United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-224043

May 5, 1987

Claude F. Pickelsimer, Jr.
Director, Financial Management Office
Centers for Disease Control
Public Health Service
Department of Health and Human Services
Atlanta, Georgia 30333

Dear Mr. Pickelsimer:

You submitted the travel voucher of Mr. Deane A. Johnson to the Claims Group of the General Accounting Office. Mr. Johnson claimed $4,462.50 covering real estate expenses incurred in connection with his relocation from Columbus, Ohio, to Salt Lake City, Utah, in October 1979. Following a protracted period of delay, we informally advised you in November 1986 that the reimbursement of transfer related real estate expenses under para. 2-6.3 of the Federal Travel Regulations (FPMR 101-7, May 1973) incorp by ref., 41 C.F.R. § 101-7.003 (1973) (FTR), requires documentary evidence that the residence sale has been finalized and actual expenses incurred. As initially filed with this Office the record presented for our review was lacking the necessary documentation to satisfy the employee-claimant's burden to establish his right to payment in accordance with 4 C.F.R. Part 31. Following these discussions you contacted Mr. Johnson and advised him of his obligations and burden of proof with regard to supporting his claimed entitlement. On March 2, 1987, you forwarded to this Office a series of documents and analyses provided by Mr. Johnson. In view of this necessary administrative development, the claimant has now satisfactorily assembled the documentation required to substantiate the legal liability of the United States, and, consistent with the following brief analysis, we are advising our Claims Group to make an expeditious final settlement of Mr. Johnson's claim.

The record shows that Mr. Johnson was unable to sell his residence in Sunbury, Ohio, during the 1-year period following his transfer in October 1979. Therefore, in

accordance with FTR para. 2-6.1e he requested and was granted a 1-year extention to October 1981 for reimbursement. Under the terms of a Real Estate Purchase Agreement dated March 27, 1980, Mr. Johnson (as seller) entered into a Land Installment Contract with Mr. John W. Jacobus, and others (collectively as purchaser), wherein the purchaser agreed to buy Mr. Johnson's property outright for the sum of $56,500 if that purchaser was unable to resell the property on or before September 15, 1981. The purchaser also agreed to pay Mr. Johnson the sum of $425 per month for a period of 12 months beginning October 10, 1980, and to pay all taxes and fire insurance premiums. Your agency initially questioned whether Mr. Johnson's status as legal owner but not equitable owner under the Land Sale Contract adversely affected his qualifications for reimbursement in connection with the eventual sale of this property. However, the fully developed record shows that the seller and purchaser agreed in August 1981 to release each other from the terms of the Land Sale Contract, and in that same month, Mr. Johnson sold the property to Mr. Jack C. McKinley and Donna McKinley for $56,000, with Mr. Jacobus listed as the selling realtor. It is only this latter sale for which Mr. Johnson seeks reimbursement of his expenses.

Under 5 U.S.C. § 5724a(a)(4), funds are made available for the reimbursement of real estate transaction expenses of the sale of the residence of an employee at the old station and a purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States. However, reimbursement for brokerage fees on the sale of the residence and other expenses may not exceed those customarily charged in the locality of the residence. The regulations governing the reimbursement of residence transaction expenses are found at Chapter 2, Part 6 of the FTR. The agency's remaining concerns in this case are whether Mr. Johnson's residence at the old duty station was in his name within the meaning of para. 2-6.1c of the FTR, and whether Mr. Johnson may be reimbursed for a realtor's fee paid to Mr. Jacobus in view of the fact that Mr. Jacobus at one time held equitable title to the property under the Land Sale Contract.

Mr. Johnson has stipulated that no expenses were incurred in connection with the earlier Land Sale Contract and a copy of the release from that contract, signed by Mr. Johnson as seller and Mr. Jacobus and others as purchasers, has been made part of the administrative record for our review.

In addition a Statement of Settlement signed by Mr. Johnson and the purchasers of the real property in question, Jack and Donna McKinley as buyers, adequately shows the specific expenses which are now being claimed by Mr. Johnson.

We are satisfied on the basis of the record before us that Mr. Johnson's contractual arrangement to transfer the property in question to Mr. Jacobus was nothing more than an incompleted contract for which, ostensibly, no expenses have been claimed. Thus, again, Mr. Johnson's claim is limited to the completed sale of real estate to the McKinleys.

Although Mr. Johnson indicated that he claimed no expenses relative to the canceled land contract, the settlement documents submitted in support of the claimed expense entitlements show that $4 of the amount claimed is a charge for recording the release from the Land Installment Contract. An additional $4 claimed is a charge for recording a statement to correct the realtor's error in misspelling Mr. Johnson's name on the release from the Land Sale Contract and on that Deed. These costs associated with the incompleted Land Sale Contract are not reimbursable, as they do not relate to the transaction between Mr. Johnson and the McKinleys for which real estate transaction expenses are claimed here. Robert A. Benson, B-184869, September 21, 1976.

One of the prerequisites for reimbursement of real estate expenses is that the title to the residence must be in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. See 5 U.S.C. § 5724a(a)(4) and FTR para. 2-6.1c. Where the employee holds title to a residence with an individual who is not a member of his immediate family, the employee may be reimbursed only to the extent of his interest in that residence. Thus, we have held that where an employee was divorced from his wife before the date of settlement he did not hold title with a member of his immediate family when the property was actually sold; since a separated spouse is not a member of an employee's household such a spouse does not fall within the definition of immediate family. See Allan Wood, 64 Comp. Gen. 299 (1985).

The documentation initially submitted in this case shows that while the General Warranty Deed in the file conveyed the property to the McKinley's from "Dean" A. Johnson alone, the Statement of Settlement named "Deane and Judith Johnson"

as sellers. This discrepancy has been resolved through the claimant's forwarding a copy of a Quit-Claim-Deed dated June 4, 1980, by which the claimant's former wife agreed to release her interest in the property to the claimant for valuable consideration. As a result, since Mr. Johnson legally assumed sole interest in the property to be conveyed to the McKinleys, we find that the residence was in his name within the meaning of para. 2-6.1c of the FTR and we find no legal impediment to reimbursement of transaction expenses on this basis.

Next, it is not unusual to find a broker in multiple roles as both broker and buyer, and the fact that a licensed broker bought a residence of a transferred employee when difficulty was experienced in disposing of the property does not preclude the broker from collecting his commission. Absent the use of an inflated value in setting the sales price, the expense of the commission is reimbursable to the employee when the settlement sheet reflects that his proceeds were reduced by the amount of such commission. See 47 Comp. Gen. 559 (1968). In making a determination on this issue as required FTR para. 2-6.2a, the Department of Housing and Urban Development (HUD) area office in Columbus, Ohio, advised that 7 percent was the maximum customary commission chargeable in October 1980, the date the contract was negotiated. See FTR para. 2-6.3c. As such, we find no legal objection to the payment of a 7 percent commission to Mr. Jacobus in this case.

Accordingly, consistent with our review of the revised administrative record here, we are advising our Claims Group to make an expeditious final settlement of Mr. Johnson's real estate transaction expense claim.

Sincerely yours,

Harry R. Van Cleve
General Counsel

cc: Claims Group/GGD

The Honorable Sam Nunn
United States Senate