

DOCUMENT RESUME

03811 - [B2934181]

[Request for Payment of Transferred Employee's Residence Purchase Expenses]. B-189093. October 13, 1977. 4 pp.

Decision re: Donald J. Sharp; by Paul G. Dembling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: National Aeronautics and Space Administration.

Authority: 5 U.S.C. 5724a(a)(4). F.T.R. (FPMR 101-7), para. 2-6.2,3. B-174011 (1971). B-186579 (1976). B-179635 (1974). 22 Comp. Gen. 221. 44 Comp. Gen. 337. 56 Comp. Gen. 85. Robertson v. Sichel, 127 U.S. 507, 515 (1888). German Bank of Memphis v. United States, 148 U.S. 573, 579 (1893).

Frank Hann, Director of Financial Management, National Aeronautics and Space Administration, requested a decision concerning a transferred employee's claim for expenses in connection with purchase of a residence. Since reimbursement of residence transaction expenses may not exceed customary fees in the locality, the employee may be reimbursed only for one-half of escrow fees and may not be reimbursed for title policy or termite inspection. (Author/HTW)

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DECISION

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

FILE: B-189093

DATE: October 13, 1977

MATTER OF: Donald J. Sharp - Residence purchase expenses

DIGEST: Transferred employee bought house at new station, paying for owner's title insurance policy, termite inspection, and escrow costs. According to local custom, however, seller should have paid for owner's title policy, termite inspection, and one-half of the escrow charges. Since under 5 U.S.C. 5724a(a)(4) reimbursement of residence transaction expenses may not exceed the fees customarily charged in the locality of the residence, employee may be reimbursed only for one-half of escrow fees, and nothing for the title policy or termite inspection.

By a letter dated May 13, 1977, Mr. H. Frank Hann, Director of Financial Management, National Aeronautics and Space Administration (NASA), requested our decision concerning the voucher of Mr. Donald J. Sharp, a NASA employee for additional residence transaction expenses.

The record indicates that on July 18, 1976, Mr. Sharp was transferred from the Kennedy Space Center, Florida, to the Dryden Flight Research Center at Edwards, California. In connection with the purchase of a residence at his new headquarters, Mr. Sharp claimed, among other expenses, the following items:

Mortgage Title Insurance Policy	\$316.50
Escrow Fee	224.00
Termite Inspection	<u>35.00</u>
Total	\$575.50

Of that sum \$463.50, representing the title policy, termite inspection, and one-half of the escrow fee, was administratively disallowed as not being customarily paid by the buyer in the locality where the property is located. This action was based upon the advice of the Federal Housing Administration concerning the

B-189093

customary practices regarding real estate expenses in the locality. In reclaiming the suspended amount, Mr. Sharp contends that he was given erroneous, misleading advice concerning the extent to which real estate expenses would be reimbursed. In particular, Mr. Sharp states that the only advice which he received concerning real estate costs was a written discussion paper which provided that reimbursement upon purchase of a residence would be as follows:

"Not to exceed 5% of purchase price or \$2500 whichever is smaller. (Includes legal fees, credit reports, title policy, escrow agent's fee, revenue stamps, and other incidental expenses)."

Mr. Sharp thus contends that he was never advised that reimbursement of certain costs would be limited to the amounts customarily incurred and paid in the locality of his new residence. He therefore concludes that he should be reimbursed for his actual expenses.

Statutory authority for reimbursement of the residence transaction expenses of transferred employees is found at 5 U.S.C. 5724a(a)(4) (1970), which provides in pertinent part as follows:

"Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and 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, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence." (Emphasis added.)

This limitation has been carried forward into the implementing provisions of the Federal Travel Regulations (FPMR 101-7, May 1973) which provide in pertinent part at paragraph 2-6.2d as follows:

B-189093

" * * * The cost of a mortgage title policy paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense. * * * "

Based upon the statutory limitation, our decisions concerning reimbursement of title insurance premium have turned on whether such payments are customary in the locality of the residence. Thus, we have held that where an owner's title insurance policy is not generally required for loan assumptions in the locality of the transaction, reimbursement of such an expense would not be proper where an employee assumed an outstanding loan upon purchase of a residence. B-174011, November 15, 1971. However, where a purchaser must obtain an owner's title policy as a legal prerequisite to the transfer of property or to obtaining financing incident to such a transfer, reimbursement may be made if the premium is customarily paid by the purchaser in the locality involved. Matter of Carl F. Wilson, B-186579, October 28, 1976. Finally, pursuant to FTR paragraph 2-6.3c (May 1973), technical assistance in determining the reasonableness of an expense may be obtained from the local or area office of the Department of Housing and Urban Development, (HUD) serving the area in which the expense occurred.

In the present case, Mr. Sharp obtained a California Land Title Association (CLTA) policy, which is commonly regarded in the state as an owner's title policy. Pursuant to FTR para. 2-6.3c, the agency was informed by HUD, and we have confirmed, that in the locality of Edwards, California, the premium for the CLTA policy is paid by the seller. Further, a lender's or mortgage title policy is not required where the buyer assumes an existing mortgage. In view of the custom which requires sellers to pay for an owner's title policy in the locality of the transaction, the \$315.50 paid by Mr. Sharp for an owner's title policy may not be reimbursed.

Authority for reimbursement of fees for escrow services and termite inspections is generally provided in FTR para. 2-6.2f which states:

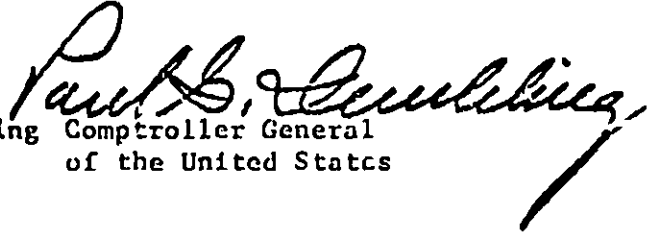
B-189093

"f. Other expenses of sale and purchase of residences. Incidental charges made for required services in selling and purchasing residences may be reimbursable 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."

The agency was advised by HUD, and we have confirmed, that in the relevant locality, the seller pays for the termite inspection and the buyer and seller evenly divide the cost of escrow services. Since Mr. Sharp has already been allowed the maximum customary reimbursement for these services, his claim for further payment is denied.

Finally, Mr. Sharp claims that he was not informed that reimbursement for residence transaction expenses is limited to what is customary in the locality of the residence. The agency, however, states that the discussion paper provided to the employees was intended only for general guidance. While it is unfortunate that Mr. Sharp may not have been fully appraised of the statutory limitation all Government officers and employees are special agents of limited authority and all persons dealing with such agents and employees are charged with notice thereof and of the limitations upon the authority of the agents with which they deal. B-179635, March 20, 1974. It is well settled that in the absence of specific statutory authority, the Government is not liable for the negligent acts or omissions of its officers and employees, nor is it bound by or responsible for their unauthorized or incorrect statements. Robertson v. Sichel, 127 U.S. 507, 515 (1888); German Bank of Memphis v. United States, 148 U.S. 573, 579 (1893); 22 Comp. Gen. 221 (1942); 44 id. 337 (1964); 56 id. 65 (1976).

Accordingly, the voucher may not be certified for payment.


Acting Comptroller General
of the United States