146248

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robert D. Weller

File: B-246296

Date: March 30, 1992

DIGEST

A transferred employee may not be reimbursed for the buyer's closing costs he paid in the sale of his residence in the absence of evidence that such costs were customarily required to be paid by the seller in the locality at that time. Further, travel regulations establish the policy that the government is not responsible for real estate losses or other problems associated with market conditions. Thus, amount claimed by employee-seller for otherwise disallowable closing costs that were paid as an inducement to the purchaser in a "buyer's marker" is not reimbursable.

DECISION

The issue in this case is whether a transferred employee may be reimbursed for the buyer's closing costs he paid in the sale of his residence.[1] We hold that he may not be reimbursed in these circumstances.

Mr. Robert D. Weller, an employee of the Federal Communications Commission, Washington, D.C., transferred to a new duty station in December 1990, with a reporting date of March 1991, incident to which he sold his residence located in Vienna, Virginia. Mr. Weller states that when the terms of his sales contract were written, it was determined that the seller (Mr. Weller) would pay for certain items enumerated in an addendum to the Settlement Statement. Specifically, Mr. Weller requests reimbursement of a release fee to the clerk of the court, an express payoff fee, title search, attorney's charge for document preparation, certifications, buydown fee, document review fee, real estate tax service fee, credit report, appraisal fee, lender's title insurance, recording fee, recording

[1]This decision is requested by Ms. Sandra S. Williams, Authorized Certifying Officer, National Finance Center, United States Department of Agriculture.

taxes, and survey charge.[2] However, a review of Mr. Weller's sales contract reveals that Mr. Weller was not obligated to pay any of the specific expenses enumerated above, but did agree to pay up to $2,900 towards the buyer's closing costs at settlement. Mr. Weller requests reimbursement of $2,562 of the $2,900 which he contributed toward the buyer's closing costs under the terms of his sales contract.[3]

The certifying officer contends that the costs here are not reimbursable because the seller was not required to pay them. However, the certifying officer states that HUD advised her informally that the local custom for conventionally financed housing (as was the case here) in Vienna, Virginia, is that seller and buyer may negotiate the payment of closing costs items. Our Office informally sought further clarification from HUD.[4] We were advised by HUD that although it is not uncommon for sellers to pay some of the closing costs associated with the buyer, this is not the customary practice in Vienna, Virginia. HUD defined "customary" as dominant or the practice in more than 50 percent of all sales in the locality.

Section 5724a of title 5, United States Code (1988), provides, in part, that an employee may be reimbursed various expenses associated with a transfer including,

> "(a)(4) Expenses of the sale of the residence . . . at the old station . . . required to be paid by him . . . ."

The regulations implementing this provision are contained in the Federal Travel Regulations (FTR), 41 C.F.R. Part 302-6 (1991). Section 302-6.1 of the FTR restates the statutory provision that an employee may be reimbursed for expenses he is <u>required</u> to pay in the sale of his old residence. Section 302-6.2(d)(1) lists various miscellaneous expenses which may be reimbursed in connection with real estate transactions if customarily paid by the party claiming them, while section 302-6.2(d)(2) lists those items which may not

---

[2]We note that some of the charges for which reimbursement is claimed are specifically nonreimbursable under the Federal Travel Regulations (FTR) 41 C.F.R. § 302-6.2 (1991) regardless of whether incurred by buyer or seller.

[3]The record indicates that Mr. Weller was previously reimbursed $11,820 for expenses he incurred in the sale of his residence.

[4]The HUD Regional Office in Philadelphia, Pennsylvania, which has jurisdiction over Virginia, was contacted.

be reimbursed. Additionally, section 302-6.2(f) authorizes reimbursement for other incidental charges which are imposed for required services on the seller or buyer to the extent they do not exceed the customary rate in the locality of the residence. An agency may rely on technical assistance provided by the local area office of HUD in determining whether closing costs are customarily required to be paid by the seller or purchaser. See 41 C.F.R. § 302-6.3(c).

Further, section 302-6.2(e) of the FTR prohibits reimbursement of losses due to market conditions, such as losses resulting from the failure to sell a residence at a specific asking price. Thus, if the amount a seller claims for reimbursement is for otherwise disallowable closing costs that were paid as an inducement to purchase in a "buyer's market," such market conditions do not provide a basis for an exception to the regulations and reimbursement is prohibited. See Douglas E. Clowers, B-189396, Mar. 23, 1978; Norbert P. David, B-245650, Mar. 5, 1992.

In this case the sales contract characterized the costs for which reimbursement is claimed as "purchaser's closing costs at settlement," which indicates that they are costs which the buyer would be required to pay. Our Office has held that even though it may be common for a seller to assume a purchaser's closing cost by contract, that does not mean that under such practice the seller would customarily be required to pay such costs. See Joseph R. Brimacombe, B-238372, Aug. 1, 1990, and cases cited. In light of the clarifying information from HUD that the seller is not customarily required to pay these costs in Vienna, Virginia, there does not appear to be any basis to reimburse Mr. Weller for the buyer's costs.

Accordingly, Mr. Weller's claim may not be allowed.

for Seymour Efros
James F. Hinchman
General Counsel