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DECISION



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

FILE: B-189589

DATE: June 16, 1978

MATTER OF: Richard G. Thomas

DIGEST: Employee was charged a flat fee for services in selling his house, based on a percentage of the selling price. He may be reimbursed under FTR para. 2-5.2c as a relocation expense, where such a charge is specifically fixed by the law of the jurisdiction of Puerto Rico for the enumerated services of preparing conveyances and related notary fees and recording fees

This action is in response to a letter date July 6, 1977, from Mr. Edwin J. Post, Chief, Accounting Section, Office of the Controller, Drug Enforcement Administration, Department of Justice, requesting an advance decision as to the propriety of making payment on a voucher in the amount of \$312.50, in favor of Mr. Richard G. Thomas, representing reimbursement of "legal fees" charged in connection with the sale of his house incident to his official change of station. In addition, our advice is requested concerning a similar expense (\$224) incurred for the prior purchase of that residence by Mr. Thomas.

The record shows that Mr. Thomas was transferred from San Juan, Puerto Rico, to El Paso, Texas, pursuant to Travel Order No. B-0021, dated September 9, 1976. As a result of this change of station, Mr. Thomas incurred certain expenses in the sale of his home at his old station. Of the amount claimed on the original voucher, an item for "legal fees" in the amount of \$312.50 for the preparation, execution and recording of the deed in connection with the sale of that property was suspended pending receipt of an itemized accounting of each of the services performed by the attorney and the cost of each service.

According to the file, Mr. Thomas advised that no itemization is necessary in Puerto Rico. In support of his position, he notes that at the time of his transfer to Puerto Rico in 1974, a similarly based expense (for the preparation, execution and recording of the mortgage on the property) was incurred when he purchased the home. While that cost was challenged administratively, upon presentation of documentation to establish the basis upon which the fees are assessed and without itemization, he was reimbursed for those required fees. The documentation supplied was a letter from the mortgage company explaining the manner in which title to real estate is transferred in Puerto Rico.

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The regulations governing the reimbursement of real estate expenses, including legal fees, incurred incident to transfer are contained in the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), paragraph 2-6.2c, of which provides that:

"Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

According to the HUD Settlement Statement, Mr. Thomas was required, as seller, to pay \$312.50 (one-half of one percent of the sale price) to his attorney for services rendered. Those services included document preparation, notary fees and attorney fees, all relating to the deed of sale. In addition, he paid \$224 (one-half of one percent of the amount of the mortgage) for the attorney's services relating to the cancellation of his mortgage on that property.

The documentation provided in support of his claim for reimbursement of legal expenses at the time Mr. Thomas was transferred to Puerto Rico and our own examination of the laws of Puerto Rico reveal that the procedures used in transferring title to real estate in Puerto Rico are very different from the procedures used in virtually all of the rest of the country. Under the laws of Puerto Rico it appears that, in some instances, attorneys act in a dual capacity, as an attorney and as a notary. The functions of a notary in these situations are much more extensive than those of a notary public in the rest of the United States. It appears that the notary drafts the documents,

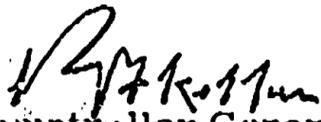
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takes the acknowledgements and witnesses the signatures, and records the documents. Under section 1102 of Chapter 73 of title 4 of the Laws of Puerto Rico Annotated, only attorneys, and those persons authorized to do so prior to the passage of that section, may act as notaries.

In addition to specifying the duties of attorney/notaries, the Puerto Rican statutes also prescribe the fees that are to be charged for those services. Section 847 of Chapter 65 of Title 4 of the Laws of Puerto Rico Annotated, sets out the fees to be charged. For the execution, which seems to also include preparation and recordation, of, *inter alia*, mortgages, deeds, and cancellations of mortgages involving objects or sums exceeding \$1,000 in value, notaries are required to charge one half of one percent for their services.

Thus, while Mr. Thomas' claim characterizes the charges as "legal fees," it appears that they are more properly viewed as notary's fees and that their payment and amount are required by statute. Under IPR para. 2-6, 2c reimbursement is authorized for "costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees." We believe that this provision encompasses Mr. Thomas' claim.

Accordingly, the \$312.50 claimed by Mr. Thomas may be paid and the \$224 paid at the time of his transfer to Puerto Rico need not be questioned.


Acting Comptroller General
of the United States