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DECISION



21498 PCL

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

FILE: B-205614

DATE: April 13, 1982

MATTER OF: Nathaniel E. Green - Relocation - Real Estate
Expenses - Interest in a Cooperatively Owned
Building

DIGEST:

1. Employee transferred from Cincinnati, Ohio, to Detroit, Michigan, in May 1981, claims certain real estate transaction expenses in connection with the purchase of a cooperative apartment at the new duty station. Following the rule established in Zera B. Taylor, B-201172, December 15, 1981, 61 Comp. Gen. ____, in the absence of evidence clearly establishing a different arrangement, we will consider an interest in a cooperatively owned apartment building to be a form of ownership in a residence for which real estate expenses may be reimbursed as provided under the Federal Travel Regulations (FTR).
2. In Herbert W. Evorett, B-201809, May 8, 1981, 60 Comp. Gen. ____, we held that membership fees in cooperatively owned apartments are part of the purchase price having no relationship to any expense required for the purchase of the property. In the present case "application fee" and "lottery (unit selection) fee" may be distinguishable as incidental charges made for required services in connection with the purchase of a cooperative for which reimbursement may be further considered under paragraph 2-6.2f of the FTR. However, \$200 claimed as an application fee must be further explained to adequately differentiate it from a membership fee.
3. Claims for expenses of "mortgage service," "insurance," and "legal service" in connection with employee's purchase of a cooperative apartment at the new official station must be further explained and itemized to enable the agency to ascertain

qualifying mortgage expense and insurance entitlements under paragraph 2-6.2d of the FTR, and qualifying legal expenses under paragraph 2-6.2c of the FTR. Expenses for "marketing and advertising" extend only to the sale of a residence at the old duty station under paragraph 2-6.2b of the FTR and may not be reimbursed in connection with the purchase of a residence at the new duty station. Expenses for "real estate tax" and "operating reserve" are specifically precluded from reimbursement under paragraph 2-6.2d of the FTR.

4. Transferred employee claims his "10% down-payment" and "security deposit" as reimbursable expenses incurred in the purchase of his cooperative apartment. Both of these monetary outlays are credited against the purchase price of the residence. Neither 5 U.S.C. § 5724a nor the Federal Travel Regulations contemplate the Government's taking a real property interest in an employee's new residence. As the down-payment and security deposit are part of the purchase price and not a part of the cost or expenses of purchasing, they are not reimbursable as relocation expenses.

In our recent decision Zera B. Taylor, B-201172, December 15, 1981, 61 Comp. Gen._____, we analyzed an employee's entitlement to expenses incurred in the sale of a cooperatively owned apartment incident to an official transfer. Here, in Mr. Green's case, we extend our analysis to those expenses which are reimbursable in connection with the purchase of a cooperatively owned apartment at the employee's new official duty station.

Mr. Nathaniel E. Green, an employee of the Internal Revenue Service, claims certain real estate transaction expenses he incurred in acquiring a residence at the new duty station in connection with his official transfer from Cincinnati, Ohio, to Detroit, Michigan, in May 1981. Mr. Green's housing and financing were obtained by stock

purchase in a cooperative which owned and operated the apartment building in which his new residence was located.

In the Zera B. Taylor case, cited above, we first evaluated whether Mr. Taylor's relationship to the residence was that of an owner-cooperator claiming miscellaneous real estate transaction expenses under paragraph 2-6.2d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), or that of a renter-lessee claiming lease termination expenses under paragraph 2-6.2h of the FTR. In reviewing our case law precedents we recognized that participating in a cooperative apartment and maintaining an equity interest in a particular housing corporation did not always require that the employee be treated as an owner of the residence within the meaning of the entitlement authorities. We also noted that more recently we have held that an interest in a cooperatively owned building, which is specifically referred to in paragraph 2-6.1c of the FTR, is a form of ownership in a residence for which real estate expenses may be reimbursed as provided for in paragraph 2-6.2. As a result, our approach has more consistently viewed cooperative apartment arrangements as vesting purely ownership interests in connection with the employee's relationship with the cooperative unit. Thus, where the employee claiming reimbursement does not specifically claim and adequately document that the cooperative arrangement is predominantly a lease relationship, we treat the employee's interest as one of ownership for which real estate transaction expenses may be reimbursed under controlling regulations.

Having established that Mr. Green's residence transaction generally qualifies for reimbursement of expenses required to be paid by him under 5 U.S.C. § 5724a (1976), and Part 6, Chapter 2, FTR, we turn now to an evaluation of the specific expenses and charges for which he is claiming reimbursement.

APPLICATION FEE AND LOTTERY FEE

Mr. Green claims \$200 for an "application fee to cooperative" and \$25 for a "lottery fee (for selection of position for choice of cooperative apartment)." In our

decision Herbert W. Everett, B-201009, May 8, 1981, 60 Comp. Gen._____, we held that membership fees in condominium or cooperatively owned homes or apartments are regarded as items of added value continuing to benefit the purchaser. As such, they are considered a part of the purchase price and not a part of the cost or expenses of purchasing. In Mr. Everett's case, the membership fee had no relationship to any expense or charge for services required for the purchase of the property. It was a requirement for occupancy and participation in the management of the cooperative development. Accordingly, such membership fee is not reimbursable as a relocation expense under the Federal Travel Regulations. Mr. Green's expenses under consideration here are potentially distinguishable.

The application fee and the lottery (unit selection) fee were required payments when Mr. Green applied to become a member of the cooperative. We presume that in part these fees represent administrative expenses and service charges for the preparation and processing of necessary documents as well as the performance of reference and credit checks that were prerequisites to cooperative ownership. As one-time nonrefundable expenses, we find that in principle the application fee and the lottery (unit selection) fee were "incidental charges made for required services" in connection with Mr. Green's purchasing his new residence which may be further considered for reimbursement under paragraph 2-6.2f of the FTR.

However, while we approve of reimbursement of these fees in principle, only the lottery (unit selection) fee may be certified for payment in the \$25 amount claimed. The \$200 amount claimed as an application fee remains inexplicably high in comparison to FHA or VA application fees. As a result, Mr. Green should provide verification regarding what the \$200 amount claimed actually covered, thereby resolving existing speculation that the "application fee" is in other words a "membership fee" which is a nonreimbursable expense as outlined in our Everett case, cited above.

Moreover, following informal consultations with officials of the Department of Housing and Urban Development, we are advised that a relatively high application fee, such

as the \$250 amount claimed here, often includes specified "mortgage services" and "legal services" which appear as separate and additional claims on Mr. Green's schedule of expenses. For the reasons outlined above, the lottery (unit selection) fee may be reimbursed in the \$25 amount claimed. The application fee may be further considered for reimbursement by the agency following clarification of its purpose and coverage in the particular circumstances of Mr. Green's claim.

MORTGAGE SERVICE AND LEGAL SERVICE

Mr. Green claims \$95.32 for "mortgage service" and \$223.21 for "legal service" in connection with his acquisition of the cooperative residence. To the extent that such items of expense are not otherwise covered by the application fee, and following further appropriate itemization, these service charges may be considered for reimbursement in whole or in part under the following analysis.

Paragraph 2-6.2d of the FTR provides that FHA or VA fees for loan application, costs of preparing credit reports, mortgage and transfer taxes, State revenue stamps, and similar fees and charges are reimbursable with respect to the purchase of a residence at the new official station if they are customarily paid by the purchaser and to the extent they do not exceed amounts customarily paid in the locality of the residence. However, interest on loans, points, and mortgage discounts are not reimbursable; and, 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.

Under this authority a cooperator's allocated portion of mortgage interest (exclusive of service charges) would not be reimbursable as a customary expense incurred incident to the acquisition of the cooperative residence. At the same time, charges in connection with preparing credit reports and drawing up documents would qualify for reimbursement. Accordingly, Mr. Green should further clarify his "mortgage service" claim to enable the agency to ascertain qualifying mortgage expense entitlements.

Similarly, Mr. Green must provide additional information regarding his claim for "legal services" in connection with his residence transaction.

Under paragraph 2-6.2c of the FTR and considering our opinion in George W. Lay, 56 Comp. Gen. 561 (1977), necessary and reasonable legal fees and costs, except for the fees and costs of litigation, incurred by the purchaser of a residence at a new official station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. And, as with other residence transaction claims, paragraph 2-6.3c of the FTR directs that technical assistance in determining the reasonableness of an expense within the customary range for legal services should be obtained from the local office of the Department of Housing and Urban Development.

As a result, where the entitlement authorities differentiate between those specific legal services customarily incurred by purchasers and sellers, Mr. Green's generalized claim for "legal services" is an insufficient explanation on which the agency may appropriately certify this portion of his real estate expense entitlement. Again, clarifying itemization is required.

MARKETING AND OTHER FOR ADVERTISING

Mr. Green claims \$196.42 for "marketing and other for advertising" expenses in connection with the purchase of his cooperative residence.

The provisions of paragraph 2-6.2b of the FTR which allow certain costs of advertising, appraisal and marketing extend only to the sale of the residence at the old official station. As such, Mr. Green has no marketing or advertising expense entitlement for the purchase of a residence at the new duty station.

REAL ESTATE TAX AND OPERATING RESERVE

Mr. Green's claim for \$829.93 for "real estate tax" as well as the claim for \$372.02 for "operating reserve"

may not be allowed under the specific provision of paragraph 2-6.2d that property taxes and operating or maintenance costs are not reimbursable.

INSURANCE

Mr. Green's claim for \$117.68 for "insurance" also requires additional explanation, but would appear to be reimbursable--if at all--as a "mortgage service" expense discussed above. This follows from the specific wording of paragraph 2-6.2d of the FTR that "[T]he cost of a mortgage title policy paid for by the employee on a residence purchased by him/her is reimbursable but costs of other types of insurance paid for by him/her, such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense."

10 PERCENT DOWNPAYMENT AND SECURITY DEPOSIT

Mr. Green claims his \$2,120 "10% downpayment" and \$330 "security deposit" as reimbursable expenses incurred in the purchase of his cooperative apartment. Both of these monetary outlays are credited against the stock purchase price which in effect represents the residence itself. Neither 5 U.S.C. § 5724a nor the Federal Travel Regulations contemplate the Government's taking a real property interest in an employee's new residence. As the downpayment and security deposit are part of the purchase price and not a part of the cost or expenses of purchasing, they are not reimbursable as a relocation expense under controlling legal authority.

Moreover, with reference to the Taylor case discussed above, the Occupancy Agreement and Cooperative Plan for Mr. Green's new residence set forth computational sums that are payable by the owner (Mr. Green) as "Carrying Charges" on a monthly basis. Included in this list are items such as taxes, administrative and operating expenses, insurance, operating reserves, maintenance, and mortgage and interest payments. In the Taylor case we observed that expenses of the type represented by his claim for carrying charges could not be considered a cost

incident to the sale of a residence for which reimbursement is authorized under Chapter 2, Part 6, of the FTR. Here in Mr. Green's case, we are no less persuaded that costs included in the monthly carrying charges are not reimbursable in connection with the purchase of a cooperative residence.

Milton J. Fowler
for Comptroller General
of the United States