

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

June 13, 2001

GSBCA 15499-RELO

In the Matter of RUTH M. RIVERA

Ruth M. Rivera, Viera, FL, Claimant.

Bonnie Britten, Team Leader, Travel Policy Division, Office of the Deputy Assistant Secretary for Finance, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Dr. Ruth M. Rivera, is employed by the Department of Veterans Affairs (VA). She transferred from the VA Medical Center in West Palm Beach, Florida, to a VA outpatient clinic in Viera, Florida, in June 1999. Relocation expenses were authorized in connection with the transfer. Dr. Rivera has asked the Board to review the agency's disallowance of her claim for real estate transaction expenses incurred in the sale of her home at the old permanent duty station in West Palm Beach. For the reasons stated, we conclude the agency has properly disallowed the expenses.

Background

Dr. Rivera has been employed by the VA as a staff psychiatrist since February 1991. Prior to the subject transfer from West Palm Beach to Viera, she moved from Big Spring, Texas, to West Palm Beach. Dr. Rivera explains that her mother is elderly and has multiple medical conditions that make it impossible for her to live independently. Thus, Dr. Rivera and her mother lived together in Texas, and continued to live together in the West Palm Beach area after claimant's transfer.

The house in Big Spring was owned by Dr. Rivera's mother, Marina Rivera. When they moved to the West Palm Beach area, the Big Spring house was sold and a residence was purchased in Jupiter, Florida. Because the house in Florida was more expensive than the house in Texas, Marina Rivera was not, by herself, able to qualify for the mortgage. To obtain the mortgage, Dr. Rivera's son, Fernando Reiser, and his spouse were added to the

title. The settlement documents from that transaction show only Marina Rivera and Fernando and Susanne Reiser as the borrowers and owners.

Subsequently, Marina Rivera became ill and her attorney recommended that she transfer title to any property held in her name. In accordance with this advice, Mrs. Rivera quitclaimed her interest in the house in Jupiter to the Reisers. Although the Reisers are shown as the owners of the property in Jupiter, it was occupied by Dr. Rivera and her mother.

When Dr. Rivera transferred to Viera, the house in Jupiter was sold and another house purchased, where Dr. Rivera and her mother now live. The settlement statement for the house in Jupiter reflects the sellers as Fernando and Susanne Reiser.

After Dr. Rivera submitted a voucher for closing costs associated with the sale of the Jupiter house, the VA determined that she was not eligible for reimbursement of these costs because title to the house was not held in her name or in the name of an immediate family member living in her household. Because title to the property is held by her son and daughter-in-law, Dr. Rivera questions the VA's disallowance of these costs.

Discussion

Under 5 U.S.C. § 5724a(d)(4) (Supp. V 1999), employees who are transferred in the interest of the Government may be reimbursed for certain expenses incurred in the sale of a residence at the old duty station. The conditions under which real estate expenses may be reimbursed are spelled out in the Federal Travel Regulation (FTR). The relevant requirement here is set forth in section 302-6.1(c) of the FTR, which provides that title to the residence or dwelling sold at the old duty station must be either in the name of the transferring employee, or jointly in the names of the employee and one or more members of the employee's immediate family, or solely in the name of one or more members of the employee's immediate family. 41 CFR 302-6.1(c) (1999).

The FTR specifically defines the term "immediate family" as follows:

Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station . . . :

- (i) Spouse;
- (ii) Children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support . . . ;
- (iii) Dependent parents . . . of the employee or employee's spouse . . . ; and
- (iv) Dependent brothers and sisters . . . of the employee or employee's spouse who are

unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

41 CFR 302-1.4(f).

Based on the information in the record, claimant's son does not meet the FTR's very specific definition of immediate family for purposes of claimant's eligibility to be reimbursed closing costs incurred incident to a permanent change of duty station. Dr. Rivera's son is married and does not live in her household. Nor does it appear that he is financially dependent on her for support. Thus, since title at the time of the transfer was held neither in Dr. Rivera's name nor in the name of her mother, it was not held by a member of the employee's immediate family, as that term is defined in the FTR, and claimant is not entitled to be reimbursed for closing costs incurred in the sale of the house. See, e.g., Fred Borakove, GSBCA 15379-RELO (Apr. 19, 2001); Daniel J. Cushine, GSBCA 15357-RELO, 00-2 BCA ¶ 31,130; John J. Toal, GSBCA 15206-RELO, 00-2 BCA ¶ 31,054.

The Board has recognized that under the FTR there are some circumstances in which an employee may be deemed to have an equitable title interest in a house, thus establishing eligibility for full or partial reimbursement of closing costs. These circumstances include titles held in trust, titles held by financial institutions, titles which include accommodation parties, titles held by sellers of property under financing arrangements providing for fixed periodic payments and transfer of title, and similar arrangements. 41 CFR 302-6.1(c)(3), (f)(2); Cushine, 00-2 BCA at 153,770. To qualify for recovery of expenses under the provision permitting accommodation parties, however, there is still a requirement that the employee or a member of the immediate family -- in this case, Dr. or Mrs. Rivera -- hold title jointly with the individual or accommodation party who is not a member of the immediate family. This does not seem to be the case; rather, title appears to be held solely by Dr. Rivera's son and his wife. Nor is there any suggestion that the property is held in trust for the benefit of Mrs. or Dr. Rivera. The other exceptions would similarly not appear to apply.

Accordingly, based on the evidence provided, we must conclude that the VA has properly disallowed these costs.

CATHERINE B. HYATT
Board Judge