



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 22, 2020

CBCA 6673-RELO

In the Matter of CADY L. TYRON

Cady L. Tyron, Claimant.

Catharine Debelle, Office of Counsel, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

HYATT, Board Judge.

Claimant, Cady L. Tyron, seeks review of the United States Army Corps of Engineers' disallowance of the expense of a septic tank inspection that she paid for in connection with the sale of her residence at her former duty station following a permanent change of station. For the reasons stated, we deny the claim.

Background

Claimant's travel orders authorized payment of eligible real estate expenses incurred in connection with the sale of a residence at her former duty station. The agency reimbursed all of the expenses she claimed with the exception of the amount of \$793.45, which she states was the cost of a septic tank inspection she obtained prior to the sale of her home at the old duty station.

The Corps informed claimant that this expense could not be reimbursed because periodic inspections and maintenance of septic systems are routinely required in the state of Washington and these records must be provided as part of the disclosure process to a potential buyer of a home. The agency considered the cost of a septic system inspection to be a maintenance and operating cost, which is not an eligible expense.

Claimant asserts that, as the seller of the property, she was required by the lender to have a septic tank inspection in order to sell her residence. She explains that the purchaser was obtaining a VA [Department of Veterans Affairs] loan and that to qualify for VA financing, there must be a determination of a "safe and sanitary sewage disposal" system,

requiring an inspection. Claimant has provided a copy of a receipt from a local septic tank service company in support of her claim. The receipt shows charges for pumping, dumping, digging, and mileage, and has the following notation:

Clean inlet & outlet baffles, check grainfield all in good working order at time of pumping. ADD Roebic bacteria enough for 1000 gal. now every month enough for 500 gal.

In addition, claimant has submitted an email from the lender's senior loan officer who confirmed that a septic tank inspection is a mandatory requirement of the underwriting guidelines for VA loans, and that "[t]his is a cost that the seller pays for."

Discussion

By statute, "an agency shall pay to or on behalf of an employee who transfers in the interest of the government, expenses of the sale of the residence . . . that are required to be paid by the employee[.]" 5 U.S.C. § 5724a(d)(1) (2018). For the sale of a residence at the old duty station, the pertinent Federal Travel Regulation (FTR) implements this provision to the extent that "the residence transaction expenses are customarily charged to the seller of a residence in the locality of the old official station . . . [the] agency will, with appropriate supporting documentation provided by [the employee], reimburse [the employee] . . ." 41 CFR 302-11.200 (2019) (FTR 302-11.200). The Joint Travel Regulations (JTR), which also apply to Ms. Tyron's relocation, parallel the requirements of the FTR. JTR 054504–54505. With respect to inspections, the FTR specifically states that expenses incurred "in connection with environmental testing and property inspection fees" may be reimbursed if "required by Federal, State, or local law; or by the lender as a precondition to sale or purchase." FTR 302-11.200(f)(11). The FTR also states that the agency will not pay for maintenance or operating expenses. FTR 302-11.202(f). Claimant and the agency disagree about which of these provisions apply.

The agency, relying on FTR 302-11.202(f), maintains that regular inspections are required by the state and argues that the septic tank inspection that took place just prior to the sale of the house would have been necessary to comply with state and local health requirements. Washington's state code requires that property owners with on-site septic systems obtain inspections of septic systems either annually or every three years, depending on the type of system. Wash. Admin. Code § 246-272A (2010). Inspections and repairs that are required by state or local law are considered to be maintenance expenses that may not be reimbursed under the applicable regulations. *Adella O'Hara*, CBCA 5332-RELO, 16-1 BCA ¶ 36,418; *Sandra L. Wilks*, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962; *George S. Chaconas*,

GSBCA 14278-RELO, 98-1 BCA ¶ 29,728. The agency thus regards this charge not as an expense incurred incident to the sale of the house, but rather as an ongoing maintenance or operating expense, which is not eligible to be reimbursed

Claimant bears the burden to establish through persuasive evidence that the Government is liable for the cost claimed and that she is entitled to payment of the expense in question. Rule 401(c); *see, e.g., Karen M. Stanley-Wolfe*, CBCA 5822-RELO, 17-1 BCA ¶ 36,868; *Simeon A. Milton*, CBCA 5565-RELO, 17-1 BCA ¶ 36,753. Claimant, relying upon FTR 302-11.200 (f)(11), counters that the inspection was a precondition of financing under the terms of a VA loan. In the absence of any contrary information offered by the agency, claimant's evidence at best might suffice to support an inference that the inspection was a precondition of obtaining the VA loan, and was customarily paid for by the seller. Claimant would, however, also need to provide evidence that the amount charged was solely attributable to an inspection of the system and was reasonable.

In the absence of any information about the type of septic system on the property and the timing of any required septic tank inspection, we cannot find that the septic service company's charges reflect an added expense that would not have been incurred at that time, but for the sale of the residence. Moreover, the only evidence pertinent to the septic tank inspection is an itemized receipt that, on its face, shows no specific charge for an inspection and appears primarily to charge for services such as pumping and dumping the sludge in the system. These appear to be primarily maintenance and operating services, which are not eligible to be reimbursed. Claimant has not met her burden to prove she is entitled to payment of the amount claimed.

Decision

The claim is denied.

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge