



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 19, 2009

CBCA 1515-RELO

In the Matter of KEITH E. HANCOCK

Keith E. Hancock, Sterling, VA, Claimant.

Cheryl Holman, Assistant Chief, PCS Travel Division, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

In June 2008, claimant, Keith Hancock, who is employed by the Department of Veterans Affairs (VA), purchased a residence following his transfer from Phoenix, Arizona, to Washington, D.C. He seeks review of the VA's disallowance of his claim for reimbursement of the loan origination fee of \$3700 charged by the lender.

Background

_____ Mr. Hancock entered into a sales contract to purchase a home in Sterling, Virginia, for \$365,000. Subsequently, he arranged to amend the sales contract, increasing the sales price to \$370,000 in order to pay the closing costs on the home. He received a mortgage loan of \$370,000 from his lender, the Bank of America. This mortgage was guaranteed by the VA. Claimant's understanding was that a lump sum would be credited to him at closing for the amount by which the sales price had been increased.

At closing, however, the one percent loan origination fee of \$3700 was reflected on the settlement statement as having been paid by the seller. When Mr. Hancock requested reimbursement of his real estate expenses from the VA, he included the loan origination fee as an expense that he had paid, with an explanation of the circumstances. The agency disallowed it, advising that Mr. Hancock could not be reimbursed for an expense that was

reflected on the settlement statement (also referred to as the HUD-1) as having been paid by the seller.

Mr. Hancock has submitted documentation supporting his statement that the price of the property was increased by \$5000 to cover a portion of his closing costs. The addendum to the sales contract expressly provided that the seller would credit \$4700 to the buyer at closing. A letter written by counsel for Northern Virginia Title and Escrow, Inc. (NVT&E), the company that conducted the closing, verifies that Mr. Hancock was supposed to receive a credit from the seller to be applied to the buyer's closing costs at settlement. According to NVT&E's attorney, the lender, shortly before closing, determined that "numerous 'reasonable and customary' purchaser fees" should be moved to the seller's column on the settlement statement. The collective fees required to be moved, including the loan origination fee of \$3700, added to more than the amount seller was to have credited to the buyer. The NVT&E lawyer confirmed that despite this required change, the buyer ended up paying for the fees that Bank of America dictated be moved into the seller column.

Mr. Hancock has also provided a letter from the loan officer at Bank of America. The loan officer, who has worked at several institutions, confirmed that Bank of America's requirement was unusual in her experience. She stated that ordinarily a negotiated credit of the type agreed to here would be reflected on the HUD-1, with individual items of closing costs, including the loan origination fee, being paid by the purchaser and a lump sum credit would be shown as having been paid by the seller. She added that the settlement statement was prepared just before closing. Claimant did not have the option of objecting to it because postponement of closing would have caused his interest rate to go up. In addition, his household belongings had arrived and needed to be unloaded.

Discussion

When certain requirements are met, the employing agency is required to reimburse some of the expenses that a transferred employee incurs in purchasing a residence at the new duty station. 5 U.S.C. § 5724a(d) (2006). One of these requirements is that the employee must actually incur and pay an expense in order to be reimbursed for it. 41 CFR 302-11.1(a) (2008).

In order to determine whether an employee has incurred and paid an expense, we first look to the settlement statement (HUD-1), which generally delineates what expenses are paid for by the buyer and what expenses are paid for by the seller. *See, e.g., Terence L. Lynch*, GSBGA 16678-RELO, 06-1 BCA ¶ 33,153 (2005); *Marion L. Ladd*, GSBGA 15138-RELO, 00-1 BCA ¶ 30,890. Although the HUD-1 usually controls, there are, nonetheless, instances in which the settlement statement is not an entirely accurate reflection of the transaction.

The issue presented here was carefully considered in *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999). In that case, the purchaser incurred and paid closing costs as part of the purchase price, although the costs were shown on the settlement statement as having been paid initially by the seller. Under the test articulated in *Parrish*, costs that were included in the purchase price of the house and shown as paid for by the seller may still be reimbursed to the purchaser provided that the purchaser (1) establishes that the closing costs were clearly discernible and separable from the price paid for the house, (2) shows that both the seller and the purchaser regarded the costs as having been paid by the purchaser, and (3) produces documentation showing the amount of closing costs and the purchaser's liability for them. *Id.* at 151,114; accord *Roger L. Bankert*, CBCA 558-RELO, 07-2 BCA ¶ 33,601, at 166,421; see also *Nishelle Grant*, CBCA 1245-RELO, 09-1 BCA ¶ 34,054; *Estefanie B. Duncan*, GSBCA 16239-RELO, 04-1 BCA ¶ 32,449 (2003); *Kathleen M. Lewis*, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616.

Here, the addendum to the sales contract establishes that the sum of \$5000 that was negotiated to be added to the purchase price was intended to be credited to the buyer for the purpose of paying closing costs. The correspondence from the title company and lender similarly support claimant's position that the added amount was to defray costs incurred by him and not by the seller. Although the lender required that the closing costs be itemized in the seller's column, the evidence supports claimant's contention that, in fact, the costs were borne by him. No other bases for disallowing this claim have been identified by the VA. Accordingly, the VA should reimburse Mr. Hancock the amount he seeks with respect to the loan origination fee paid at closing.

CATHERINE B. HYATT
Board Judge