



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 7, 2007

CBCA 558-RELO

In the Matter of ROGER L. BANKERT

Roger L. Bankert, Price, UT, Claimant.

Chris Barned, Supervisor, Travel and Relocation, Bureau of Land Management, National Business Center, Denver, CO, appearing for Department of the Interior.

GILMORE, Board Judge.

Background

Mr. Roger L. Bankert (Mr. Bankert or claimant), an employee of the Department of the Interior's Bureau of Land Management (BLM), was relocated from the BLM's field office in Pinedale, Wyoming, to its field office in Price, Utah. On November 15, 2006, Mr. Bankert purchased a home in Price, Utah. After closing on the home, he submitted a claim in the amount of \$1976, for reimbursement of some of his closing costs. The costs claimed were as follows:

Appraisal Fee	\$350 (\$325 paid prior to closing; \$25 paid at closing)
Legal and Related Expenses	\$866
Loan Processing Fee	\$675
Credit Report	\$ 35
Transfer Charges	\$ 50

At the time of settlement, the buyer's closing costs totaled \$2426.79. Prior to closing, Mr. Bankert and the seller had agreed that the purchase price of the house would be increased by \$3000 and that the seller would pay up to \$3000 of Mr. Bankert's closing costs. Thus, at closing, the seller paid Mr. Bankert's closing costs of \$2426.79.

Mr. Bankert requested reimbursement of \$1976 of his closing costs from the BLM, contending that although the seller paid his closing costs, he provided the money since the purchase price, and his loan amount, had been increased to cover the closing costs.

Of the amount claimed by Mr. Bankert, the BLM paid \$325 for the appraisal fee that he had paid directly to the appraiser prior to settlement. The BLM denied the remaining amount of \$1651, on the ground that the seller, not the claimant, paid claimant's closing costs.

Mr. Bankert has asked the Board to review the BLM's denial of \$1651. Mr. Bankert submitted to the Board a statement from the lender indicating that the price of the house, and the loan amount, was increased by \$3000, to include the buyer's closing costs, with the seller agreeing to pay the buyer's closing costs up to \$3000. Mr. Bankert also submitted an addendum to the purchase contract showing the purchase price was increased by \$3000, with the agreement of the seller to pay up to \$3000 of the buyer's closing costs. The settlement sheet was also provided which clearly shows that the buyer, Mr. Bankert, was liable for \$2426.79 in closing costs and that the seller paid \$2426.79 in closing costs on behalf of the buyer.

Discussion

41 CFR pt. 302-11 (2006) governs allowances for expenses incurred by transferred employees in connection with residence transactions. One of the requirements for reimbursement is that the expenses must have actually been paid by the employee or a member of the employee's immediate family. 41 CFR 302-11.303.

As the General Services Administration Board of Contract Appeals (GSBCA) explained in *Harlan C. Thiel*, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710 (1996), we look to the settlement sheet in determining what settlement expenses an employee actually incurred and paid. The settlement sheet here contains the notation "Seller paid closing costs." The BLM relies upon *Nicholas A. Mendaloff*, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983, in support of its position. In *Mendaloff*, the board denied reimbursement of closing costs to an employee where the price of the house was increased and the seller, at settlement, paid the employee's closing costs. The board held that "[t]he Government is not authorized to reimburse its employees for theoretical expenses of the bargain that the parties may have contemplated, but did not technically make." *Id.* at 148,300. The GSBCA, in a later decision, *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999), noted that the board's decision in *Mendaloff* should not be read as departing from the long-standing precedent of the General Accounting Office (GAO) on this issue. In *Parrish*, the board noted that the GAO, which considered claims for relocation expenses until mid-1996, had decided

that an employee could be reimbursed for closing costs that were included in the purchase price of the house and paid by the seller at closing, if “(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 showed the amount of the closing costs and the purchaser’s liability for them.” *Id.* at 151,114 (GAO citations omitted); *see also David A. Anderson*, CBCA 556-RELO (May 21, 2007); *Kathleen M. Lewis*, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616, at 156,209.

Here, Mr. Bankert has met the conditions set out in *Parrish*. The closing costs are clearly discernible and separable from the price of the house; the lender’s statement and an addendum to the purchase contract show that both the seller and the buyer considered the closing costs as having been paid by the buyer as a part of the purchase price; and the documentation shows the amount of the closing costs and Mr. Bankert’s liability for them. Mr. Bankert is not asking for theoretical expenses of a bargain that he did not actually make.

Decision

The claim is granted to the extent that the expenses are otherwise allowable under 41 CFR pt. 302-11.

BERYL S. GILMORE
Board Judge