

DECISION

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

FILE: 8-219501

DATE: January 13, 1986

MATTER OF: Paul A. Pradia - Reimbursement of
Real Estate Expenses

DIGEST:

An employee transferred from California to Arizona, may not be reimbursed for a commission paid a real estate salesman for services rendered in connection with the sale of his California residence. The real estate salesman was not a licensed broker, and California law prohibits the payment to or the acceptance of a commission by a person other than a licensed broker. The payment of the commission to the salesman, therefore, was not a legally enforceable obligation. Furthermore, the employee may not be reimbursed for an appraisal fee in the absence of proof of payment.

This decision is in response to a request from the Director of the Office of Finance and Accounting, U.S. Department of Housing and Urban Development, for a decision concerning the entitlement of Mr. Paul A. Pradia to reimbursement of a real estate commission and an appraisal fee in connection with the sale of his residence at his former duty station. The Department of Housing and Urban Development denied Mr. Pradia's claim on the grounds that the commission was paid to a person who was not a licensed real estate broker and that there was no proof of payment of the appraisal fee. We concur in HUD's determination for reasons we will explain below.

On March 16, 1983, Mr. Pradia was notified that he was to be transferred from Sacramento, California, to Phoenix, Arizona, and he reported to his new duty station on April 18, 1983. On June 18, 1983, Mr. Pradia and his wife signed a listing agreement for the sale of their Sacramento residence with Kiernan Realtors. Mr. Billy Taylor was the real estate salesman for Kiernan Realtors. The listing period appearing on that agreement was from June 18, 1983,

to August 1, 1984. Subsequent to the signing of the agreement, Mr. Taylor left Kiernan Realtors and became an associate of Walker and Lee Real Estate. On July 15, 1983, Mr. Pradia signed a listing agreement for the period from July 6, 1983, to October 30, 1983, with Walker and Lee.

On October 11, 1983, Mr. and Mrs. Pradia accepted a lease with an option to purchase from Paul and Hazel Williams. Mr. and Mrs. Williams exercised the option to purchase in January 1985 and the transaction was closed by Stewart Title of Sacramento on February 15, 1985. Mr. Pradia also reports that at some time after the option contract was executed, Mr. Taylor moved to a third real estate firm - Coldwell Banker. In a statement dated June 3, 1985, Mr. Pradia states that "due to disagreements between Mr. Taylor and his former employers, he decided not to share the brokers commissions with either of them and not to advance the listing to Coldwell Banker." As stated below, the Department disallowed Mr. Pradia's claim for a real estate commission of \$5,100 and an appraisal fee of \$65.

Authority for reimbursement of the expenses a transferred employee incurs in selling a residence is found in 5 U.S.C. § 5724a(a)(4). Paragraph 2-6.2a of the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1983) (FTR), which implements that statutory provision, provides for reimbursement of a broker's fee or a real estate commission paid by the employee for services in selling his residence. Paragraph 2-6.1 of the FTR provides that, in connection with the allowances authorized by Chapter 6, the employee will be reimbursed only for those expenses required to be paid by him.

In accordance with the FTR provisions, we have held that a broker's commission may be reimbursed only where the employee has incurred a legally enforceable obligation. See Mathew Biondich, B-197893, June 4, 1980, and cases cited therein. In determining whether an obligation is legally enforceable in this situation we look to the state law. Patricia A. Wales, 61 Comp. Gen. 96 (1981).

Section 10137 of the California Business and Professional Code provides in part as follows:

"No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed."

In addition, section 10138 of the same Code provides as follows:

"It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars (\$100) for each offense, for any person, whether obligor, escrowholder or otherwise, to pay or deliver to anyone a compensation for performing any of the acts within the scope of this chapter, who is not known to be or who does not present evidence to such payor that he is a regularly licensed real estate broker at the time such compensation is earned.

"For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings."

In Grand v. Griesinger, 325 P.2d 475, at 481 (Cal. Dist. Ct. App. 1958), the court commented on these provisions stating that:

"It is evident that brokers and salesman belong in distinctly different categories and that the broker, because of his superior knowledge, experience and proven stability is authorized to deal with the public, contract with its members and collect money from them; the salesman, on the other hand, is strictly the agent of the broker. He cannot contract in his own name (Tatterson v. Standard Realty Co., 81 Cal. App. 23, 29, 253 P. 770; Weber v. Tonini, 151 Cal. App. 2d 168, 170-171, 311 P.2d 132; 9 Cal. Jur. 2d § 70, p. 227), nor accept compensation from any person other than the broker under whom he is licensed; it is a misdemeanor for anyone, whether obligor, escrow holder, or otherwise, to pay or deliver to any one other than the broker compensation for services within the scope of the act. Sec. 10138. The entire statutory scheme requires the broker actively to conduct his brokerage business and to

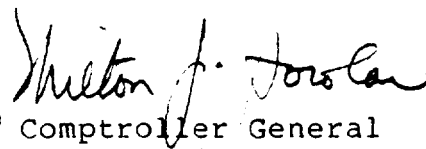
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supervise the activities of his salesmen.
It precludes a salesman from taking charge of
or conducting a business such as a rental
agency which requires a broker's license."

Mr. Pradia states that he acted in good faith in
listing his property with a salesman who represented himself
as representing two real estate firms known to Mr. Pradia to
be licensed in California. While we do not question
Mr. Pradia's good faith, it is clear under the above
provisions of California law that Mr. Pradia did not have a
legally enforceable obligation to pay Mr. Taylor.

We must also deny Mr. Pradia's claim for reimburse-
ment of the appraisal fee. Not only must an employee be
required to pay the expenses for which he seeks reimburse-
ment, he must also prove that he actually paid those
expenses. The Department advises us that Mr. Pradia has
not done that with respect to the appraisal fee.

Therefore, since the facts presented to us neither show
that Mr. Pradia had a legally enforceable obligation to pay
Mr. Taylor nor that Mr. Pradia actually paid an appraisal
fee, we must deny his claim for reimbursement.

for 
Comptroller General
of the United States