



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 29, 2009

CBCA 1469-RELO

In the Matter of GREGORY A. THESSEN

Gregory A. Thessen, Indianola, IA, Claimant.

Diane Eggert, Chief, Travel and Relocation Services Branch, Financial Management Division, Agricultural Research Center, Department of Agriculture, Beltsville, MD, appearing for Department of Agriculture.

VERGILIO, Board Judge.

Regulation states that an employee limits his entitlement to reimbursement of relocation expenses by opting to utilize a contracted-for relocation service. This claimant, who used a relocation contractor in the guaranteed sale of his residence, may not recover the closing costs or homeowner warranty costs paid by the claimant to effectuate the sale of his home. This result is reached because the itemized and allocated costs in the agreements between the claimant-seller and relocation company-purchaser are subsidiary to the services the claimant received and for which the Government has paid for the residence sale.

On January 2, 2009, the Board received a claim from Gregory A. Thessen (a civilian employee of the Government) regarding a relocation arising from a permanent change of duty station within the continental United States. In March 2008, the claimant opted to utilize a relocation services contractor and a guaranteed purchase option for home sale services. The claimant found the eventual buyer. In order to accomplish the sale, the claimant made concessions. Based upon an ultimate offer from that buyer, the relocation contractor purchased the residence from the claimant and resold the residence to the buyer found by the claimant. A statement of equity for the sale between the claimant and relocation contractor indicates that the claimant was charged \$11,000 in closing costs and \$407 for a home warranty. These costs, among others, were deducted from the sale price to arrive at the total amount that the claimant received from the relocation contractor. In addition to these two amounts, the claimant also seeks \$30 for a facsimile of a payoff quote fee from his mortgage company. The support for the \$30 charge is a copy of the claimant's mortgage loan

statement, which identifies the amount as a miscellaneous fee with the description as “payoff quote faxfee[.]”

The agency has denied the claimant’s request to be paid each of these costs. The agency maintains that the claimant is not eligible to recover these costs under provisions of the applicable Federal Travel Regulation (FTR). The agency relies upon a specific provision:

If I use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, will I be reimbursed for the relocation allowance as well?

No, if you use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, you will not be reimbursed for the relocation as well.

41 CFR 302-12.5 (2008) (FTR 302-12.5). While the agency asserts that the closing costs and home warranty costs could not be reimbursed for reasons apart from this relocation provision, the Board does not reach those matters; nor is it relevant that the claimant obtained money under a home sale incentive program for assisting in the sale of the residence.

This Board has concluded that the regulation, with its “substitute for” language, does not act as an absolute bar to a claimant’s recovery of costs incurred in the sale of a residence under a home sale program. Thus, when a claimant’s travel authorization and an agency’s implementing guidelines did not specify that use of a relocation contractor would preclude recovery of all or specific costs incurred in the sale of a residence, the Board has held that a claimant would recover the amounts of a pre-payment penalty of a loan and a termination fee of a loan, *Andres Arredondo*, CBCA 647-RELO, 07-2 BCA ¶ 33,650, and that a claimant could recover the fee it was charged for the cancellation of a home equity line of credit and notary fees, unless a relocation services contractor’s fee included payment for such expenses. *Edward D. Russell*, CBCA 1083-RELO, 08-2 BCA ¶ 33,879. These charges arose under agreements between the employee and a lender; the charges were incurred because of the relocation, but not with respect to the terms and conditions of the sale of the residence.

In this case, agency guidelines do no more than mirror the language of the regulation; they do not specify an absolute right or bar to the recovery of costs; that is, the guidance does not state that if the employee utilizes a relocation contractor in the home sale program the employee will be eligible or ineligible to receive any reimbursement relating to the sale of a residence. The claimant, who bears the burden of proof for recovery, Rule 401 (48 CFR 6104.1 (2008)), must establish entitlement under the regulations.

The closing costs and warranty costs are factors in the sale of the residence by the claimant and the purchase by the relocation contractor; the costs impact on the net the claimant receives. As such, the costs are tied to the services provided by the relocation contractor (and paid for by the Government) in purchasing the residence and may not be separately reimbursed by the agency to the claimant. The claimant may not recover what it describes as closing costs and costs for a home warranty.

In contrast to the items affecting the terms and conditions of the sale, the claimant seeks payment of a fee incurred to obtain a facsimile of a payoff quote. The claimant has failed to provide details demonstrating that the service was necessary to satisfy a requirement of the relocation actions, as opposed to utilized simply for the personal convenience of the claimant. *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304. Without such information, the claimant has not met his burden of proof to recover the facsimile charge.

The claimant is not entitled to the reimbursements sought.

JOSEPH A. VERGILIO
Board Judge