



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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September 25, 2014

CBCA 3981-RELO

In the Matter of DIEDRA D. CORDELL

Diedra D. Cordell, Rocklin, CA, Claimant.

Sharon L. Milauskas, Real Estate Division, Baltimore District, United States Army Corps of Engineers, Baltimore, MD, appearing for Department of the Army.

**DANIELS**, Board Judge (Chairman).

The United States Army Corps of Engineers (Corps) transferred Diedra D. Cordell from Maryland to California in May 2011. Ms. Cordell sold her home in Maryland, and the Corps reimbursed her for the bulk of the transaction costs that she claimed as a result of the sale. The Corps did not reimburse her for \$10,000 that she paid as a contribution to the buyer's closing costs, however. She has asked us to review that determination.

We recently considered a similar claim in *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533. In our decision in that case, we explained the following:

Congress has directed agencies to pay, to an employee who is transferred in the interest of the Government, expenses the employee incurs in selling a residence at an old duty station. 5 U.S.C. § 5724a(d)(1) (2012). The legislature has permitted the Administrator of General Services to define which expenses will be reimbursable. *Id.* In so doing, however, the legislature has imposed various constraints. One of them is that “[r]eimbursement for . . . expenses . . . may not exceed those customarily charged in the locality where the residence is located.” *Id.* § 5724a(d)(4). The Administrator has faithfully implemented the statute by prescribing, in the Federal Travel Regulation, that certain expenses are reimbursable “[p]rovided [that they] are customarily

charged to the seller of a residence in the locality of the old official station.” 41 CFR 302-11.200 (2012).

“The term ‘customary’ must be applied strictly, for the statute on which the regulatory phrase is based makes agencies responsible for paying transferred employees’ closing costs only where those costs ‘are required to be paid.’” *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744 (2001). That strict application has resulted in our holding that “[a]n expense is ‘customarily’ paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community.” *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996)).

The burden is on the claimant to establish by a preponderance of the evidence that it is customary for the seller to assume some or all of the buyer’s closing costs in the locality where the residence is located. *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930 (citing *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727). This burden may be met in several ways. These include showing that a cost is allocated to the seller by state law or in a pre-printed sales form, submitting historical data which show that over a number of years a commanding percentage of sellers have contributed to buyers’ closing costs, and submitting letters from real estate professionals confirming that a particular cost is invariably assumed by the seller for the buyer. *Delbert C. Steorts, II*, CBCA 2468-RELO, 12-1 BCA ¶ 34,890 (2011) (citing *Weston*). General, conclusive statements of customary practice and data from a limited period of time, however, are not persuasive. *Molton*; *Theresa M. Grimm*, CBCA 2231-RELO, 11-1 BCA ¶ 34,729; *James E. Miller*, GSBCA 16123-RELO, 04-1 BCA ¶ 32,450 (2003). This is especially so where the principal purpose of the seller’s payment to the buyer appears not to have been to cover particular closing costs, but rather, as an inducement to entice the buyer to purchase the house. *Mahmood Ramzan*, CBCA 3287-RELO, 13 BCA ¶ 35,386; *Bradley K. Fossey*, CBCA 3049-RELO, 13 BCA ¶ 35,327, *reconsideration denied*, 13 BCA ¶ 35,388.

Ms. Cordell has not even attempted to meet her burden. All she has shown us is a memorandum from an employee in the Corps’ Sacramento District’s real estate division which says that in “numerous PCS [permanent change of station] Claims reviewed by Sacramento District, [the district has] approved [fees paid at closing by the seller on behalf

of the buyer] before with no problem.” Ms. Cordell maintains that “it is unfair that some are paid for those fees and some are not.”

As we have explained in *Walker* and the cases cited in that decision, whether these fees are reimbursed is dependent on whether an employee meets the test set out in statute and regulation: were the fees customarily charged to the seller of a residence in the locality in question? Because Ms. Cordell has not shown that a seller’s paying closing costs of the buyer was customary in the locality of her previous residence (Odenton, Maryland) at the time she sold that home, she may not be reimbursed for having paid some of those costs. Her payment is best construed as an inducement to entice the buyer to purchase the house.

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STEPHEN M. DANIELS  
Board Judge