residence at his former permanent duty station.

Mr. Goudelocke was transferred from Mobile, Alabama, to Washington, D.C., in April 1976. His condominium townhouse in Mobile was sold on October 3, 1976, and settlement occurred on November 23, 1976. On December 9, 1976, Mr. Goudelocke submitted a claim for \$2,646, representing a 7 percent brokerage commission he had paid his mother.

Incident to its examinations of the claim, the Mobile office of the Corps reported that the majority of real estate firms in Mobile charged a 6 percent commission and that those charging a 7 percent commission supplied special services such as Multiple Listing Service or 1 year insurance on appliances and equipment in the house sold. It therefore approved reimbursement in the amount of \$2,268, equal to a 6 percent commission, provided Mr. Goudelocke was found to be entitled to reimbursement. The Mobile office also recommended a request for the Comptroller General to rule on Mr. Goudelocke's entitlement in light of certain circumstances set forth as follows:

"a. The selling broker, Willie L. Goudelocke, was the mother of the applicant and they were living in the same household at the time of the sale.

"b. Willie L. Goudelocke had a state license as a real estate broker, but had no business office, no telephone listing as a real estate broker and was apparently not engaged in the real estate business.

"c. Willie L. Goudelocke was not licensed by the City of Mobile to engage in the real estate business at the time the sale contract was entered into 3 October 1976. We were furnished a copy of a license she purchased on 16 November 1976 for the 'Balance of 1976' (copy attached). It appears that she attempted to obtain license for this single transaction.

"d. Mr. Goudelocke's original application contained no evidence that the sale commission was paid or that it was a legal debt. The application forwarded with DAEN-ASZ-T letter of 22 February 1977 contained a receipt dated 13 February 1977 showing the commission was paid on 23 November 1976.

"e. We understand that Willie L. Goudelocke is employed as a librarian and is not engaged in the real estate business. We attempted to contact

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Willie L. Goudelocke to develop further data in the latter regard, and to obtain any information bearing on subject transaction. Mrs. Goudelocke did not return our call."

Mr. Goudelocke disputes the statement that his mother was living with him at the time of sale. He reports that after his transfer to Washington in April 1976, he permitted his mother to reside at his home in Mobile until it was sold in October of that year. He also reports that, contrary to the Mobile office statement, his mother engages in real estate work even though she is also employed as a librarian. It is not necessary, however, for us to resolve these issues in order to determine the propriety of reimbursing Mr. Goudelocke since there is nothing in the record indicating the claimant's mother is his dependent.

Paragraph C14002-1a, Volume 2, of the Joint Travel Regulations, which governs reimbursement of brokers' commissions in this case, provides, in pertinent part:

"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 duty station. * * *"

The above regulation is in agreement with the Federal Travel Regulations (FPMR 101-7), chapter 2, part 6 (May 1973) which implement 5 U.S.C. § 5724a(a)(4) (1970). That statute authorizes reimbursement of expenses which employees are required to pay in connection with transfers between duty stations. In accordance with this provision we have held that reimbursement of brokers' commissions may be made only where the employee has incurred a legally enforceable debt to a broker. See E-165747, January 7, 1969, and Matter of Robert W. Pearson, B-180986, September 18, 1974.

Decision B-165747, supra, involved a claim by an employee of the Bureau of Customs, Department of the Treasury, for reimbursement of \$500.07 that he paid his former wife in connection with the sale of his house at his old permanent duty station. Reimbursement was denied, because, as we stated in that decision:

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"Payment of the amount in question appears to have been a voluntary act on the part of the employee, not a legally enforceable debt arising out of services performed by Mrs. Murray in connection with the sale of the residence in question."

The Mobile office cited this case and stated:

"While this case does not decide the issue in the Goudelocke case, we feel that it does raise the fundamental point of whether or not it is within the spirit and intent of the legislation for blood kin of the transferring employee to be compensated for services rendered. Specifically, this case raises the question of whether a legally enforceable debt is incurred by the employee arising out of the services performed by his mother."

We did not deny the claim in B-165747, supra, because the person who allegedly performed the brokerage service was related to the claimant. Rather, we denied the claim because the claimant's former wife did not possess a real estate license from Vermont, where the house was located. She was therefore prohibited by the laws of that state from engaging in the sale of real estate, and there was no legally enforceable debt. There is no allegation that Mrs. Goudelocke did not actually provide brokerage services for her son. He says he has not lived in Mobile since April 1976 and it was necessary for him to utilize a broker. Her name appears on the contract of sale as the designated agent and she also signed as witness for both the buyers and the seller. In addition, the file shows that she attended and acted as her son's agent at the closing, as evidenced by her having signed the closing statement in his behalf and the check from the buyer being issued to Goudelocke Real Estate. As a result, the only circumstances mentioned in Mobile's statement which might have affected the enforceability of Mr. Goudelocke's debt to his mother was that Mrs. Goudelocke did not possess a Mobile real estate license at the time of sale. In order to determine how this fact would have affected Mrs. Goudelocke's right to payment, and her son's right to reimbursement, we must look to the laws of the State of Alabama.

The general rule in Alabama was stated in Knight v. Watson, 221 Ala. 69, 127 So. 841 (1930) as follows:

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"A statute imposing a license tax as a revenue measure merely, although declaring the doing of business without such license unlawful and affixing a penalty as a method of enforcement, does not render void and unenforceable contracts made without such license. * * *

"But an act under the police power, designed to regulate the business, to protect the public against fraud and imposition, requiring a license as evidence of qualification and fitness, and prohibiting any act of business under penalty, unless such license is first obtained, does render such contracts illegal, void, and unenforceable in actions for the recovery of compensation and the like. * * *"

See also Waldrop v. Langham, 260 Ala. 82, 69 So.2d 440 (1953); Faulkner v. Stapleton Insurance and Realty Corp., 266 Ala. 437, 96 So.2d 761 (1957); and Bickley v. Van Antwerp Realty Corp., 271 Ala. 117, 122 So.2d 275 (1959). Each of these cases was an action to recover a commission by a plaintiff broker who did not possess a real estate license as required by the state licensing law. While these cases did not involve the same statute, each statute contained provisions prescribing certain qualifications for license applicants, regulating the business of brokers, and providing that violations of the statutes constituted a misdemeanor. Due to these provisions, the statutes were held to have been enacted under the police power and the brokers were therefore not permitted to recover their commissions.

The Mobile license law contains no such provisions concerning brokers' qualifications, etc. The real estate licensing requirement is included in the License Code of the City of Mobile which is simply a schedule of license fees for numerous businesses and professions. The real estate license fees are graduated according to the income derived by the applicant from his business. In light of these provisions and because the license code is administered by the City of Mobile Revenue Department, it seems clear that the Mobile real estate licensing law is purely a revenue

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measure and was not enacted under the police power for the purpose of regulating the real estate business. As a result, it seems unlikely that Mrs. Goudelocke's failure to possess a Mobile city license would have made Mr. Goudelocke's agreement to pay her unenforceable and void.

One of the circumstances which caused the Mobile office to doubt whether Mr. Goudelocke was entitled to reimbursement was that his original application contained no evidence that the commission had actually been paid. However, the Mobile office points out that Mr. Goudelocke later furnished a receipt from his mother which states that she received payment on November 23, 1976, but which was dated February 13, 1977. The Corps has not provided us with any evidence which would cause us to doubt this receipt, and we understand that Mr. Goudelocke's mother reported the commission on her 1976 State and Federal income tax returns. Mr. Goudelocke is therefore entitled to reimbursement.

However, reimbursement should be limited to an amount equal to a 6 percent commission as approved by the Mobile office of the Corps. Although Mr. Goudelocke stated in a memorandum contained in the file that his mother is a member of Multiple Listing Service, he has informed us that she was not a member at the time his house was sold. Also, Mr. Goudelocke has provided no evidence which shows that firms other than those providing special services charge a 7 percent commission in Mobile. Therefore, we believe that 6 percent is the proper rate of reimbursement.

The voucher should be processed in accordance with the above if otherwise proper.

Acting

Paul S. Stumling
Comptroller General
of the United States



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

Jessica Rutford
CP.

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October 12, 1977

The Honorable Tom Bevill
House of Representatives

Dear Mr. Bevill:

Reference is made to your interest in the claim of Mr. W. Jerry Goudelocke for reimbursement of a 7 percent commission that he paid when he sold his residence incident to his transfer from Mobile, Alabama, to Washington, D.C., in April 1976.

By decision of today, copy enclosed, we held that Mr. Goudelocke is entitled to reimbursement in an amount equal to 6 percent of the sale price.

Sincerely yours,

Acting

Paul B. Stumbly
Comptroller General
of the United States

Enclosure