GAO

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

Office of the General Counsel

B-265989

March 15, 1996

Mr. Frederick N. Whiteside
Manager, Accounting Operations Division
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, DC 20591

Dear Mr. Whiteside:

This is in response to your request for our opinion on whether or not agencies may certify claims for payment involving brokers' commissions in excess of the customary rate if it can be proven that payment of the higher rate clearly resulted in a savings to the government.

In the present case, Mr. James D. Erickson, an employee of the Federal Aviation Administration (FAA) executed a permanent change-of-station (PCS) move from Fort Worth, Texas, to Washington, D.C. under orders with a reporting date of March 28, 1995. Upon notification of his impending PCS, Mr. Erickson entered into an agreement with a real estate broker for sale of his residence. The terms of the listing agreement included a sales commission of 6 percent plus a 1 percent offering as a bonus to the selling broker. Mr. Erickson submitted a claim to FAA for $7,175 in sales commissions along with other expenses associated with the sale of his home. Of this amount, $1,025 was rejected because it exceeded 6 percent, the customary rate for Fort Worth. The customary rate was verified with the Comptroller for the Housing and Urban Development Office in Fort Worth.

According to Mr. Erickson, his claim for the additional fee is justified on the basis of the savings that accrued to the government by avoiding the use of the relocation contract. Your letter states that a computation of savings would involve a comparison of the amount that would have incurred by using a relocation services contract to the amount of expense paid to Mr. Erickson, including the applicable Relocation Income Tax Allowance.

Under title 5, the agency pays expenses for relocation either to the company it contracts with under 5724c or to the employee under 5724a. When an agency enters into a relocation services contract under the provisions of 5 U.S.C. § 5724c (1995), an employee of the agency may elect to use the contract services. If this election is made, the employee is not reimbursed relocation expenses otherwise authorized "that are analogous or similar to expenses or the cost for services that the agency will pay for under the relocation service contract." See, Kelly K. Ward, B-252531, Aug. 13, 1993. If this election is not made, the employee is reimbursed relocation expenses under 5 U.S.C. § 5724a.

In the present case, Mr. Erickson did not elect to use the FAA's relocation services contract. As a result, he was entitled under 5 U.S.C. § 5724a(4)(A) only to the 6 percent broker's fee customary in the locality. The HUD statement of the customary fee is a rebuttable presumption. See, George C. Symons, B-188527, Jan. 26, 1978. We find no basis in the statute or regulations for reimbursement above the customary fee. Mr. Erickson's argument that there was savings to the government because he did not elect to use the relocation services contract is not sufficient to rebut the presumption. If a relocation services contract is not used by the employee, we find no basis to reimburse the employee based on a comparison of the government's cost under 5724c and 5724a.

Sincerely yours,

Lowell Dodge
Associate General Counsel

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DIGEST

Employee of FAA did not elect to use the FAA's relocation services contract. As a result, he was entitled under 5 U.S.C. § 5724(a)(4)(A) only to the 6 percent broker's fee customary in the locality. If a relocation services contract is not used by the employee, we find no basis to reimburse the employee based on a comparison of the government's cost under 5724c and 5724a.