



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 19, 2007

CBCA 734-RELO

In the Matter of DENNIS W. DEL GROSSO

Dennis W. Del Grosso, Saranac, NY, Claimant.

Harry Bunn, Chief, Travel Section, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

STEEL, Board Judge.

Background

Dennis Del Grosso is a Customs and Border Protection (CPB) pilot who was transferred from Homestead, Florida, to Plattsburg, New York, in December 2004. His notice of station change was dated September 20, 2004, and it appears from his permanent change of station voucher that he reported for duty on October 30, 2004. Mr. Del Grosso started his permanent change of station (PCS) with Immigration and Enforcement (ICE). He was later employed by the CBP because before his move was completed, his ICE division (Air and Marine Operations) was transferred, along with all paperwork and obligations, to CBP. Thus, he first received information about reimburseable expenses for the PCS from ICE's Dallas Finance Center.

At his new duty station, Mr. Del Grosso purchased approximately forty-seven acres of land made up of two tax parcels including two permanently affixed mobile homes in Saranac, New York, with the intention of constructing a new home on the property. The land was located entirely within a resource management area of the Adirondack Park Agency (APA). The APA is a New York State government agency which regulates development on private land in the Adirondack Park, an area the size of Vermont located in the northeastern quadrant of the State. APA's overall density guidelines state that only one residence may be

constructed per 42.7 acres in a resource management area, in addition to requiring a permit for most development activities therein.

Before Mr. Del Grosso could build a residence upon the property, the APA required a survey of the land including the location of a proposed house. After examining back deeds in the area, his surveyor, Ralph C. Schissler, III, noted that a full parcel survey had never been performed for the land in question. He charged Mr. Del Grosso \$7000 for a full survey. Mr. Del Grosso's request for complete reimbursement of this expense was denied.

Upon request for reconsideration, the CBP contacted Mr. Schissler, who informed the CBP by e-mail on August 29, 2006 that

I looked at this estimate as needing a full boundary survey with house, etc [sic] location since, I do not believe, the full parcel has ever been surveyed. To answer your question, no, a full survey would not have to be performed each time this parcel is transferred. It would, however, depend on the surveyor as to the price due to the extent of work he/she feels is needed to verify the previous survey and surveyor. Either way, the approximate starting price for a survey is \$1200.

In light of this response, the CBP authorized payment of \$1200 for the survey, and informed Mr. Del Grosso that the general charge for a survey by "Cartus Mortgage, upon whom CBP relies as an industry leader, was in the neighborhood of \$400."

Mr. Del Grosso responded with an undated request that his appeal be forwarded to the Board of Contract Appeals. In his request for Board review, he noted that Mr. Schissler told him that a price of \$1200 would be for a much smaller property than the approximately forty-seven acres surveyed for Mr. Del Grosso and would apply only to "a previously surveyed property." Mr. Del Grosso also suggested that he was given erroneous information by ICE.

Discussion

The main question here is whether Mr. Del Grosso should be reimbursed for the reasonable cost of the survey of his particular parcel of land, even if the cost exceeds the amount customarily paid for a survey of an existing residence in the same locality. The Board finds that he may only be paid costs which are customarily paid for a survey of an existing residence in the locality, not the markedly higher price of the particularized survey.

The Federal Travel Regulation (FTR), at 41 CFR 302-11.200 (2004), states that an agency will pay certain real estate expenses, "provided that they are customarily paid . . . by

the purchaser of a residence at the new official station.” Item (f) of the same section notes that other miscellaneous expenses will be paid in connection with the purchase, provided they are normally paid by the purchaser in the locality of the residence and do not exceed amounts customarily paid in the locality. These miscellaneous expenses include

(10) Expenses in connection with construction of a residence, which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence;

....

(12) Other expenses of sale and purchase made for required services . . . if customarily paid by the purchaser of a residence at the new official station.

In reaching its decision to reimburse Mr. Del Grosso only \$1200 of his \$7000 survey costs, CBP relied upon this regulation and the case of *David G. Winter*, GSBCA 14229-RELO, 98-1 BCA ¶ 29,631. Mr. Winter was transferred by the Marine Corps from Charleston, South Carolina, to Camp Lejeune, North Carolina, and constructed a new house. A number of claimed expenses in connection therewith were not reimbursed by the agency, including survey expenses (elevation certificate, foundation survey, and final survey). The Board found that only the final survey would qualify for reimbursement, as it was comparable to reimbursable expenses for the purchase of an existing residence. The Board denied reimbursement of survey fees for the elevation certificate and also denied reimbursement for the foundation survey which was required for the construction of a new home but would not have been incurred if an existing home had been purchased.

Mr. Del Grosso argues that his property is highly unusual: it is within the Adirondack Park, for which additional surveying and other requirements exist; it had not been surveyed previously; and very complicated title issues were involved with this particular parcel. All of these factors argue for the reasonableness of the survey fee charged to Mr. Del Grosso. However, our predecessor board in deciding these cases, the General Services Board of Contract Appeals, construed the FTR to “provide that an employee who chooses to construct a home at the new duty station will be permitted to recover real estate expenses to the same extent as an employee who purchases an existing home.” *Thomas S. Cushing*, GSBCA 13867-RELO, 97-2 BCA ¶ 29,022.

As in the *Winter* and *Cushing* cases, the CBP determined here, and the Board agrees, that the majority of the \$7000 charge normally would not have been incurred in connection with the purchase of an existing residence. The agency gave Mr. Del Grosso the benefit of

the doubt in accepting the expertise of Mr. Schissler in setting the rate that normally would be charged for a subsequent survey of an existing residence at \$1200. The agency could have as well relied upon the report from Cartus Mortgage that surveys generally run in the neighborhood of \$400.

Mr. Del Grosso further commented that he was led to believe by the ICE PCS Manual and a confirming telephone call to the ICE travel office which handled his initial transfer procedures that he would be entitled to reimbursement of up to 5% of the actual purchase price, or, as he figured it, \$14,150. He therefore apparently believed that he was entitled to the full survey costs since, at \$7000, they were less than 5%. It is not clear from the record what exact information Mr. Del Grosso was provided by the ICE travel office. Even if Mr. Del Grosso was told by the travel office that he could recover the entire cost of the survey and relied on this advice to his detriment, that advice is not binding on the Government. *Flordeliza Velasco-Walden*, CBCA 740-RELO (July 23, 2007); *Lee A. Gardner*, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456, at 155,325-26.

The Board does not question the legitimacy of the expenditures made by Mr. Del Grosso in securing a survey of the property he wished to purchase in the Adirondack Park. Rather, the Board is bound by the FTR, which requires that Mr. Del Grosso only be reimbursed for those expenditures which are customary and usual for a survey of a preexisting residence, not a survey for new construction. The CBP Office of Financial Management Online PCS Manual (June 14, 2004, revised) ch. 12, Real Estate Transactions, states, and the Board agrees, that the employee is solely responsible for the decision to locate the residence in a particular location, and will be solely responsible for the financial impact of that decision.

For the reasons stated above, the determinations of Mr. Del Grosso's agency regarding his claim are affirmed.

CANDIDA S. STEEL
Board Judge