



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 27, 2010

CBCA 1827-RELO

In the Matter of SHEN L. LIN

Shen L. Lin, Cheshire, CT, Claimant.

Crystal G. Buttimer, Office of the Staff Judge Advocate, Warner Robins Air Logistics Center, Robins Air Force Base, GA, appearing for Department of the Air Force.

**HYATT**, Board Judge.

Claimant, Shen L. Lin, a civilian employee of the Department of the Air Force, seeks review of the denial of his claim for certain expenses he incurred in connection with the sale of his home at his former duty station in Warner Robins, Georgia.

Background

The Air Force authorized real estate transaction expenses in connection with Mr. Lin's transfer to Connecticut in June 2009. Incident to the relocation, Mr. Lin sold his home at his previous duty station in Warner Robins, Georgia. Mr. Lin entered into a sales contract that provided that the seller would pay up to \$3000 of the purchaser's closing costs and prepaid items.

Claimant submitted a voucher for reimbursement of \$3287 in expenses that he incurred with respect to the sale of the property. The Air Force determined that of the expenses claimed, only the amount of \$1278 was reimbursable. The following items were considered not to be reimbursable under applicable regulations:

Loan origination fee	\$ 945.70
Credit Report	\$ 16.00
Administration Fee	\$ 599.00
MERS Transfer Fee	\$ 4.00
DU Fee	\$ 15.00
Processing Fee	\$ 175.00
Document Preparation Fee (Lender)	\$ 175.00
Title Examination	\$ 79.30

The Air Force maintains that these expenses are not customarily paid by sellers in the Warner Robins area.

After receiving a letter from the Air Force informing him that the above items would not be paid, claimant asked the Board to review the agency's decision. He stated in his letter to the Board that:

I do not have any document to show you why it is necessary for [a] seller to pay for the closing costs in the midst of one of the worst economic downturns since I did not retain a real estate agent. However, if you would make phone calls to any of the real estate agents within the city of Warner Robins, Georgia, the truth will prevail.

In a follow-up letter to the Board, claimant further noted that in late 2009 and early 2010, when his house was on the market, some 220 homes in the City of Warner Robins were subject to foreclosure or bankruptcy, creating severe pressure on sellers to make concessions to purchasers.

### Discussion

Under the Federal Travel Regulation, the seller of a residence is entitled to reimbursement for those costs that are "customarily paid by the seller of a residence at the old official station . . . ." 41 CFR 302-11.200 (2008). The Department of Defense's Joint Travel Regulations (JTR), which also apply to Mr. Lin, require that reimbursement of costs related to the sale of a home must be "[r]easonable in amount, and . . . [c]ustomarily paid by the seller . . . in the locality where the property is located." JTR C5759-C.1.

In response to Mr. Lin's claim, the Air Force provides two reasons for its decision disallowing the claimed costs: (1) it is not customary for sellers to assume buyers' closing costs in the Warner Robins area; and (2) some of the costs would not be eligible for

reimbursement even if it were customary to pay buyers' costs. Although the Air Force asserts that buyers' costs are not customarily paid in this locality, neither the agency nor claimant has produced any concrete evidence, such as statements of real estate professionals or a preprinted sales contract, to support their respective positions.

It is Mr. Lin's obligation to produce evidence that it is customary in the Warner Robins area for a seller to pay some portion or certain elements of the buyers' expenses at closing. *E.g.*, *Deborah A. Bentley*, GSBCA 16752-RELO, 06-1 BCA ¶ 33,197; *Kerry M. Kennedy*, GSBCA 16540-RELO, 05-1 BCA ¶ 32,877; *Sandra L. Wilks*, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962. The Board cannot undertake to perform this task for claimant.

In those instances where a seller agrees to pay some portion of the buyer's closing costs, the seller can meet his burden to prove that it is "customary" for a seller to assume a particular cost in a variety of ways:

These include showing that a cost is allocated to a particular party in a preprinted sales form, submitting letters from local realtors and brokers confirming that a particular cost is invariably assumed by the seller for the buyer, providing data showing that over the years a commanding percentage of sellers have contributed to buyers' closing costs, and the like. In contrast, letters from realtors simply asserting that many sellers contribute to buyers' closing costs do not establish that a practice is customary. [*Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827-28 (2001).] A common occurrence does not necessarily rise to the level of a custom, although over time a custom may be determined to have evolved.

*Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (quoting *Joseph B. Wade*, GSBCA 15889-RELO, 03-1 BCA ¶ 32,128, at 158,815-16 (2002)). In addition to input from realtors and lenders, letters from other knowledgeable professionals, such as an attorney familiar with the transaction, could also be helpful. Other sources of insight into the customary allocation of costs could include the local office of the Department of Housing and Urban Development or, in this case, the Georgia Association of Realtors. *See Terry L. Hood*, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314. Finally, evidence of how many other sales in the same community, over a substantial period of time, involved seller contributions to buyer closing costs could also be probative of whether a custom has evolved. *Janeen H. Rosenberg*, GSBCA 15591-RELO, 01-2 BCA ¶ 31,614.

We note that Mr. Lin's arguments echo those made by claimants in recent cases in which the Board has concluded that the record did not reflect that payment of the buyers'

closing costs by sellers was customary. That is, the fact that a seller paid the purchaser's closing costs does not in and of itself establish a customary practice. This is so even if, due to an economic downturn in the housing market, a claimant had to agree to pay the buyer's closing costs in order to sell the residence at all. The term "customarily" is unrelated to the strength or weakness of the real estate market; rather, it simply refers to what is usual, normal, habitual, or routine. *Michael K. Daniel*, CBCA 1762-RELO, 10-1 BCA ¶ 34,400; *Anthony J. Kress*, CBCA 877-RELO, 08-2 BCA ¶ 33,903, at 167,778. If Mr. Lin's claim is based solely on his perception that the current economic downturn has created a circumstance where large numbers of sellers must agree to assume some portion of the buyers' closing costs in order to sell their residences, the Air Force has properly disallowed his claim.

In the absence of evidence supporting the proposition that it is, and has been, customary for the seller to assume these expenses, rather than simply a recent consequence of market conditions, the agency cannot reimburse an employee for these costs. At this point, however, we cannot entirely rule out the possibility that it is customary for sellers to assume some of the buyers' costs in this locale. If Mr. Lin wishes to pursue this further, he may, with suitable documentation, request that the Air Force reconsider its decision.

Even assuming Mr. Lin is able to obtain evidence showing that it is customary in the Warner Robins locale for a seller to contribute to the buyer's closing expenses, he would still not automatically be eligible to recover the entire amount he seeks. The loan origination fee, credit appraisal report, and title examination charge are items that he could potentially be reimbursed for. *Vernon K. Register*, CBCA 871-RELO, 08-1 BCA ¶ 33,790; *Hood*. The remaining charges are problematic. As the Air Force points out, however, most of the other expenses paid by Mr. Lin appear to be additional administrative fees imposed by the lender in connection with the mortgage and would generally not be reimbursable in addition to the loan origination fee. In this regard, it is Mr. Lin's burden to supply information concerning the nature of these charges. *John W. Bodford*, CBCA 1006-RELO, 08-1 BCA ¶ 33,862; *Ioan V. Sere*, GSBCA 16815-RELO, 06-2 BCA ¶ 33,412.

### Decision

On the record before us, the claim must be denied. Claimant may ask the agency to reconsider its position if he is able to provide appropriate documentation as discussed above

to identify the nature of the various fees charged and to support his argument that the costs in question are customarily paid by the seller of property in the City of Warner Robins.

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CATHERINE B. HYATT  
Board Judge