UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 10, 2007

CBCA 553-RELO

In the Matter of GARY J. TENNANT

Gary J. Tennant, Strasburg, VA, Claimant.

James E. Hicks, Administrative Law Section, Drug Enforcement Administration, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

Under statute and regulation, employees who are transferred from one location to another in the interest of the Government are entitled to be reimbursed for various kinds of relocation expenses, including the costs of purchasing a home at the new duty station. Reimbursement is appropriate, however, only for expenses an employee incurs after he is notified that he will be transferred. Generally, notification must be in writing. Notification may be by other means, however, where an agency manifests by those means a clear administrative intent to transfer the employee. *Michael L. Scott*, GSBCA 16310-RELO, 04-1 BCA ¶ 32,526 (2003); *Rudolph Gomez, Jr.*, GSBCA 15735-RELO, 02-2 BCA ¶ 31,984; *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175 (2000).

In June 2005, Gary J. Tennant, an employee of the Drug Enforcement Administration (DEA), entered into a contract to purchase a house being constructed in Virginia. Mr. Tennant actually purchased the house in December of that year. In February 2006, DEA issued written travel orders transferring him from the Netherlands Antilles to a facility in Virginia which is located in suburban Washington, D.C. He complied with the orders and moved to the Virginia house in March 2006.

Mr. Tennant maintains that even though he bought the house before he received written orders, he is entitled to be reimbursed for the expenses he incurred in making the

purchase because prior to the purchase, DEA manifested a clear administrative intent to transfer him to the Washington metropolitan area. The employee says that the intent was expressed in a DEA manual and interpretations of manual provisions supplied to him by DEA officials.

Mr. Tennant was promoted to a GS-14 supervisory position in June 2000 and sent to the Netherlands Antilles on a three-year tour of duty in April 2003. In May 2004, DEA published a *Career Progression Guide for Special Agents*, which contains this provision:

> Individuals selected for a GS-14 overseas position will be rotated into HQS [headquarters] positions upon the completion of a minimum of four years as a supervisor. This four year requirement may consist of time spent in a combination of overseas and domestic locations. If at the end of four years, an Agent has not completed his/her overseas tour because of an approved extension to the initial tour, he/she will be rotated into HQS upon completion of the foreign assignment.

In July 2005, shortly after he entered into the contract to buy the house in Virginia, Mr. Tennant sent an electronic mail message to the executive secretary of the DEA board which is responsible for transfers of supervisors. He told the executive secretary that he understood he was subject to mandatory rotation and "would love confirmation that I'll easily get tagged for headquarters." The executive secretary responded, "At the end of your tour you will rotate directly to HQS." Another DEA official -- one with responsibilities for international programs -- told him, more specifically, that he would "be transfering [sic] to HQS . . . here in DC."

The statements made by the DEA officials -- particularly the one by the official with international responsibilities -- might be capable of construction as expressions of intent to transfer Mr. Tennant to the Washington area. But even if they were, they are not helpful to the employee because he signed the contract to purchase the house in Virginia *before* the statements were made. Relocation expenses may be reimbursed only if they are "incident to transfer from the old to the new station." *Marko Bourne*, GSBCA 16273-RELO, 04-1 BCA ¶ 32,544 (2003) (quoting S. Rep. No. 1357, 89th Cong., 2d Sess. 2-4 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2565-67). In furtherance of this principle, we have established a rule that

> when a contract for purchase or sale is entered into before an agency manifests an intent to transfer the employee, the transactions will be considered to have been entered into for some reason other than the transfer. That reason may have been anticipation of a transfer, but unless the transfer has been announced, anticipation is insufficient to make the sale incident to the transfer.

Peter J. Grace, GSBCA 16790-RELO, 06-1 BCA ¶ 33,219, at 164,635.

The only conceivable source of agency intent to transfer Mr. Tennant to the Washington area prior to his having entered into the contract for the home purchase was, therefore, DEA's *Career Progression Guide*. The agency says that the *Guide* cannot be such a source because it uses the term "HQS positions" to describe positions in several locations -- some in the Washington area but others in various other places in the United States, including El Paso, Texas, and Johnstown, Pennsylvania. Mr. Tennant responds that while DEA may now consider positions outside the Washington area to be "HQS positions," it did not do so at the time he was transferred. The employee's rejoinder merely serves to demonstrate that a generalized agency statement of policy or practice is subject to change. It cannot be relied on as a manifestation of intent sufficiently clear as to amount to a constructive travel order to transfer an employee from one permanent duty station to another. Expressions of intent must be particularized to specific employees, times, and places, in order to be effective.

Because Mr. Tennant contracted to buy his residence in June 2005 but did not receive specific notification of transfer to the Washington metropolitan area until February 2006, the purchase of the home was not necessarily incident to his transfer. The expenses he incurred in buying the house are therefore not reimbursable by DEA.

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STEPHEN M. DANIELS
Board Judge