UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 23, 2009

CBCA 1443-RELO, 1477-RELO

In the Matter of CAROLYN ELIZABETH WATTS

Carolyn Elizabeth Watts, Covington, GA, Claimant.

Cheryl Holman, Chief, PCS Travel Accounting, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

POLLACK, Board Judge.

Carolyn Elizabeth Watts, an employee of the Department of Veterans Affairs (VA), transferred from her permanent duty station in Birmingham, Alabama, to Decatur, Georgia. There are two separate disputes before us, one relating to the home marketing incentive program (CBCA 1443-RELO) and the other relating to responsibility for costs associated with an unsuccessful delivery of household goods (CBCA 1477-RELO).

Home Incentive Claim

This dispute centers on payments claimed by Ms. Watts under the VA's Guaranteed Home Sale Incentive Program. Ms. Watts claims that due to the alleged wrongful actions of the VA's relocation contractor, Cartus, in mishandling a qualified sale, she not only lost the benefit of the sale and with that, approximately $12,000 (the difference between the proposed sale price offered by a prospective buyer, Motes, and the sale price Ms. Watts ultimately received for the property from Cartus) but, additionally, was wrongfully denied a two percent incentive payment that she should have received. The VA claims that Ms. Watts is not entitled to the two percent home marketing incentive,"HMI," award, because her home did not qualify as an amended home sale (the house was not ultimately sold under

the program) and because the relocation contractor acted reasonably and did not mishandle the sale.

There are a number of conflicts as to what occurred and what was said. However, it is agreed that on June 26, 2006, the relocation contractor received a telephone call from Ms. Watts, regarding a contract offer she received from a buyer (Hubbard). Cartus's notes indicate that Ms. Watts advised it that she had executed an agreement with a third party. Ms. Watts remembered otherwise and stated, that in the telephone call, she informed Cartus that she had received an offer, but had signed the offer document declining the offer. Ms. Watts pointed out that she had moved previously, was familiar with the program practices, and simply would not have signed a binding contract or told Cartus that she did.

In addition, the record contains two e-mail exchanges between Ms. Watts and the VA regarding the above conversation. The e-mails were not written contemporaneously with the conversation of June 26, but rather were later exchanges between Ms. Watts and the VA, attempting to clarify the facts surrounding the conversation. In the first, dated January 10, 2007, from Ms. Watts to the VA, Ms. Watts stated:

> I recall my realtor was telling me I needed to sign the documents, once we had found a buyer for my house, I told her as I had told her all along, Cartus takes over at this point in which an acceptable buy[er] is found for my property. On my way to a dental appointment I called Cartus to confirm that I was correct and to ask them to call my realtor; Cartus instead responded, we will reach out to your realtor (I now vividly understand what those words mean; thought [sic] not at the time).

In the second e-mail, dated March 30, 2007, Ms. Watts again addressed the June 26 conversation, stating that she called Cartus as to the first offer (Hubbard) and told them her real estate agent was under the impression that Ms. Watts was to sign. Ms. Watts had wanted Cartus to contact her agent and explain to the agent the process. Ms. Watts also asserted that Cartus should have spoken to her realtor earlier.

While the parties differ as to what was said on June 26, they agree that after that conversation, Cartus contacted Ms. Watts' real estate broker in order to verify information surrounding that transaction. While the record shows that Ms. Watts received an offer from Hubbard, which she then rejected, the record also shows that the document was not submitted to Cartus at that time. It is relevant that when Ms. Watts advised Cartus of the declination of the Hubbard offer, there was no other offer pending and thus no urgency in submitting the document to Cartus for review.

Matters changed on June 30, when at the close of business, Cartus received an e-mail from Ms. Watts' agent forwarding a proposed contract from a separate party, the Motes. Along with the proposed contract was an e-mail, in which the realtor stated that the previous offer (from Hubbard) "never became a contract." Then, on July 3, the following Monday and first business day after Cartus received the Motes' proposed contract, Cartus spoke to Ms. Watts by telephone and told her that Cartus could not proceed with the proposed contract until it received a copy of the document Ms. Watts had "originally signed" (the offer from Hubbard). Notwithstanding the request, Cartus did not get the Hubbard documents until July 10. Once received, the Hubbard documents verified Ms. Watt's statements as to the declination and verified that the Motes were a new offeror. However, as set out below, that became irrelevant, for by July 10, the Motes had withdrawn their offer.

While the exact date the Motes changed their mind is not recorded, Ms. Watts learned of the withdrawal on Wednesday evening, July 5, and her realtor contacted Cartus on July 6, to advise Cartus that the Motes had withdrawn their offer. In handling its responsibilities, Cartus, upon receiving the contract on June 30, had timely contacted Ms. Watts on the next business day (July 3), seeking a copy of the Hubbard documents so as to verify several needed points. By the next business day, however, Wednesday, July 5, the Motes offer was withdrawn. Cartus had two issues that it needed resolved as to the Hubbard documents. One was whether the declination was as reported by Ms. Watts. Second, Cartus needed to verify that the Motes' proposed contract was not from the same party as the declined offer. Without the requested Hubbard document, Cartus could verify neither matter.

Ms. Watts asserts that on July 10, she contacted Cartus to inform it that she wanted to renegotiate the offer from Hubbard that had previously been declined. She said that Cartus then informed her that she could not renegotiate with Hubbard. In response to questions posed to the parties by the Board, the VA states that once Cartus received the Hubbard documents, Cartus and the VA were willing to allow Ms. Watts to continue in the incentive program. If Ms. Watts could have arranged a contract with Hubbard, that would have been acceptable. Further, she was free to proceed with any other prospective buyer.

Ms. Watts thereafter was unable to secure another buyer and, on August 31, 2006, she accepted Cartus's offer. It was at a lower price than that proposed by the Motes, before their withdrawal.

Government agencies contract with private relocation companies in order to provide employees who are being transferred at the Government's request with relocation assistance, including the sale of their home. 5 U.S.C. § 5724c (2006). In addition, the agency may implement a home marketing incentive payment program. This program allows the agency

to save on relocation costs and provides the employee with an incentive payment. Under the VA program, an employee is entitled to an incentive payment when:

> (1) the residence is entered into a relocation services program established under a contract in accordance with section 5724c of this title to arrange for the purchase of the residence; (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 (a). The Federal Travel Regulation (FTR) further details when an agency employee would be entitled to receive an incentive payment. 41 CFR 302-14.5 (2006). In this case, the employee's agency, the VA, had further requirements as to its amended sale program. According to the VA Eleven Key Elements and Procedures of an Amended Value Option, if the transferring employee does not satisfy each of the eleven step guidelines, then the employee will not receive an incentive payment. This Board and its predecessor have issued several decisions where failure to meet the conditions specified in statute and regulation has served as a basis to deny an employee's claim. *Charles Ingram*, CBCA 1050-RELO, 08-1 BCA ¶ 33,847 (2008)*; Laura E. Kilpatrick*, GSBCA 15814-RELO, 02-2 BCA ¶ 31,957; *Mark R. Tayler*, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816; *Regina M. Rochefort*, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879. In several cases, the employee has raised issues as to the guidance provided by the Government or by the relocation contractor. *Adella Hansen*, CBCA 819-RELO, 07-2 BCA ¶ 33,667 (2007); *Judy Schutza*, GSBCA 16475-RELO, 04-2 BCA ¶ 32,801 (2004); *James M. Turner*, GSBCA 15580-RELO, 02-1 BCA ¶ 31,753 (2002); *Gregory R. Littin*, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604.

Here, we need not test in any detail the facts of this case against the facts presented in the cases above. That is because Ms. Watts has contended that Cartus and the VA actions were improper and thus this claim turns on how we find as to that contention. Although we understand Ms. Watts' frustration in that the Motes' offer might have come to fruition if Cartus had moved upon it immediately, we do not conclude under the facts of this case that Cartus or the VA can be held responsible for that lost opportunity. Here, the only action of Cartus that could be questioned was its insistence that it could not act on the Motes' offer without first verifying the status of the Hubbard documents. We do not find that to be unreasonable or inappropriate under the circumstances. Further, we cannot ignore the fact that Cartus did not receive and thus could not review the Hubbard documents until July 10, several days after the Motes had withdrawn their offer. Moreover, the Motes' offer was open for less than six days, of which two days were a weekend and one a holiday. Cartus and the VA could not control the duration of the Motes' offer. Accordingly, neither Cartus nor the VA has taken actions which we find to have wrongfully deprived Ms. Watts of a benefit for which she otherwise qualified. Accordingly, we deny Ms. Watts' claim.

Bill of Collection for Unsuccessful Delivery

The VA has issued a bill of collection for $250 plus $17 in postage fees as costs due to a failed delivery of household goods to Ms. Watts. The items were scheduled for delivery on August 4, 2006, and were brought to the appropriate location for unloading by the mover. However, the delivery could not be successfully made, as Ms. Watts did not have access to the property due to a failure to be able to properly settle on the property on that date.

Ms. Watts was scheduled to close on her new residence on August 4, 2006. Cartus was handling the home sale portion of her residence, had agreed to purchase the property from her, and was to forward proceeds of the sale to Ms. Watts for use at the settlement. On July 28, 2006, Cartus asked her for bank information. Thereafter, on July 31, 2006, Cartus wired funds to an account number provided by Ms. Watts. As Ms. Watts provided Cartus with an erroneous bank account number, the bank funds did not transfer to Ms. Watts as anticipated.

On August 2, the VA says that a representative of Cartus and Ms. Watts spoke, when Cartus was contacted by Ms. Watts who was inquiring about the status of funds that were to be wired to her for an upcoming settlement. It was through that conversation that Cartus discovered that Ms. Watts had provided Cartus an erroneous bank account number. Cartus then asked for and Ms. Watts then provided the correct account numbers to Cartus on August 3, 2006, along with a voided bank check. Ms. Watts stated that after providing that information, she was expecting the money to be wired and in her hands on August 4, 2006, the date set for the settlement. As it turned out, Ms. Watts did not receive the wired funds until August 8, 2006.

According to Ms. Watts, the responsibility for the funds not arriving on August 4 was due to the fact that Cartus did not transfer the money on time. She further charges that Cartus should have known of the account number error, as she had earlier provided Cartus other account information that had the correct number. Ms. Watts noted that she had notified Cartus of the settlement well before the August 4 closing date, that Cartus was aware of the date, and that Cartus had assured her that everything was on track for the closing. She contended that she did not learn of the absence of the funds until she arrived at the closing. When it became apparent that the money would not arrive, the lawyer at settlement conducted a dry settlement. That dry settlement, however, did not allow her access to the purchased property. Accordingly, when the mover arrived at approximately 1:00 p.m. on August 4, the mover had no access to the property and the delivery had to be cancelled and rescheduled.

In attempting to place responsibility on Cartus, Ms. Watts notes that a current bank statement was requested of her early on in the administrative process. She stated that her account number was on the statement. Additionally, she stated that at one other point she had sent a voided check for account verification purposes. Finally, Ms. Watts states that there were several telephone calls during the day of settlement between Cartus and lawyer for settlement, and the lawyer was led to believe that the money was enroute.

Cartus says that while it received the updated account number information from Ms. Watts on the morning of August 3, 2006, on that same morning, it placed a trace on the funds that it had wired on July 28. Cartus further contends that in the August 3 conversation with Ms. Watts, it advised her that the funds that had been wired; needed to be returned prior to re-issuing a wire; and also advised her that the timing of the return of the funds was hard to determine. On the morning of August 3, Cartus received the formerly misdirected funds, and on that same day, it proceeded to re-issue a wire to Ms. Watts' account. Cartus had no information explaining why it took so long for the money to arrive in Ms. Watts' account; however, the fact remains that in order for Ms. Watts to have avoided the moving charges at issue, she needed to have the money in her hands on August 4, and that did not occur.

In deciding who is responsible for the moving costs incurred, the fact is that but for Ms. Watts' error in providing her bank account number, there appears to have been ample time for her to have received the wired money in her account. We find no wrongful action by the VA or Cartus, which independently excuses or overides her error. Cartus acted reasonably in conducting its business as to the wire transfer. The fact that Cartus could not re-wire the funds to the correct account by August 4, when the error was not even discovered until August 2, is not evidence of Cartus's acting inappropriately. Moreover, as to the contention that Cartus warranted receipt of the funds by Ms. Watts on August 4, we find convincing that Cartus warned Ms. Watts that it was hard to determine when she would receive the funds. Additionally, given the fact that Ms. Watts did not provide the corrected number to Cartus until August 3, we do not find that Ms. Watts was reasonable in expecting that settlement could be completed as scheduled, and in not making arrangements to delay the moving of her household goods. In proceeding as she did, Ms. Watts took a risk. She could have cancelled the move to make sure the money was in her account before settlement. The fact she did not is not the VA or Cartus's fault. This claim is denied.

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HOWARD A. POLLACK
Board Judge