



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 6, 2008

CBCA 787-RELO

In the Matter of PAMELA STUMP

Pamela Stump, Fort Worth, TX, Claimant.

Maj. W. Barry Huggins, Staff Judge Advocate, Homestead Air Force Base, FL,
appearing for Department of the Air Force

KULLBERG, Board Judge.

Claimant, Pamela Stump, an employee of the United States Air Force (USAF), was transferred in a permanent change of station (PCS) move from Luke Air Force Base, Arizona, which had been closed, to Naval Air Station, Fort Worth, Texas. She seeks review of the USAF's decision to reimburse her for only a portion of the cost of the survey of the property that she purchased in the Fort Worth area. As discussed below, she is not entitled to reimbursement for the full cost of the survey; her reimbursement is limited to only that portion of the cost that is reasonably related to the residence site.

Background

As a result of her relocation to the Fort Worth area, Ms. Stump purchased for \$228,000 a home that was located on an 18.16-acre property outside the city limits. Settlement occurred on April 5, 2007. Ms. Stump incurred various costs for the purchase that included \$1716 for the survey of the property.

After Ms. Stump submitted her claim, the USAF questioned whether the survey was required by the lender and, if so, whether the cost was customary for that area. In response,

Ms. Stump sent the USAF a letter from her attorney that stated that the survey was required by the lender and that the cost of \$1716 was reasonable and customary.

The USAF reconsidered its earlier ruling on Ms. Stump's claim and advised her that when a home is purchased on land that exceeds the size reasonably related to the residence, the Federal Travel Regulation (FTR) limits reimbursement of certain costs such as surveys by means of a pro rata determination. The USAF determined that only one acre of the 18.16-acre property related to the residence. Rather than make a pro rata determination, however, the USAF allowed a reimbursement of \$600 for the cost of the survey because that amount represented the typical rate for the survey of one acre. Ms. Stump's claim before this Board, consequently, seeks the remaining balance of her survey cost, \$1116, which the USAF has denied.

In response to Ms. Stump's request for the Board's review of her claim, the USAF recommended that reimbursement for her survey cost should be calculated using a ratio of the market value of the portion of her property related to the residence to the market value of the entire property. Copies of tax appraisal records provided by the USAF showed that Ms. Stump's property consisted of a one-acre tract on which her home was located, and the remaining 17.16 acres were on tracts of unimproved land. The USAF determined that the ratio of the market value of the residence site consisting of one acre, \$107,030, to the market value of the 18.16-acre property, \$231,970, was 46.14%, and that percentage should be applied to the cost of the survey to calculate her reimbursement.

Discussion

Claimant argues that she should be reimbursed for the full cost of surveying the 18.16-acre property. The relevant FTR section provides the following:

How much will I receive for reimbursement when I purchase or sell land in excess of what reasonably relates to the residence site?

When you purchase or sell land in excess of what reasonably relates to the residence site, your reimbursement will be limited to a pro rata reimbursement of the land reasonably related to the residence site.

41 CFR 302-11.308 (2006) (FTR 302-11.308). The Joint Travel Regulations (JTR), which also apply in this appeal, similarly state that an employee "is limited to pro rata reimbursement when land, in excess of that which reasonably relates to the residence site,

is bought or sold.” JTR C5750-H.2.b. The agency which receives the claim should initially make such a pro rata determination. 54 Comp. Gen. 597, 598 (1975). Survey costs should be prorated for purposes of determining the amount of reimbursement in that such costs vary with the size of the property. *Id.* at 599.

Ms. Stump disputes the USAF’s position that only a portion of the property she purchased related to her residence. The Comptroller General outlined the following factors an agency should use in determining what portion of a property relates to the residence:

Absent any zoning laws or regulations for the building of residential dwellings or if the area is generally zoned for agricultural use and the sale or purchase involves a farm dwelling with appurtenant outbuildings, the certifying officer should take into account such factors as the use to which the land has been put in the past, its present utilization and the potential for future use. That will include consideration of crop growing, standing timber, other income producing use, fencing, irrigation, etc. In cases of unimproved land which could be subdivided and sold as lots in the future, it is suggested that the officer take into account the size of the lots in other subdivisions in the area and the requirements of the local or state department of health which is usually concerned with the waste disposal systems and the percolation quality of the soils. It might be that in a certain locality a house or mobile home could be located on a three-fourths acre lot whereas in other localities the requirement might be at least 5 acres in order to properly place the drain fields for the septic tank system.

54 Comp. Gen. at 598-99. An agency can rely upon tax assessment records in order to determine the value of that portion of the property related to the residence site. *See Larry D. Gatewood*, GSBICA 15343-RELO, 01-1 BCA ¶ 31,211 (2000).

The only documentary evidence before the Board that showed how much of the 18.16-acre property related to Ms. Stump’s residence were the tax records provided by the USAF, and those records showed that her property consisted of a one-acre tract on which her house was located and the rest of the property was unimproved land. Ms. Stump submitted an “overview” picture of her property and represented that her house was in the middle of the property. That picture, however, provides no specific information that would show that more than one acre is reasonably related to the residence site, and the Board has no basis for finding that more than one acre of the property relates to the residence.

The above-referenced FTR and JTR sections require that the USAF limit reimbursement for the cost of Ms. Stump's survey by a pro rata determination based on the value of that portion of the property she purchased that reasonably related to the residence site. Those regulations do not prescribe any particular formula for calculating the pro rata share of costs to be reimbursed when a transferred employee purchases land in excess of what reasonably relates to a residence. The USAF decided that because the ratio of the market value of the one-acre tract that related to the residence site and the market value of the 18.16-acre property Ms. Stump purchased was 46.14%, it would limit reimbursement to 46.14% of the cost of the survey (or \$791.76). The USAF's pro rata determination using market values is an acceptable method under those regulations. *See William D. Genda II*, GSBKA 15227-RELO, 01-1 BCA ¶ 31,287; *Larry D. Gatewood*.

Ms. Stump also contends that the costs related to the purchase of her home including the full cost of the survey did not exceed five percent of the purchase price, which is the maximum reimbursement allowed under the JTR. *See JTR C5756-B.1*. Ms. Stump has misapplied the JTR in that her reimbursement is limited to those costs that are allowed under the applicable travel regulations regardless of whether her total incurred costs were within five percent of the purchase price. *See Dennis W. Del Grosso*, CBCA 734-RELO, 07-2 BCA ¶ 33,686. As discussed above, other provisions of the JTR and FTR clearly limit the amount of reimbursement for costs such as the survey of the 18.16-acre property Ms. Stump purchased.

Additionally, Ms. Stump argues that she did not find anything in the JTR or the civilian PCS guide that would limit the amount of acres that a house could occupy or the cost of a survey. However, an employee is not entitled to recover costs that are not reimbursable because his or her understanding of the applicable travel regulations was incorrect. *See Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634. The Board is subject to those travel regulations and cannot allow additional reimbursement because she may not have fully understood the extent to which her costs would be reimbursed. *Id.*

Decision

Ms. Stump's claim for the full cost of the survey is denied.

H. CHUCK KULLBERG
Board Judge