The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Terry R. Carlstrom

File: B-219845

Date: June 9, 1987

DIGEST

Employee may not be reimbursed for real estate expenses incurred incident to settlement which took place 3 months beyond the maximum 3-year period within which real estate transactions must be completed under paragraph 2-6.2e of the Federal Travel Regulations. The fact that sale was delayed by actions of renters who remained in possession after they had ceased paying rent and had defaulted under terms of contract by which they agreed to purchase the employee's former residence does not toll the running of the 3-year period of limitation, which may not be waived or modified regardless of the circumstances responsible for the delayed settlement.

DECISION

Mr. Terry R. Carlstrom, an employee of the National Park Service, has appealed Settlement Certificate Z-2864529, March 9, 1987, issued by our Claims Group, which denied his claim for reimbursement of real estate expenses incurred in the sale of his residence incident to his change of official station. For the reasons stated below, we sustain the Claims Group's settlement and hold that the relocation expenses claimed may not be reimbursed.

Mr. Carlstrom was authorized a change of permanent duty station from Anchorage, Alaska, to Washington, D.C. He reported for duty at his new official duty station on August 8, 1982. In connection with his transfer to Washington, D.C., Mr. Carlstrom was authorized reimbursement for real estate expenses incurred in selling his former residence in Alaska. Mr. Carlstrom has explained that his Alaska residence was placed on the market in June 1982 and was occupied by renters beginning in August 1982. On September 6, 1984, Mr. Carlstrom and the couple then renting the house executed an agreement under which the renters agreed to purchase the house after the sale of other property which they owned but not later than June 1, 1985.

039169

In March 1985, the buyers defaulted and discontinued making all payments. They did not vacate the premises until May 1, 1985, and, ultimately, Mr. Carlstrom obtained a judgment against them to cover certain of his losses.

On July 13, 1985, Mr. Carlstrom entered into a contract to sell his Alaska residence to another purchaser. That sale was not closed until November 14, 1985, 3 months beyond the maximum 3-year period within which an employee must consummate the sale of his former residence in order to receive reimbursement for real estate sale expenses. Because closing did not occur until more than 3 years after August 8, 1982, the date he reported to his new duty station, Mr. Carlstrom's claim for real estate expenses was denied by the National Park Service. That denial was upheld by our Claims Group, which cited the fact that the regulations providing a maximum 3-year period within which real estate transactions must be completed may not be waived or modified even though an employee is unable to complete the purchase or sale transaction for reasons beyond his or her control.

Upon appeal from the Claims Group's determination, Mr. Carlstrom claims that the time limit of 3 years should be extended by the 8-month period that "a dishonest buyer occupied the house and caused it to be removed from the market." Mr. Carlstrom points out that the actual closing date of the house sale transaction, November 14, 1985, would fall several months short of the extended time limit of 3 years and 8 months.

The statutory authority for reimbursement of real estate expenses incurred by civilian employees upon change of official station is found in 5 U.S.C. § 5724a(a)(4) (1982). The implementing regulations are contained in the Federal Travel Regulations (Supp. 4, Oct. 1, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984) (FTR). The time limitation for completion of transfer-related real estate transactions is found in FTR, para. 2-6.1e.

As in effect at the date of Mr. Carlstrom's transfer from Anchorage to Washington, D.C., paragraph 2-6.1e of the FTR provided that an employee had 1 year from the date he reported for duty at his new official station to complete the sale of his residence at his old duty station. As then applicable, there were provisions under which an employee could obtain a 1-year extension, giving him an aggregate period of 2 years within which to finalize the sale of his former residence. Effective October 1, 1982, paragraph 2-6.1e of the FTR was amended to provide for an initial 2-year period, with an additional 1-year extension, which would allow the employe a maximum period of 3 years within which to complete real estate transactions. This amendment was applicable to employees whose time to complete real estate transactions had not expired prior to August 23, 1982, and, thus, gave Mr. Carlstrom an initial 2-year period within which to complete the sale of his Alaska residence. James H. Gordon, 62 Comp. Gen. 264 (1983). In July 1983, Mr. Carlstrom was granted a 1-year extension, giving him an aggregate period of 3 years within which to consummate the sale of his Alaska residence. This 3-year period ended on August 7, 1985, a little over 3 months prior to November 14, 1985, the date when settlement finally took place.

This Office has consistently held that the above-cited regulation has the force and effect of law. William R. Walberg, 58 Comp. Gen. 539 (1979). The time limit it establishes may not be waived or modified even when the employee's failure to meet that limit is due to the recalcitrance of tenants occupying the employee's former residence under a lease with an option to purchase. Neil McKinney, B-217186, April 3, 1985. In Jerald W. Duxbury, B-219222, December 20, 1985, we considered a case very similar to Mr. Carlstrom's in which the transferred employee entered into a purchase agreement with individuals who were in possession of the property on the date the purchase agreement was executed and who failed to consummate the purchase in accordance with the terms of that agreement. The transferred employee sued for specific performance and, upon failing to obtain that relief, placed the house back on the market. The sale to another purchaser was ultimately consummated 5 months after the 3-year entitlement period established by FTR, para. 2-6.2e had ended. As does Mr. Carlstrom, the employee in that case claimed that the 3-year period of limitation was tolled by conditions beyond his control, namely litigation and occupancy of his former residence by the defaulting purchaser. We specifically held that these circumstances did not provide a basis to waive or modify the 3-year limit and that there is no basis for "tolling" or suspending the running of that time limitation.

Consistent with the above-cited authorities, there is no legal basis to allow Mr. Carlstrom's claim for reimbursement of real estate expenses incurred in connection with the sale of his former Alaska residence. We, therefore, sustain the denial of Mr. Carlstrom's claim by our Claims Group's Settlement Certificate Z-2864529, dated March 9, 1987.

Milton J. Socolar

Acting Comptroller General
of the United