



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 18, 2023

CBCA 7778-RELO

In the Matter of STEVEN T.

Steven T., Claimant.

Erica L. Avery, Assistant General Counsel, Defense Intelligence Agency, Washington, DC, appearing for Department of Defense.

KANG, Board Judge.

Claimant is a civilian employee of the Defense Intelligence Agency (DIA). Claimant seeks review of DIA's denial of his request for reimbursement of relocation expenses incurred in connection with the sale of a residence. We grant the claim in part.

Background

DIA relocated claimant under permanent change of station orders in 2021. He reported to the new duty station in November 2021. In October 2021, claimant entered into a contract for the sale of his house in Maryland and closed on the sale in December 2021. Claimant sought reimbursement for sale expenses. DIA has paid most of the expenses but continues to deny reimbursement for a seller's credit to the buyer of \$9800.41 and a fee of \$126 for an escrow agent's preparation of a resale demand statement. DIA contends that the expenses are not reimbursable because claimant does not establish that they are customarily paid by sellers in the locality.

Discussion

When an agency transfers an employee from one permanent duty station (PDS) to another within the United States and the transfer is in the agency's interest, the agency must

pay some of the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d)(1) (2018). The Federal Travel Regulation (FTR) lists certain real estate transaction expenses that may be reimbursed if incurred in the employee's sale of a home. 41 CFR 302-11.200 (2021) (FTR 302-11.200). The Joint Travel Regulations (JTR) supplement the FTR for civilian employees of the Department of Defense. JTR 054504 (Nov. 2021). As relevant here, the JTR authorize reimbursement of legal and related costs that "are not included in broker's fees or similar services reimbursed under other categories" and certain miscellaneous expenses. *Id.* 054504-C, -D. Such expenses are reimbursable only if they are "customarily paid by the seller at the old PDS." *Id.* 054504-C; *see id.* 054504-D.

Claimants bear the burden 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 of the residence sold." *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930, at 171,748 (quoting *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727, at 170,991). The burden may be met in several ways, including: showing that a cost is allocated to the seller by state law or 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; or providing data showing that over the years a commanding percentage of sellers have contributed to buyers' closing costs. *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412. The terms "customary" or "customarily" must be applied strictly because "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.'" *Bradley N. McDonald*, CBCA 5025-RELO, 16-1 BCA ¶ 36,345, at 177,204 (quoting *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133).

Seller's Credit

Claimant contends that the seller's credit is reimbursable under the JTR because it is supported by preprinted forms signed by the buyer and seller at closing: (1) an American Land Title Association Settlement Statement (ALTA statement), which details the debits and credits to the seller and buyer for closing; (2) a Maryland Realtors Residential Contract for Sale (contract); and (3) a Southern Maryland Association of Realtors Payment of Closing Costs Addendum (contract addendum), which identifies the amount the seller agreed to pay toward the buyer's closing costs at settlement. Specifically, claimant notes that the seller's credit expense was identified on the ALTA statement and contract addendum as an amount paid by claimant at settlement to cover the buyer's closing costs.¹ Claimant, however, does

¹ The ALTA statement and addendum list a total amount of \$17,122 for the seller's credit and do not identify the specific expenses that comprise the credit. Claimant's

not specifically contend that the costs comprising the seller's credit are customarily paid by sellers in the area where the house was sold.

As discussed above, a preprinted form may establish that an expense is customary for a seller to bear in a locality if the form allocates the expense to a particular party; that is, the preprinted information in the form specifies that a particular party must pay the expense. *Erwin Weston*, 09-1 BCA at 168,412. Here, in contrast, the ALTA statement and contract addendum forms do not allocate expenses to a particular party. Rather, these preprinted forms allow various credits or debits to be allocated to either the seller or the buyer. These forms, therefore, do not establish that the claimed expenses are customarily paid by the seller in the locality.

Claimant also generally contends that the seller's credit is a reimbursable expense because the buyer would not have been able to complete the purchase without it. In this regard, claimant represents that the buyer was pre-approved for a loan amount lower than needed to complete the purchase. The buyer's inability to complete the purchase without the seller's credit, however, does not establish that sellers in the locality customarily pay the expenses comprising the seller's credit. In sum, we find the claimant is not entitled to reimbursement of the seller's credit.

Resale Demand Statement

Claimant contends that the expense for preparation of a resale demand statement was reimbursable as a legal or related cost under JTR 054504-C. The claim identified the expense as an "Escrow Agent's (*e.g.* Settlement Attorney, Thomas Pelagatti) Fee Resale Demand Statement (Legal & Related Fee)." DIA denied reimbursement for this expense, finding that claimant did not explain why the resale demand statement should be treated as a reimbursable escrow agent fee and that claimant, in any case, does not establish that sellers in the locality customarily pay this expense.

Claimant explains that the expense was paid to the escrow agent, Mr. Pelagatti, for preparation of a resale demand statement, which provides information concerning the homeowners association to which the property belongs. The statement is intended to satisfy a disclosure requirement under the Maryland Homeowners Association Act, MD Code, Real

filings with the Board identify fourteen expenses, which claimant contends are allowable under the FTR and total \$9800.41. These fourteen expenses correspond to buyer debit line items in the ALTA statement.

Prop. § 11B-106. The disclosure was also referenced on a preprinted form attached to the contract titled “Maryland Homeowners Association Act Notice to Buyer.”

We agree with claimant that the expense should not have been considered an escrow fee but rather a fee for the preparation of the resale demand statement for purposes of complying with the seller’s obligation under the Maryland Homeowners Association Act. We find that this is an expense within the scope of the legal and related costs provision of the JTR and that claimant establishes that this expense is customarily paid by sellers in the locality, as shown by the Maryland Homeowners Association Act and the preprinted notice form. We therefore find the claimant is entitled to reimbursement of the expense for preparation of the demand statement.

Decision

The claim is denied with respect to the seller’s credit and granted with respect to the \$126 expense for the resale demand statement.

Jonathan L. Kang
JONATHAN L. KANG
Board Judge