Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James A. Fairley

File: B-258932

Date: September 19, 1995

DIGEST

1. A transferred employee sold his residence in the vicinity of his old duty station and claims reimbursement for a 6-½ percent broker's commission. Under 41 C.F.R. § 302-6.2(a), real estate broker's fees may be paid but not in excess of the rates generally charged in the locality. The Housing and Urban Development office which monitors the real estate market in the area of his old duty station informed the agency that the customary commission fee in the locality is 6 percent. Since the commission generally charged by the real estate brokers there does not exceed 6 percent, the employee's reimbursement is limited to that percentage. Raymond L. Hipsher, B-214555, Aug. 28, 1984; and Gene C. Nicko, B-232313, Jan. 9, 1989.

2. A transferred employee claims reimbursement for a document preparation fee he paid in connection with the purchase of a residence in the vicinity of his new duty station. Since 41 C.F.R. § 302-6.2(c) (1994) specifically authorizes reimbursement for the cost of preparing conveyances and other related instruments, that expense may be allowed. James A. Schampers, 69 Comp. Gen. 573 (1990).

3. A transferred employee claims reimbursement for an underwriter's fee and a tax service fee he paid in connection with the purchase of a residence in the vicinity of his new duty station. Under 41 C.F.R. § 302-6.2(d)(2)(v) (1994), no fee, cost, or expense determined to be part of finance charges under the Truth in Lending Act or Regulation Z is reimbursable. Since the claimed expenses are identifiable as being lender finance charges incident to the extension of credit, they may not be reimbursed. George C. Souders, B-248457, Sept. 29, 1992.

4. A transferred employee claims reimbursement for a processing fee charged by the lender in connection with the purchase of a residence in the vicinity of his new duty station. If the fee represents part of the administrative cost of processing paperwork associated with a loan origination fee, this charge may not be paid because the maximum amount allowable has already been paid as a loan origination fee. If the fee is not part of the loan origination fee, then it is an additional charge

by the lender incident to the extension of credit and not reimbursable. William T. Bigby, B-221162, June 10, 1986.

5. A transferred employee purchased a residence in the vicinity of his new duty station and paid for a separate owner's title insurance policy in addition to the lender's title insurance policy. He seeks reimbursement for the cost of the owner's policy. Under 41 C.F.R. § 302-6.2(d)(1)(ix) (1994), the cost of such policy may be reimbursed only if it is a prerequisite to financing and required by the lender. Since there is nothing in the record to show that the owner's policy was required by the lender, the employee may not be reimbursed. Eldean K. Minary, B-250724, May 2, 1994.

6. A transferred employee claims reimbursement for a homeowner's association transfer fee in connection with his purchase of a residence in the vicinity of his new duty station. Membership fees in cooperatively owned homes or apartments are deemed items of added value benefiting the purchaser. Since such memberships are deemed part of the ownership purchase price, a fee charged to transfer or acquire that ownership right is also part of the purchase price and may not be reimbursed. Nathaniel E. Green, 61 Comp. Gen. 352 (1982).

DECISION

This decision responds to an appeal by Mr. James A. Fairley from our Claims Group's Settlement Z-2869090, June 22, 1994, which disallowed a number of real estate related expenses claimed by him for residence purchase and sale incident to a permanent change-of-station in October 1992. We conclude that of the expenses which were disallowed only the document preparation fee incident to his residence purchase may be allowed, for the following reasons.

Mr. Fairley, an employee of the Department of Veterans Affairs stationed in Biloxi, Mississippi, was transferred to Denver, Colorado, effective October 18, 1992. Incident to that transfer, he sold a residence in the Biloxi area and purchased a residence in the Denver area. Some of the expenses incurred for both the sale and the purchase were disallowed by the agency and by our Claims Group. Of the expenses disallowed, Mr. Fairley now contends that the following expenses should be allowed:

Sale: The ½ percent of the 6-½ percent real estate broker's fee disallowed. Allowed $9,480, disallowed $790.

Purchase: Document Preparation Fee - $130
Tax Service Fee - $60
Underwriting Fee - $110
Processing Fee - $100
Mortgage Title Insurance (Owner's) - $730
Homeowners Association Transfer Fee - $75

OPINION

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1988), and the implementing regulations contained in Part 302-6 of the Federal Travel Regulation (FTR),[1] transferred employees are entitled to be reimbursed for certain real estate expenses in connection with the sale and purchase of residences.

RESIDENCE SALES EXPENSE

Section 302-6.2(a) of the FTR[2] authorizes reimbursement for real estate broker's fees, "but not in excess of rates generally charged for such services . . . in the locality of the old official station," and section 302-6.3(c) of the FTR[3] authorizes the use of the local or area offices of the Department of Housing and Urban Development (HUD) to assist in determining the reasonableness of a real estate related expense. The HUD office in Jackson, Mississippi, determined that the customary rate for a broker's commission in the Biloxi area is 6 percent.

Mr. Fairley asserts that the area of his former residence is in a completely different market than the market of the Jackson, Mississippi, office of HUD. As a result, its finding would not reflect the market in Biloxi. His position is that the 6-½ percent broker's fee charged him was consistent with the fees charged in the Biloxi area and was well within the FTR guidelines.

We point out that the HUD office in Jackson monitors the real estate market in the Biloxi area and that the HUD finding was predicated on the Biloxi market, not the Jackson market. We have consistently held that the regulations require that the applicable commission rate is the rate generally charged by the real estate brokers in an area, not the rate charged by the particular broker used by an employee to sell his residence. If an employee pays a commission greater than that usually

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[1]41 C.F.R. Part 302-6 (1994).

[2]41 C.F.R. § 302-6.2(a) (1994).

[3]41 C.F.R. § 302-6.3(c) (1994).

charged, he cannot be reimbursed for the extra commission.[4] Accordingly, our Claims Group's disallowance of the extra sales commission is sustained.

RESIDENCE PURCHASE EXPENSES

Document Preparation fee

Under section 302-6.2(c) of the FTR,[5] "costs of preparing conveyances, other instruments, and contracts" are specifically reimbursable. While the service performed is only identified on the settlement sheet as a document preparation fee, since the cost of preparing conveyances and other related instruments is specifically authorized, Mr. Fairley may be reimbursed this $130 charge.[6]

Underwriter's fee; Tax service fee; and Processing fee

Section 302-6.2(d)(2)(v) of the FTR,[7] specifies that "no fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act . . . and Regulation Z" is reimbursable. We have held that both underwriter's and tax service fees are part of the lender's finance charge incident to the extension of credit and not reimbursable.[8] As to the processing fee, its purpose is not specifically identified in the letter from the lender, First City Financial, dated July 16, 1993, to be different than the expected administrative cost of processing paperwork which would be included as part of a loan origination fee. If it is part of the administrative cost associated with the process for which a loan origination fee is payable, it may not be reimbursed since the maximum amount already has been paid as a loan origination fee (1 percent). If it is not considered part of the loan origination fee, then it must be deemed an additional charge made by the lender incident to the

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[4]Raymond L. Hipsher, B-214555, Aug. 28, 1984, and decisions cited. See also Gene C. Nicko, B-232313, Jan. 9, 1989.

[5]41 C.F.R. § 302-6.2(c) (1994).

[6]James A. Schampers, 69 Comp. Gen. 573 (1990). See also Kirk Anderson, 56 Comp. Gen. 862 (1977).

[7]41 C.F.R. § 302-6.2(d)(2)(v) (1994).

[8]George C. Souders, B-248457, Sept. 29, 1992, citing to Kenneth R. Pedde, B-223797, Apr. 20, 1987.

extension of credit and, thus, not reimbursable.[9] Therefore, none of these three fees may be reimbursed to Mr. Fairley.

Mortgage title insurance (Owner's)

Generally, an owner's title insurance policy is insurance obtained by an employee for his own protection when purchasing a residence, and is reimbursable under limited circumstances. Section 302-6.2(d)(1)(ix) of the FTR,[10] authorizes reimbursement for the cost of such a policy only "if it is a prerequisite to financing," or the policy "is inseparable from the cost of other insurance which is a prerequisite to financing." We have held that while the purchase of an owner's title insurance policy may have been appropriate, the evidence must show that purchase of such insurance was required by the lender as a prerequisite to obtaining financing, not merely as a matter of prudence for the employee's own protection.[11] Since there is nothing in the record to show that owner's title insurance was a financing prerequisite, Mr. Fairley may not be reimbursed that cost.

Homeowner's association transfer fee

Section 302-6.2(d)(1) of the FTR lists in clauses (i) through (v) miscellaneous expense items which are specifically allowed. In addition, clause (vi) of that section permits reimbursement for other fees and charges similar in nature to those listed in clauses (i) through (v) unless specifically prohibited in section 302-6.2(d)(2) of the FTR. A homeowner's association transfer fee is not listed as a reimbursable item under FTR section 302-6.2(d)(1)(i) through (v), nor is it similar in nature to those items. We have held that participating memberships in condominium or cooperatively owned homes or apartments are regarded as items of added value continuing to benefit the purchaser. As such, memberships are considered a part of the purchase price and not part of the cost or expense of purchasing.[12] Therefore, the homeowner's association transfer fee may not be reimbursed.

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[9]William T. Bigby, B-221162, June 10, 1986; and Harvey C. Varenhorst, B-208479, Mar. 16, 1983.

[10]41 C.F.R. § 302-6.2(d)(1)(ix) (1994).

[11]Eldean K. Minary, B-250724, May 2, 1994, and decisions cited.

[12]Nathaniel E. Green, 61 Comp. Gen. 352, 354 (1982), citing to Herbert W. Everett, 60 Comp. Gen. 451 (1981).

CONCLUSION

The $130 document preparation fee may be reimbursed to Mr. Fairley. However, the remaining items under appeal may not be paid and our Claims Group's disallowance of those items is sustained.

/s/Seymour Efros
for Robert P. Murphy
General Counsel