



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 30, 2007

CBCA 813-RELO

In the Matter of NEAL R. ECKRICH

Neal R. Eckrich, Washington, DC, Claimant.

Lori Brock, Supervisor, Chief, Accounting PCS Travel, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

VERGILIO, Board Judge.

On July 6, 2007, the Board received from Neal R. Eckrich a request to resolve his claim for reimbursement of expenses incurred in connection with a relocation to a new duty station. The claimant and two individuals (not members of his immediate family) purchased a residence at his new duty station. A term of the sales contract specifies that the seller pays \$3000 of the buyer's closing costs. After determining the reimbursable expenses of the transaction, the Department first reduced the amount by \$3000, because it concluded that amount was paid by the seller, and then prorated the result such that the claimant recovered one third of the remaining expenses. The claimant here disputes each reduction. The Department and then the claimant made a submission in response to the claim brought to this Board.

The reimbursable expenses should not be reduced by \$3000, as there is no basis to attribute any of the \$3000 to reimbursable closing costs of the purchaser. Because the claimant has a one-third interest in the residence, regulation dictates that the employee's entitlement to reimbursement is limited to his prorated share of the expenses. Therefore, the claimant is to recover \$1000 (one third of the \$3000), as may be adjusted for taxes, withholdings, and offsets.

Background

As an employee of the Department of Veterans Affairs, the claimant obtained authorization to be reimbursed real estate expenses in conjunction with a permanent change

of station. The claimant and two other individuals entered into and executed a contract to purchase a home at which the claimant would reside. In the residential sales contract, settlement sheet, and documentation regarding a loan, the three individuals are identified singly as the purchaser of the residence at the new duty station. The claimant identifies the other two individuals as friends and not as members of his “immediate family,” as that phrase is defined in applicable regulation (41 CFR 300-3.1 (2006) (Federal Travel Regulation (FTR) 300-3.1)). A provision of the sales contract specifies: “The seller agrees to pay \$3,000.00 subsidy to buyer for closing costs upon closing.” The contract does not allocate or attribute the subsidy to any specific closing costs. The seller credit of \$3000 is also reflected in the settlement statement, which also reflects the various closing costs incurred by the purchaser. The non-reimbursable closing costs of the purchaser were in excess of \$3000 (e.g., interest and taxes, FTR 302-11.202).

The claimant submitted to the Department a claim for reimbursement of expenses. In essence, the Department concluded that \$7013.64 were reimbursable expenses relating to the purchase. Because the seller paid \$3000 of the closing costs, the Department deducted that amount from the otherwise reimbursable expenses. The auditor could not determine what the seller’s payment was to cover. The unstated rationale seems to be that the otherwise reimbursable expenses were paid by the seller, that is, someone other than the claimant. FTR 302-11.303 (the regulation specifies that expenses paid by someone other than the claimant or immediate family member are not reimbursable; the Department should review its determination of reimbursable expenses and its calculations in finalizing this claim). Because the claimant held a one-third interest in the title, with the remainder of the interest not held by members of the claimant’s immediate family, the Department determined that the claimant was entitled to one third of the reimbursable expenses less the \$3000 paid by the seller.

Discussion

The claimant maintains that the \$3000 in closing costs paid by the seller should not offset the reimbursable expenses. Additionally, the claimant contends that the reimbursement should not be prorated; the claimant seeks to recover 100% of the reimbursable expenses.

Residence transactions--reimbursable expenses

Statute specifies that under regulations, an agency shall pay to an employee who transfers in the interest of the Government expenses of the employee that are required to be paid by the employee in the purchase of a residence at the new official duty station. 5 U.S.C. § 5724(d) (2000). Certain expenses of purchasing a residence at the new duty station are

reimbursable as residence transaction expenses; other expenses are expressly not reimbursable. FTR 302-11.6, -11.200, -11.202.

The provision of the sales contract that obligates the seller to pay \$3000 in closing costs does not allocate the payment to any specific cost incurred by the purchaser. The non-reimbursable closing costs of the purchaser exceeded \$3000. Neither the sales contract nor the settlement sheet, nor other information submitted in this matter, provides support for the conclusion that seller's payment of \$3000 diminished the purchaser's obligation to pay the reimbursable expenses. Absent a basis to conclude that purchaser and seller earmarked a seller credit to a specific cost(s) of the purchaser (for example, by a statement that credit is for a given item, or because the seller's credit exceeds non-reimbursable costs of the purchaser), it is not appropriate to allocate a seller credit to the purchaser's reimbursable expenses.¹

Less than full title--proration

An applicable regulation directly addresses the situation of a purchaser not holding full title to the property underlying a request for reimbursement:

If you or a member of your immediate family do not hold full title to the property for which you are requesting reimbursement, you will be reimbursed

¹ In an analogous situation, a purchaser can be reimbursed for closing costs included in the purchase price of the house and paid for by the seller if the purchaser establishes that (1) the closing costs were clearly discernible and separable from the price paid for the house; (2) the seller and purchaser each 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 that amount. *Roger L. Bankert*, CBCA 558-RELO, 07-2 BCA ¶ 33,601; *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605. In the present case, the settlement sheet reveals the closing costs (reimbursable and non-reimbursable expenses) and obligations of the purchaser. Although there is no basis to conclude that both parties intended the seller credit to apply in whole or part to particular settlement expenses of the purchaser, the claimant has expressed his view that the credit does not apply to the reimbursable costs. There is no factual basis to interpret the sales contract in a manner that is at odds with this reasonable interpretation of the claimant, such that one is compelled to conclude that the seller's credit applies to non-reimbursable costs. In this situation, it is inappropriate to deny reimbursement based upon the silence and lack of specificity in the sales contract and the basic agreement of the seller to pay closing costs of the purchaser.

on a pro rata basis to the extent of your actual title interest plus your equitable title interest in the residence.

FTR 302-11.103. To determine who holds title to the property, one must verify: (1) the name(s) actually appearing on the title document or (2) who holds equitable title interest in the property. FTR 302-11.440. Provisions dictate the analysis required to determine if an employee possesses an equitable title interest. FTR 302-11.105, -11.441 (the latter regulation contains a seemingly incorrect reference to FTR 302-11.405).

The record demonstrates that the claimant does not hold full title to the property. The claimant was not the sole purchaser of the property in question. His name and those of two other individuals, not members of his immediate family, appear in the sales contract, settlement sheets, and documents relating to a loan. Given the joint ownership (and the inability to direct conveyance of the property without the agreement of the three individuals), and the obligations of the three individuals regarding the underlying loan, the claimant has not demonstrated that the one third proration used by the Department is incorrect.

In his submissions to this Board, the claimant raises various hypotheticals which merit no specific response. The regulation directs the analysis required to resolve the factual situation presented. The Department correctly concluded that the claimant could recover one third of the reimbursable expenses.

Decision

The Board grants in part the claim, as detailed above. The claimant should be reimbursed for an additional \$1000 in reimbursable expenses incurred (one third of \$3000), with the Department to make any appropriate adjustments for taxes, withholdings, and offsets.

JOSEPH A. VERGILIO
Board Judge