



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 21, 2007

CBCA 556-RELO

In the Matter of DAVID A. ANDERSON

David A. Anderson, Homestead, FL, Claimant.

Christiane B. Sable, Comptroller, Air Force Reserve Command, Department of the Air Force, Homestead, FL, appearing for Department of the Air Force.

DRUMMOND, Board Judge.

Claimant, David A. Anderson, is a civilian employee of the Department of the Air Force (agency). The agency's reserve command has asked the Board for an "advance decision" regarding whether it should reimburse Mr. Anderson, a transferred employee, for certain claimed closing costs charged in connection with his purchase of a residence at a new duty station. The agency initially denied the claimed costs, and claimant asked for the agency's reconsideration. Specifically, the reserve command asked whether claimant actually incurred \$2000 in claimed closing costs included in the cost of the residence and not indicated on the settlement statement as being paid by claimant.¹

¹ Under 31 U.S.C. § 3529 (2000), a disbursing or certifying official of an agency, or the head of an agency, may request a decision from the Board regarding expenses incurred by a federal civilian employee for official travel and transportation, or for relocation expenses incident to a transfer of official duty station. A decision rendered in response to such a request is called an "advance decision." *Lorenzo Henderson*, CBCA 651-RELO (Mar. 29, 2007); *Danny Dean Butrick*, CBCA 515-RELO (Mar. 19, 2007). In actuality, this is not a request for an advance decision as the agency previously denied reimbursement of the claimed costs.

Background

In 2005, claimant accomplished a permanent change of station move from Hill Air Force Base, Utah, to Homestead Air Force Base, Florida. In connection with the transfer, claimant entered into a written contract to purchase a residence at his new duty station and incurred reimbursable real estate expenses.

Mr. Anderson financed the purchase of the property with two mortgage loans totaling \$126,248.85. The settlement statement shows, *inter alia*, that a loan origination fee of \$49.95 was paid from the purchaser's funds on the first loan. The settlement statement also shows that he received a credit of \$2000 from the seller at closing. In the seller's column is a loan origination fee of \$1175.05 for the purchaser's first loan and a mortgage broker's fee of \$824.95 for the purchaser's second loan.

Following settlement, claimant sought reimbursement for various costs associated with the purchase of his home. Although the agency's reserve command reimbursed some of Mr. Anderson's closing costs, including the \$49.95 he paid as a loan origination fee, it did not reimburse the claimed loan origination fee (\$1175.05) or broker fee (\$824.95) covered by the \$2000 closing cost credit given to Mr. Anderson by the seller. The reserve command denied reimbursement for these two expenses on the ground that, according to the settlement statement, the seller paid these expenses.²

Claimant has provided a letter from his mortgage broker, Re-Vest Mortgage, to respond to the command's denial of these expenses. In a letter dated July 11, 2006, Re-Vest Mortgage states the original purchase price was \$125,000 and the purchaser was responsible for paying the loan origination and broker fees. *See William L. King Jr., CBCA 457-RELO (Feb. 09, 2007)*. The letter from Re-Vest Mortgage makes clear the broker fee was a loan processing fee. The letter from Re-Vest Mortgage states further that, prior to closing, Mr. Anderson asked the seller to pay \$2000 toward his closing costs, which the seller agree to do in exchange for a \$2000 increase in the price of the home, and the parties amended the contract accordingly. Thus, according to Re-Vest Mortgage, when the seller paid \$2000 toward Mr. Anderson's closing costs at settlement, that payment represented money ultimately coming from the purchaser rather than the seller.

² The agency states that it owes Mr. Anderson an additional \$25 due to a clerical error.

After considering the letter from Re-Vest Mortgage and other documentary evidence relating to Mr. Anderson's claim, the command referred this matter to the Board for resolution.³

Discussion

It is of course true, as the command acknowledges in its letter to the Board in this case, that under certain circumstances, an employee may be reimbursed for certain closing costs associated with the purchase of a residence at the employee's new duty station when it can be demonstrated that these costs were intentionally included in the cost of the house. This, however, requires a showing that: (1) the closing costs were clearly discernible and separable from the price paid for the house; (2) both the seller and the purchaser regarded the costs as having been paid by the purchaser; and (3) documentation establishes the amount of the closing costs and the purchaser's liability for them. *Jacquelyn B. Parish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999).

As the General Services Administration Board of Contract Appeals (GSBCA) explained in *Parish*, on occasion, notwithstanding this type of agreement between the parties, the final settlement statement may still show the seller as paying these closing costs when, in reality, the purchaser has actually paid them as part of the purchase price. In such cases, we require the employee who purchased the house to provide a statement from the seller, a real estate agent, or some other person with knowledge of the transaction, confirming that the costs were actually paid by the purchaser as a part of the purchase price. *Id.* at 151,114.

Mr. Anderson has provided us with a copy of the contract for the purchase of his home and a detailed letter of explanation from his broker. Based upon the information contained in these documents, we find that the requirements outlined in the *Parish* decision

³ The agency's reserve command asserts that two decisions of the GSBCA -- *Raul A. Rodriguez*, GSBCA 16444-RELO, 04-2 BCA ¶ 32,720 and *Estefanie B. Duncan*, GSBCA 16239-RELO, 04-1 BCA ¶ 32,449 (2003) -- are inconsistent with each other. We disagree. Both decisions speak to ultimate liability for specific costs. In both decisions, the GSBCA referred to the general proposition that reimbursement is limited to expenses actually incurred and paid by the transferred employee. The cases also direct a review of the settlement statement to determine the actual expenses incurred in connection with the transferred employee's real estate expenses. In *Rodriguez*, there was no reason to question the reliability of the settlement statement, and the GSBCA was convinced that the claimed costs had been paid by the seller. In *Duncan*, however, the employee claimed a credit was negotiated in order to include closing costs in the cost of the house, and the documentary evidence showed that the employee had incurred and paid certain closing costs, contrary to what the settlement statement showed.

have been met. In this case, the \$2000 credit covered by the amendment to the contract is similar to the credit given to the purchaser in *Parish*. The letter from the broker and the amendment to the contract show that the seller and claimant considered Mr. Anderson to be responsible for the loan origination and broker fees totaling \$2000, and as paying for those costs with a corresponding increase in the original purchase price. Those costs are clearly discernable and separable from the price paid for the house, because the parties negotiated a \$2000 increase to the sales price for the sole purpose of covering the \$2000 credit requested by Mr. Anderson. The settlement statement lists the loan origination fee and broker fee, and Mr. Anderson has established he incurred and paid for those closing costs covered by the amendment to the sales contract, regardless of what the settlement statement shows. Thus, he should be reimbursed the claimed closing costs, subject to the limitation for reimbursement set forth in the Joint Travel Regulations (JTR), which implement and supplement the Federal Travel Regulation. The JTR apply to civilian employees of the Department of Defense, and limit reimbursement of a loan origination fee to one percent of the loan amount, absent some credible evidence that the great majority of purchasers in the local area pay loan origination fees in excess of one percent. 41 CFR 302-11.200(f)(2)(v) (2004); JTR C-14002-A.4.a (2); *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625. Because the broker fee is a loan origination fee, reimbursement for the two combined cannot exceed the limitation on the loan origination fee. The settlement statement indicates that the principal amount of Mr. Anderson's loans totaled \$126,248.85. The settlement statement additionally shows that the agency has reimbursed claimant \$49.95 for a separate loan origination fee he paid. Taking into consideration that payment, claimant is entitled to reimbursement for the claimed closing costs not to exceed \$1212.53. Claimant may receive additional reimbursement only if he can demonstrate that a loan origination fee in excess of one percent of the loan amount is customarily paid in the area in which his new home is located.

JEROME M. DRUMMOND
Board Judge