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Kelly K. Ward

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Date: 1993-08-13

Matter of: Kelly K. Ward File: B-252531 Date: August 13, 1993

CIVILIAN PERSONNEL Relocation Residence transaction expenses Attorney fees Reimbursement A transferred employee used the services of a relocation service company to sell his residence at his old official station. The relocation service company retained legal counsel to perform a title search, document processing, and related services needed, which costs have been paid for by the agency. The employee secured the services of an attorney to review the legal documents involved and to provide him with legal advice and assistance. The employee may not be reimbursed for the attorney's fee he paid because the services performed were analogous or similar to those provided by the relocation service company. 41 C.F.R. Sec. 302-12.5(b) (1992).

DECISION This decision concerns the entitlement of an employee to be reimbursed for an attorney's fee incurred in connection with the sale of his residence to a relocation service company incident to a permanent change of station in August 1991.[1] We conclude that the employee may not be reimbursed.

Mr. Kelly K. Ward, an employee of the Secret Service, was transferred from Des Moines, Iowa, to New York, New York, effective August 8, 1991. He chose to use the services of the agency's relocation service contractor and, on July 17, 1991, the contractor purchased his old residence. The agency paid $20,692.50 to the contractor pursuant to the billing fee applicable at that time.

Following his transfer, Mr. Ward sought reimbursement for various relocation expenses, which included $345.41 for legal and related costs he incurred incident to the sale of his residence in Des Moines. The claim was disallowed by the agency because the relocation service company had retained local counsel to conduct the title search, prepare and process required legal documents, and perform other settlement services as part of their contractual obligation to the agency. The cost of those services were part of the billing to the agency.

Mr. Ward has appealed that disallowance arguing that, because of the volume of real estate and other legal documents involved in the transaction and the fact that he is not an attorney, he felt that he needed legal assistance to insure that he was adequately informed and protected. He also points out that the attorney he hired did discover an error involving a significant overcharge for Iowa real estate taxes he was required to pay. The agency argues, in turn, that to allow Mr. Ward's attorney's fee for reviewing the work of another attorney would be duplicative and would significantly increase the agency costs of transfers.

The regulation implementing the statutory authority to enter into relocation

service contracts under 5 U.S.C. Sec. 5724c (1988), is contained in Chapter 302, Part 12 of the Federal Travel Regulation (FTR).[2] Section 302-12.5(b) of the FTR[3] provides that, once an employee is offered and decides to use the services of a relocation service company, the employee shall not be allowed reimbursement for otherwise authorized expenses (such as attorney fees), "that are analogous or similar to expenses or the cost for services that the agency will pay for under the relocation service contract."

Thus, the underlying issue of section 302-12.5(b) is whether the services performed by the employee's attorney are duplicative of other services that the agency is required to pay for under the relocation service contract. If they are duplicative, the employee may not be reimbursed.[4]

In the present case, payment for the company's attorney fees was included in the overall fee paid by the agency to the relocation service company in connection with its purchase of Mr. Ward's Des Moines residence. The agency has advised us that the company retained the services of a local attorney to conduct the title search and perform document processing and settlement services. Thus, the agency believes that it would be duplicative to reimburse Mr. Ward for the services of another attorney retained to review the work of the company's attorney.

Essentially, Mr. Ward is seeking reimbursement for legal fees that are similar or analogous to the fees paid by the relocation services contractor and reimbursed by the agency in its fee payment to the contractor. Accordingly, FTR Sec. 302-12.5(b) bars payment of Mr. Ward's claim.

1. Requested by Mr. Bruce R. Duke, Chief, Relocations and Travel Services Branch, United States Secret Service.

2. 41 C.F.R. Part 302-12 (1992).

3. 41 C.F.R. Sec. 302-12.5(b) (1992).

4. Matthew J. Maher, B-244730, Jan. 17, 1992.