



**The Comptroller General
of the United States**

Washington, D.C. 20548

Heitzman

Decision

Matter of: Gerald F. Stangel, Larry D. King - Relocation
Service Contracts - Liability for Direct Costs

File: B-231911

Date: March 10, 1989

DIGEST

The Bonneville Power Administration (BPA) is advised that BPA employees do not have to reimburse the agency for direct costs incurred incident to a relocation services contract when a residence sale is not completed. The authority to enter into relocation service contracts under 5 U.S.C. § 5724c (Supp. IV 1986) affords agencies a broader opportunity to provide services related to real estate transactions for transferred employees, subject to the terms of the agency's contract, and is not as restrictive as the language in 5 U.S.C. § 5724a(2)(4) (1982), which specifically refers to the sale and purchase of a residence.

DECISION

This decision is in response to a request from an authorized certifying officer, Department of Energy, Bonneville Power Administration (BPA), Portland, Oregon, concerning the issue of whether or not certain employees must reimburse the agency for direct costs incurred incident to a relocation services contract when a residence sale is not completed. For the reasons that follow, we conclude that the employees do not have to reimburse the agency.

BACKGROUND

The Department of Energy has entered into a relocation services contract under the provisions of 5 U.S.C. § 5724c (Supp. IV 1986) with the Howard Relocation Group (Howard) in order to assist employees in selling their residences at their old duty station when they receive a permanent change

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of station. Certain direct costs are incurred under the terms of the contract such as appraisals, title work, and inspections, and are billed by Howard directly to BPA where they are paid by its voucher section. The BPA is concerned about this practice since its voucher section pays these direct costs without any knowledge of the employee's relocation entitlements. It is only after payment that the travel section examines the employee's travel records and determines the employee's authorized reimbursement.

The BPA has provided us with specific examples concerning reimbursement for two employees, Gerald F. Stangel and Larry D. King. Both employees incurred direct costs similar to those previously listed under Howard's relocation service contract incident to a permanent change of station. However, both employees transferred back to their old duty station and reoccupied their old residence without completing the sales transaction. Mr. Stangel transferred back to his old duty station within 3 months of his initial transfer and Mr. King transferred back to his old duty station approximately 29 months later. Mr. King's situation is further complicated by the fact that he was separated and divorced after his transfer and prior to his return.

The agency asks if the employees must reimburse it for the direct costs paid to Howard on the theory that the transactions are analogous to an unsuccessful attempt to sell a residence, which requires reimbursement.

OPINION

Under legislation enacted in 1983, federal agencies were authorized to enter into relocation service contracts in connection with the transfer of employees.^{1/} This authority includes, but is not limited to, the making of arrangements for purchase of an employee's residence at his old duty station.

The concept of a relocation service contract represents a departure from the pre-existing authority for reimbursement of real estate expenses for a federal employee. Under the authority of 5 U.S.C. § 5724a(a)(4) (1982), a transferred employee is entitled to be reimbursed for certain expenses in the sale of a residence at the old official station and purchase of a residence at the new official station. This

^{1/} See section 118, Pub. L. 98-151, 97 Stat. 978, Nov. 14, 1983, as amended by section 120(b), Pub. L. 98-473, 98 Stat. 1837, 1969, Oct. 12, 1984, now codified at 5 U.S.C. § 5724c (Supp. IV 1986).

authority is limited in its scope by the statutory language and the implementing regulations in the Federal Travel Regulations, FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). The authority to enter into relocation service contracts in 5 U.S.C. § 5724c, on the other hand, affords agencies a broader opportunity to provide services related to real estate transactions for its transferred employees, subject to the terms of the agency's contract.

Our Office has held that only expenses incurred incident to a completed real estate sale or purchase transaction may be reimbursed under 5 U.S.C. § 5724(a)(4) (1982). Paul M. Foote, B-210566, Mar. 22, 1983; Dennis E. Skinner, B-202297, July 24, 1981. However, in this case the agency is paying the relocation company directly for certain expenses incurred on behalf of the employee under its statutory authority to contract in 5 U.S.C. § 5724c, and under specific provisions of its contract. See NSA Employees, B-219547, July 17, 1987, 66 Comp. Gen. _____, where we held that an agency may include property rental management service in its relocation service contracts, concluding that section 5724c should be given a liberal interpretation.

The relocation service contract with Howard contains several provisions which we believe are applicable here. Paragraph H.08 of the contract reserves the right of the agency to cancel an employee's authorized change of station when the cancellation is determined to be in the best interest of the government. No service charge is paid to Howard; however, direct costs incurred such as inspections, surveys, appraisals of the property, and title search fees will be allowed and paid for under the terms of the contract to Howard. Paragraph 1B(1) of the contract provides for an amended value transaction in which the same direct costs enumerated above will be allowed if the employee elects to market the residence solely on his own, including the final sale and settlement.^{2/} Further, paragraph 3 of the contract provides for home selling assistance to the employees without cost in the event that the employee elects not to use the guaranteed home purchase service or amended value transaction.

The terms of the relocation service contract, as outlined above, are a departure from the usual residence sales

^{2/} Under an amended value transaction, if the employee is successful in finding a buyer whose bona fide offer will net the employee more than the contractor's offer, the contractor is given an opportunity to amend its offer.

agreement, and the contract allows both the agency and the employee a certain latitude to cancel or elect not to use the relocation services that are offered. The agency remains obligated to reimburse the relocation company for its direct costs. Further, since the role of Howard in this case is that of a buyer, the direct costs due under the contract, e.g. appraisals, surveys, and inspections, are the type of expenses that would not normally be incurred by an employee/seller.

Therefore, we believe that under these circumstances the agency has the obligation to pay the direct costs to Howard under the terms of the contract. We are aware of no statutory or regulatory requirement that the agency seek reimbursement from the employee, so long as the transfer is in the interest of the government and is not primarily for the benefit of the employee.

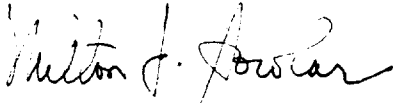
Turning to the facts of this case, we note that Mr. Stangel was transferred in the interest of the government in June; he transferred back to his old duty station in September; and the real estate expenses were incurred within this period. The expenses, in the amount of \$1,230, were for direct costs as authorized by the terms of the relocation service contract, and Mr. Stangel's retransfer was in the nature of a cancelled change of station and therefore payable by the agency under paragraph H.08 of the contract. Accordingly, Mr. Stangel does not have to reimburse the government.

We also conclude that Mr. King does not have to reimburse the government for the real estate expenses incurred on his behalf even though he was divorced from his wife at the time of his retransfer to his old duty station. The GSA guidelines in Supp. 11 of the FTR, para. 2-12.5d, provide that agencies should not make payments to relocation companies that will benefit ineligible individuals. However, Mr. King held title jointly with his spouse who was a member of his family at the time he reported to his new permanent duty station in June 1985, as provided for in FTR, para. 2-1.4d (Supp. 4, Oct. 1, 1982). William J. Fitzgerald, B-222742, Nov. 28, 1986, 66 Comp. Gen. ____; Alan Wood, 64 Comp. Gen. 299 (1985).

Mr. King was authorized to use the relocation service contractor in September 1986, and his expenses, in the amount of \$1,297.90, were incurred before the date of his legal separation from his wife in April 1987. We recognize that Mr. King's declination of Howard's offer to purchase his residence may have been related to his pending divorce; however, paragraph 1B of the contract allows the employee

to decline the contractor's offer without any limitations on the reasons for doing so, and any direct costs incurred will be allowable.

Accordingly, we conclude that Mr. Stangel and Mr. King do not have to reimburse the government for the direct costs incurred on their behalf incident to the DOE contract with Howard Relocation Group.

for 
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