

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220736

DATE: April 10, 1986

MATTER OF: John C. Bisbee

- DIGEST:**
1. The statutes and regulations authorizing transferred federal employees to be reimbursed for the expenses of the "sale" of their residence at their old duty station place no definitive limitations on the meaning of the term "sale." Hence, a transferred employee who conveyed the title of his old residence to a state agency in exchange for \$10 and a release from his mortgage contract may be reimbursed for his allowable expenses in the sales transaction, even though it was not an ordinary open-market real estate sale.
 2. The Federal Travel Regulations provide that transferred federal employees may be allowed reimbursement of legal expenses associated with the sale of their old residence, including the expenses of advisory and representational services not involving litigation before the courts. A transferred employee may therefore be reimbursed for legal fees reasonably and necessarily paid to obtain representational services to negotiate his release from a mortgage contract in exchange for his conveyance of his ownership of his old residence in a situation that did not involve foreclosure proceedings or other type of litigation.

The issue presented in this matter is whether a transferred federal employee may be reimbursed for legal fees and expenses incurred in transferring ownership of his residence

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at his old duty station to an agency of a state government.^{1/} In view of the facts of record, and the applicable provisions of statute and regulation, we conclude that the employee is entitled to reimbursement.

Background

Mr. John C. Bisbee is an employee of the U.S. Forest Service, Department of Agriculture. In 1980 he and his wife bought a house in Moffat County, Colorado, where he was then stationed. They financed the purchase of this house through a mortgage with a private lending institution, and Mr. Bisbee indicates that in this transaction they obtained a loan guarantee from a state agency, the Colorado Housing Finance Authority, under a state "low-income mortgage" program.

The Forest Service transferred Mr. Bisbee from Colorado to Indiana 3 years later in December 1983. Because of economic conditions prevailing at the time in Moffat County, Colorado, he and his wife were unable to sell their old residence on the open market at a price that equaled or exceeded the amount of their outstanding mortgage indebtedness. For that reason they entered into negotiations to dispose of the property in December 1984 with the mortgage lender and the Colorado Housing Finance Authority. These negotiations produced a settlement in May 1985 in which the Bisbees' mortgage contract was cancelled, and they transferred their title to the property by warranty deed to the Colorado Housing Finance Authority in exchange for a payment in the sum of \$10 made by that agency to them.

Mr. Bisbee then submitted a claim to the Department of Agriculture in the amount of \$450.02 as reimbursement of the legal fees and expenses he incurred in the negotiations leading to the transfer of ownership of his old residence in Colorado. In claiming reimbursement he stated that these fees and expenses were for the transfer of ownership of his

^{1/} This action is in response to a request received from Mr. W. D. Moorman, Authorized Certifying Officer, National Finance Center, Department of Agriculture, for an advance decision concerning the propriety of certifying a voucher for payment in the amount of \$450.02 in favor of Mr. John C. Bisbee.

old residence in a "deed in lieu of foreclosure," however, and because of his use of the word "foreclosure" the Department of Agriculture disallowed his claim for the reason that costs of foreclosure proceedings are not reimbursable as real estate expenses under the regulations covering the relocation entitlements of transferred federal employees.

Mr. Bisbee has now reclaimed reimbursement of the legal fees and expenses, indicating that no foreclosure action or other litigation was ever actually initiated in the matter. He indicates instead that he did not default on his mortgage obligations and entered into negotiations for the disposal of the property in December 1984 without any threat of foreclosure. He states that while he conceivably might have been forced into foreclosure proceedings if those negotiations had failed, the settlement reached had avoided that possibility.

In requesting an advance decision concerning Mr. Bisbee's renewed claim, the agency's accountable officer in effect questions whether the claim should be disallowed either because the transaction did not involve a normal sale of a residence, or because the legal fees related to negotiations involving possible litigation in foreclosure proceedings rather than to services for an ordinary real estate sale.

Analysis and Conclusion

Section 5724a of title 5, United States Code, provides that to the extent considered necessary and appropriate under implementing regulations, funds available to an agency for administrative expenses are available for the reimbursement of certain relocation expenses of transferred employees. Among the relocation expenses specifically enumerated are the "(e)xpenses of the sale of the residence * * * of the employee at the old station." 5 U.S.C. § 5724a(a)(4)(A).

Implementing regulations are contained in Chapter 2, Part 6 of the Federal Travel Regulations.^{2/} Those regulations provide that the Government shall reimburse transferred employees for expenses required to be paid by them in

^{2/} FTR, para. 2-6.1 et seq., incorp. by ref., 41 C.F.R. § 101-7.003.

connection with the sale of a residence at their old official station, and no definitive limitations are prescribed for the term "sale." FTR, para. 2-6.1. Among the items specifically authorized for reimbursement are legal and related expenses paid by the seller of a residence at the old official station, except that the "(c)osts of litigation are not reimbursable." FTR, para. 2-6.2c.

We have adopted the view that these provisions of statute and regulation permit reimbursement of allowable expenses incurred for the purpose of conveying title by other than the usual sale transaction.^{3/} Thus, we have authorized payment of allowable real estate expenses associated with transfers of title not only through open-market sales, but by gift and barter as well.^{4/} We have also previously indicated that we would authorize payment of allowable expenses associated with conveyances of title arranged for the purpose of satisfying an employee's mortgage loan obligations, in transactions not involving sales on an open real estate market.^{5/}

Concerning the reimbursement of legal expenses associated with transferring ownership of a residence, we have held that the expenses of advisory and representational services may be allowed as well as the expenses of title searches and other services specifically described under the regulations.^{6/} As indicated, however, the regulations

^{3/} See, generally, Bonnie S. Petrucci, 64 Comp. Gen. 557, 559 (1985).

^{4/} B-173652, October 27, 1971; B-166419, April 22, 1969.

^{5/} See Foreclosure Sale, 61 Comp. Gen. 112, 113 (1981); and Allan R. Irwin, B-198940, July 29, 1980. In those cases we held, however, that costs of litigation and hypothetical expenses not actually incurred were not allowable as reimbursable expenses under the provisions of 5 U.S.C. § 5724a and FTR, para. 2-6.1 et seq.

^{6/} See George W. Lay, 56 Comp. Gen. 561 (1977); and Daniel J. Everman, B-210297, July 12, 1983. Compare also Robert W. Webster, 63 Comp. Gen. 68 (1983), concerning legal expenses not directly associated with a transfer of ownership of real property.

expressly preclude reimbursement of the costs of litigation, and for that reason we have consistently disallowed claims for reimbursement of attorney fees and other expenses incurred in the course of foreclosure proceedings initiated in state courts, including the expenses of a court-ordered sale of an employee's former residence. Nevertheless, we have expressed the view that the term "litigation" as used in the regulations has the limited meaning of a suit at law or an action before a court.^{7/}

In the present case we consequently find that Mr. and Mrs. Bisbee's transfer of title to their old residence by warranty deed to the Colorado Housing Finance Authority, in exchange for \$10 and their release from their mortgage contract, constituted a "sale" within the meaning of that term as used in 5 U.S.C. § 5724a and FTR, para. 2-6.1, notwithstanding that the transaction did not involve an ordinary open-market realty sale. We further find that Mr. Bisbee's claim may not properly be disallowed on the basis that he is seeking reimbursement of the costs of litigation, since no suit at law or action before a court was ever initiated in this matter.

In addition, we find that the legal fees and expenses incurred by Mr. Bisbee were necessary and reasonable for representational and advisory services required in negotiating the transfer of title, and that he may therefore be reimbursed in the full amount claimed if the agency determines that the fees and expenses were within the customary range in the locality.^{8/}

The question presented is answered accordingly. The voucher and related documents are returned for further processing consistent with the conclusions reached here.



Acting Comptroller General
of the United States

^{7/} See Foreclosure Sale, 61 Comp. Gen. 112, supra; and Foreclosure Sale, B-214837, October 11, 1984.

^{8/} See George W. Lay, 56 Comp. Gen. 561, supra; and Daniel J. Everman, B-210297, supra.