

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

July 10, 2002

GSBCA 15679-RELO

In the Matter of PETE G. VEGA

Pete G. Vega, San Leandro, CA, Claimant.

Rhonda M. Johnson, Authorized Certifying Officer, Office of the Chief Financial Officer, National Finance Center, Department of Agriculture, New Orleans, LA; and Frances Wilches, National Program Manager for Employee Relocations, Fiscal Services Branch, Budget Division, Food Safety and Inspection Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Pete G. Vega, was transferred from Diamond Bar, California, to Alameda, California, under orders issued in August 2000. In connection with his relocation, the United States Department of Agriculture (USDA) authorized reimbursement of real estate transaction expenses for the sale of a residence. Pursuant to 31 U.S.C. § 3529 (Supp. IV 1999) ("section 3529 decision"), USDA has requested the Board's opinion on whether it may reimburse Mr. Vega for expenses connected to the sale of a residence in which his spouse had a one-third interest.

When his permanent duty station was located in Diamond Bar, Mr. Vega and his spouse owned a residence in Oceanside, California, approximately seventy-two miles from the USDA's Diamond Bar office. To reduce his commuting time, during the work week Mr.

Vega stayed with his mother-in-law at her home in Ontario, California, approximately eighteen miles from the Diamond Bar office. On weekends he returned to the residence in Oceanside, where Mrs. Vega resided. The title to the residence in Ontario was held jointly by his spouse and her parents, with Mrs. Vega holding a one-third interest in the property. Mrs. Vega held her one-third interest in this house prior to marrying Mr. Vega, and well before claimant was notified of the transfer.¹

Two separate offices within the USDA have identified issues that the Board is requested to address. USDA's National Finance Center in Louisiana has two questions:

1. Can Mr. Vega be paid for the one-third interest in his in-laws' residence that was legally owned by his wife at the time he was notified of his transfer?
2. If he is entitled to reimbursement for expenses attributable to the one-third interest his spouse held in his in-laws' residence, can he also be compensated for expenses associated with the sale of the residence in Oceanside?

The Budget Division of USDA's Food Safety and Inspection Service (FSIS) maintains that the issues should be framed differently. FSIS is of the view that the answer to the second question above is clearly "no." Mr. Vega cannot be paid for both sets of expenses. FSIS suggests that the real issue is as follows:

Can Mr. Vega be reimbursed for one-third of the [allowable real estate expenses associated with the sale of the in-laws'] residence even though his wife was not "a member of the employee's household at the time he/she report[ed] for duty" as defined in the Federal Travel Regulation?

In responding to the requests as posed by these USDA divisions, Mr. Vega provides additional clarification. He states that he does not plan to sell the residence in Oceanside, California; thus there will be no request for reimbursement of real estate expenses in connection with that residence. Moreover he concedes that even if he were to sell the Oceanside property, it was not the residence from which he regularly commuted to work at Diamond Bar, and thus he would not qualify for recovery of the expenses of selling it. Finally, he states that his spouse did accompany him when he reported to duty in Alameda.

Discussion

The authority to reimburse federal government employees for real estate expenses incurred incident to a transfer is contained in 5 U.S.C. § 5724a(a)(4) (2000), which sets forth

¹ Mrs. Vega and her parents purchased this residence together before she married Mr. Vega. Mrs. Vega owned one-third of the house and her parents owned the remaining two-thirds interest. Mrs. Vega's father died in 1989, and his interest passed to Mrs. Vega's mother.

certain requirements relating to the title of property sold or purchased. These requirements are incorporated in the Federal Travel Regulation (FTR), which provides that real estate expenses may be reimbursed so long as:

The title to the residence or dwelling at the old or new official station . . . is 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.

41 CFR 302-6.1(c) (2000). The FTR defines "immediate family" as an employee's spouse, children, and certain dependent relatives who are members of the employee's household at the time he or she reports to the new duty station. 41 CFR 302-1.4(f). Since Mrs. Vega accompanied her husband to his new duty station, she qualifies as a member of the immediate family as defined by the FTR. Although this situation is a little unusual in that Mr. Vega lived at the house, and made his daily commute from this location, while his spouse did not, the regulations do not preclude reimbursement under these circumstances.²

When the title possessed by an employee or a member of his or her immediate family is not full title, whether actual or equitable, the employee shall be reimbursed on a pro-rata basis to the extent of the employee's actual title interest. 41 CFR 302-6.1(f)(2); Rick L. Spring, GSBCA 15503-RELO, 01-1 BCA ¶ 31,412; Ferrel G. Camp, B-213,861 (May 21, 1984). Thus, Mr. Vega would be entitled to reimbursement of his spouse's one-third share of allowable real estate expenses.

To conclude, the answer to the National Finance Center's first question is yes: Mr. Vega may be compensated for one-third of the allowable expenses incurred in the sale of the Ontario property. As claimant himself acknowledges, there would be no eligibility for reimbursement of expenses related to the sale of the Oceanside house. Finally, the question posed by FSIS assumes incorrectly that Mrs. Vega did not accompany claimant when he reported for duty. Because claimant's spouse was a member of his household when he reported to his new duty station, he may be compensated for the expenses attributable to her one-third title interest in the house from which he regularly commuted to his duty station in Diamond Bar.

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² We note that this conclusion is reinforced by the fact that title interests are generally determined as of the date of settlement. Alan Wood, 64 Comp. Gen. 299 (1985). It appears from the record that the property in Ontario, California, was sold after Mr. Vega reported to duty in Alameda accompanied by his spouse.

Board Judge