UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 27, 2007

CBCA 926-RELO

In the Matter of SAHIN SONMEZ

Sahin Sonmez, Wesley Chapel, FL, Claimant.

Capt. Thomas A. McNab, Office of the Staff Judge Advocate, Department of the Air Force, MacDill Air Force Base, FL, appearing for Department of the Air Force.

VERGILIO, Board Judge.

On September 28, 2007, the Board received from Sahin Sonmez a request to resolve a claim for reimbursement of expenses incurred in connection with his relocation to a new duty station, where he purchased a residence. The Department of the Air Force (Government) denied the claimant's request to recover settlement expenses of $1740.20 for state tax stamp/deed fees (state revenue stamps), concluding that it is customary for the seller to pay such costs, and $495 paid as a processing fee to the seller, concluding that the fees were akin to those paid directly to the lender, and for which claimant had received the maximum reimbursement. The Government and claimant each made a submission to the Board.

The claimant has not demonstrated that the information regarding the payment of fees for state revenue stamps relied upon by the Government relating to the custom and practice in the locale of the purchase was inaccurate or that the Government's conclusions regarding custom and practice were unreasonable. The claimant has not demonstrated entitlement to the processing fee paid to the seller. The Government properly denied the reimbursements in question.

Background

In April 2007, as a civilian employee of the Department of the Air Force, the claimant obtained authorization to be reimbursed real estate expenses in conjunction with a permanent change of station. On May 29, 2007, he reported for duty at the new duty station. The

claimant purchased from a seller/builder a newly constructed residence. A special financing provision of the real estate sales contract specifies that the seller agrees to pay up to $4000 in closing costs and/or prepaids when the purchaser agrees to use a seller-preferred lender and title company, and the purchaser agrees to pay any closing costs and/or prepaids in excess of $4000 including owner's title insurance and the document stamps on the deed. A "loan prepaid expenses and closing costs" provision directs that, in addition to the purchase price and prepaid expenses, the purchaser agrees to pay for the documentary stamps of the deed, owner's title insurance premium and costs, and all loan closing costs. Further, the purchaser shall pay the seller a closing processing fee of $495 to offset the costs and expense incurred by the seller in assisting the purchaser to close the transaction. In August 2007, the claimant closed on the purchase of the residence. The settlement sheet indicates that the claimant used funds to pay the seller $1740.20 for state revenue stamps and $495 as a processing fee.

The Government reimbursed the claimant for various costs he incurred in connection with the purchase, including a loan origination fee of one percent of the mortgage amount. The claimant here disputes two items (the costs relating to the state revenue stamps and the agreed-upon processing fee to the seller) for which he was not reimbursed.

In pursuing reimbursement, the claimant submitted to the Government a statement from his realtor, who states that regarding every new home the realtor has sold the purchaser paid for the tax stamps on the deed and that in the area it is customary for the purchaser to pay for tax stamps on the deed in new construction closings. The claimant also submitted statements from the escrow officer of the title insurance company involved in the closing. She opines that for this seller, it is customary for the purchaser to be responsible for the tax stamps on the deed, and notes that in the contract of sale, as agreed between the parties, the seller opted to place these costs on the purchaser.

The Government considered the claimant-submitted information. It reviewed its history and experience in the locale of the purchase (the seller paid the deed portion of the stamp revenue tax in seventeen out of twenty instances). Additionally, the Government obtained statements from other individuals. An attorney, who previously had worked with the Government office as a reservist and is now with a title company, states that in the given locale the custom is for the seller to pay for the recording of the deed. An agent from a realty firm writes that the seller normally pays for the state stamps on the deed in the given locale. An individual from a title company asserts that the seller (whether of new construction or an existing home) is responsible for paying the deed portion of the tax stamp. Upon considering the information before it, the Government concluded that the custom and practice in the area was for the seller, not the purchaser, to pay the costs associated with state revenue stamps.

In a submission to this Board, the claimant states that he has contacted individuals at several other title companies, all who indicate that it is typical in the area for the builder not to pay any closing costs on a new construction.

Regarding the processing fee, the Government concluded that the fee was akin to processing fees paid to a lender. The claimant had been reimbursed one percent for such lender-related expenses. Without additional support to justify greater reimbursement, as would be required to exceed the one-percent payment, the Government denied the request for reimbursement of this cost.

Discussion

Statute, 5 U.S.C. § 5724(d) (2000), specifies that, pursuant to implementing regulations, an agency shall pay to an employee who transfers in the interest of the Government various expenses the employee is required to pay regarding the purchase of a residence at the new official duty station. The primary implementing regulation, the Federal Travel Regulation (FTR), contains a chapter on relocation allowances. 41 CFR ch. 302 (2006) (FTR ch. 302). The Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, contain provisions parallel to those of the FTR. JTR C14002, C14003 (since revised and now at C5756, C5659).

State revenue stamps

Regarding reimbursable expenses, the FTR states that, provided that they are customarily and normally paid by the purchaser of a residence in the locality of the residence at the new official station, an agency will pay, as other miscellaneous expenses, expenses of state revenue stamps. FTR 302-11.200(f)(5). The FTR instructs that an employee should, in coordination with the agency, contact the local real estate association, or if not available, at least three different realtors in the locality of the purchase, and request information concerning local custom and practices with respect to the charging of closing costs which relate to the purchase and whether such costs are customarily paid by the seller or purchaser. FTR 302-11.306. The parties did not reach an agreement prior to the incurrence of costs, or through this point in time, as to the custom and practice in the locality. It is for the agency to ultimately determine if the amounts are customarily paid by the purchaser in the given locality. FTR 302-11.406. More particularly, the reviewing official for the agency is charged with determining who customarily pays expenses in the locality. The local real estate association may be contacted to provide information concerning local real estate transaction custom and practices including information as to which costs are customarily paid by the purchaser or by the seller. JTR 14003-C.

The claimant contends that purchases of new construction are distinct from purchases of existing residences, and that the custom and practice is different for each category of transaction, with that for new construction being that the purchaser pays for the deed portion of the state revenue stamps. The Government obtained and considered material in addition to that provided by the claimant. Consistent with the Government's understanding based upon historical experience, this information indicates that it is the custom and practice in the given locale for the seller to pay the fees for the deed portion of state revenue stamps. The recent submission by the claimant does not alter the analysis or conclusions. The record demonstrates neither the incorrectness of the information relied upon by the Government nor the unreasonableness of its conclusion regarding custom and practice. There is no reason to give the information from the realtor and individuals at the title companies contacted by the claimant more weight than the information relied upon by the Government. The Government reasonably concluded that the custom and practice is different from what the claimant maintains. *Gerald Fediw*, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513 (1997) (the claimant asserted that it is common for purchasers of new construction to pay a given tax because builders require purchasers to make the payment; in the absence of concrete evidence that purchasers customarily pay the costs, the Board upheld the denial of the reimbursement). Accordingly, the Board upholds the determination by the Government to deny the requested reimbursement of $1740.20.

Processing fee

The claimant disputes the Government's denial of the claim for the $495 processing fee paid to the seller. Under the sales contract, the purchaser was obligated to pay the seller the processing fee at closing to offset the costs and expenses incurred by the seller in assisting the claimant to close the transaction. This is not a fee to a lender. It is a fee to the seller to assist the claimant in dealings with a lender affiliate of the seller.

The record does not demonstrate that this fee is reimbursable. Rather, the record suggests that the fee is akin to a broker fee or commission paid in connection with the purchase, and thereby not reimbursable. FTR 302-11.202(b). Even if viewed as a miscellaneous fee and similar to loan origination fees, the claimant has received reimbursement of one percent of his loan amount, and has not demonstrated that the fee is customarily charged in the locality of the residence. FTR 302-11.201; *Mervin H. Kemp*, CBCA 889-RELO (Nov. 1, 2007). Accordingly, the Board upholds the determination by the Government to deny the requested reimbursement of $495.

Decision

The Board denies the claim.

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JOSEPH A. VERGILIO
Board Judge