



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 17, 2008

CBCA 1050-RELO

In the Matter of CHARLES INGRAM

Charles Ingram, Ellicott City, MD, Claimant.

William D. Robinson and Bradley J. Breslin, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, Washington, DC, appearing for Department of Justice.

DeGRAFF, Board Judge.

An employee does not meet the requirements for receiving a home marketing incentive payment if he does not enter his house into the agency's home sale marketing program.

Background

Charles Ingram, an employee of the United States Department of Justice (DoJ), transferred from one permanent duty station to another in May 2007. Mr. Ingram owned a condominium at his old duty station and was interested in utilizing the agency's home sale marketing program. DoJ's relocation services company determined the condominium was not eligible for the program due to the discovery of a defect in the condominium's siding which set in motion a state-mandated claims process and created a potential liability for the relocation services company. The relocation services company and DoJ told Mr. Ingram he could ask to use the home sale marketing program after the claims process concluded, although this might not be for quite some time.

DoJ told Mr. Ingram that the applicable regulations would not permit it to pay a home marketing incentive payment if he sold the condominium without entering it into the home

sale marketing program. DoJ advised Mr. Ingram that if he sold his condominium outside the program, he would be reimbursed for his allowable closing costs and he would likely have to pay income taxes on the reimbursed amount. DoJ suggested Mr. Ingram consider whether he wanted to sell his condominium and be reimbursed for his expenses, or wait and enter the condominium into the home sale marketing program. Mr. Ingram wanted to sell his condominium quickly and did so without entering it into the agency's home sale marketing program. Subsequently, he filed a claim with DoJ for a home marketing incentive payment and for any additional taxes he will have to pay as a result of not being able to utilize the home sale marketing program. DoJ denied Mr. Ingram's claim and he asked us to review DoJ's decision.

Discussion

Federal agencies are permitted to enter into relocation services contracts with private firms to provide a variety of relocation services to employees who are transferred. These services include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the employee's old duty station. 5 U.S.C. § 5724c (2000). In addition, an agency may implement a home marketing incentive payment program. Under this program an agency may make an incentive payment to an employee when (1) the employee enters the residence at the old duty station into a relocation services program under which the private contractor will purchase the house, (2) the employee finds a buyer who completes the purchase of the residence through the program, and (3) the sale of the residence results in a reduced cost to the Government. 5 U.S.C. § 5756.

The home marketing incentive program is implemented in the Federal Travel Regulation, 41 CFR part 302-14. According to the regulation, the purpose of a home marketing incentive payment is:

to reduce the Government's relocation costs by encouraging transferred employees to participate in their employing agency's homesale program to independently and aggressively market, and find a bona fide buyer for their residence. This significantly reduces the fees/expenses their agencies must pay to relocation services companies and effectively lowers the cost of such programs.

41 CFR 302-14.2 (2007).

The regulation imposes several conditions which must be met in order for an employee to qualify for an incentive payment. The employee may receive a payment when (a) the employee enters the residence in the home sale marketing program, (b) the employee

independently and aggressively markets the property, (c) the employee finds a bona fide buyer as a result of independent marketing efforts, (d) the employee transfers the residence to the relocation services provider, (e) the agency pays a reduced fee or expenses to the relocation services company as a result of the employee's independent marketing efforts, and (f) the employee meets any other conditions established by the agency. 41 CFR 302-14.5. We will deny claims for home marketing incentive payments when any one of the requirements of either the statute or the regulation has not been met. *See, e.g., Adella Hansen*, CBCA 819-RELO, 07-2 BCA ¶ 33,667; *Judy Schutza*, GSBCA 16475-RELO, 04-2 BCA ¶ 32,801; *Laura E. Kilpatrick*, GSBCA 15814-RELO, 02-2 BCA ¶ 31,957; *Mark R. Tayler*, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816; *Gregory R. Littin*, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; *Regina M. Rochefort*, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879.

Mr. Ingram does not meet the requirements of the statute and the regulation for obtaining an incentive payment because he did not enter his house into the agency's home sale marketing program. He asks us to grant his claim for an incentive payment, however, because the state-mandated claims process was beyond his control and because he believes the relocation services company should have accepted his condominium into the home sale marketing program regardless of the company's potential liability.

Even though the state-mandated claims process was beyond Mr. Ingram's control and even though he believes the relocation services company should have accepted his condominium into the home sale marketing program, the fact remains he did not enter his condominium into the program. He decided to sell his condominium quickly and not wait to enter it into the program after the claims process concluded. As the Board stated in *Rochefort* at 152,445, "[i]t is now impossible to recreate history to enable claimant to properly invoke the home sale incentive program." Because Mr. Ingram did not meet the requirements established by statute and regulation for receiving a home marketing incentive payment, DoJ correctly denied his claim for payment of an incentive.

The basis for Mr. Ingram's claim for taxes is not completely clear. To the extent it is based upon his inability to use the home sale marketing program, DoJ properly denied the claim because Mr. Ingram could have used the program if he had waited until the state-mandated claims process had run its course. To the extent the claim is based upon his dissatisfaction with the amount of his relocation income tax allowance, the claim is not yet ripe for review because the time has not yet arrived for DoJ to pay Mr. Ingram's relocation income tax allowance. When Mr. Ingram receives this allowance, if he feels it is less than the amount allowed by the applicable regulations, he may submit a claim to the Board and ask us to review the agency's decision regarding the amount of the allowance.

The claim is denied in part and dismissed in part as being not ripe for review.

MARTHA H. DeGRAFF
Board Judge