



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 4, 2009

CBCA 1434-RELO

In the Matter of TERESA M. LOPEZ

Teresa M. Lopez, Ankeny, IA, Claimant.

Diane Eggert, Chief, Travel and Relocation Services Branch, Agricultural Research Service, Beltsville, MD, appearing for Department of Agriculture.

HYATT, Board Judge.

Claimant, Teresa M. Lopez, an employee of the Department of Agriculture's (USDA's) National Agricultural Statistics Service (NASS), was transferred in October 2007 from the Washington, D.C. area to Des Moines, Iowa. Her claim concerns entitlement to be reimbursed for certain expenses arising from the sale of the home at the old duty station.

Background

Ms. Lopez was authorized real estate transaction expenses in connection with her relocation. She opted to participate in the home sale program and enrolled with a relocation services contractor, Prudential Relocation Services. Ms. Lopez found a buyer for her house in Dumfries, Virginia, and executed a deed to Prudential. Prudential closed the sale. Subsequently, Prudential deducted the amount of \$6000 from claimant's equity. It identified this sum as "closing costs." Ms. Lopez applied for reimbursement of the amount of \$6360, which she described as additional closing costs. NASS processed the voucher and paid her claim.

Subsequently, NASS reconsidered whether it should have made this payment after receiving a complaint from a second employee whose request for additional closing costs under the home sale program had been denied. After reviewing Ms. Lopez's file, a USDA

budget officer concluded that the amount represented “dual compensation” and instituted a collection action to recoup the payment. Ms. Lopez challenged the collection action, which has been suspended during the pendency of her claim at the Board.

Discussion

The starting point for resolving this claim is the relevant provision of the Federal Travel Regulation (FTR), 41 CFR 302-12.5 (2007). This provision states as follows:

If I use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, will I be reimbursed for the relocation allowance as well?

No, if you use a contracted-for relocation service that is a substitute for reimbursable relocation allowance, you will not be reimbursed for the relocation as well.

The Board has recently explained that the term “substitute for” in this provision precludes separate reimbursement to the employee for costs that are tied-in to the terms and conditions of the sale of the residence. *Gregory A. Thessen*, CBCA 1469-RELO, 09-2 BCA ¶ 34,190.

Although the Board has recognized that in certain circumstances an employee is not precluded from receiving reimbursement for a relocation expense to which he or she would otherwise be entitled so long as payment for a duplicate or similar expense was not included as part of the fee paid to the relocation services contractor, *Edward D. Russell*, CBCA 1083-RELO, 08-2 BCA ¶ 33,879; *Andres Arredondo*, CBCA 647-RELO, 07-2 BCA ¶ 33,650, the types of costs that these cases allow are not the types of costs claimed by Ms. Lopez. As the Board pointed out in *Thessen*, the costs that were reimbursed in *Russell* and *Arredondo* involved pre-existing agreements between the employee and its lender, and were not related to the terms and conditions of the sale of the residence.

From a review of the HUD-1 statement provided for this sale, NASS identified three items of expense that it now questions: (1) “seller concessions” in the amount of \$5507; (2) a tax service fee in the amount of \$75; and (3) a document review fee of \$415 charged by Sunset Mortgage. NASS is not persuaded, even assuming these are not duplicate costs, that it should pay these items under applicable provisions of the FTR and has asked the Board for guidance. NASS is particularly concerned about what the “seller concessions” actually included. NASS points out that Ms. Lopez opted to participate in the home sale and home marketing incentive program and was paid a \$5000 bonus for finding a qualified buyer. As such, NASS suggests that perhaps “[p]art of finding this qualified buyer, and

obtaining the \$5,000 bonus, was a negotiation to lower the buyer's out of pocket costs, by agreeing to "seller concessions." In any event, NASS states that it would welcome the Board's guidance on how to resolve this claim.

Ms. Lopez has explained that the term "seller concessions" listed on the settlement statement is the same as "seller subsidies." Ms. Lopez has provided a letter from her realtor corroborating this explanation. The regional sales contract, used by the buyer and seller here, provides that the seller subsidy is applied to purchaser's charges (including, but not limited to, loan origination fees, discount fees, buy down fees, prepaids, or other charges).

In light of this clarification of the term "seller concessions," the Board's decision in *Thessen* is controlling. These types of expenses are tied in to the categories of expenses that are generally covered by the Government's arrangement with the relocation contractor. The document review fee charged by the lender is also a closing expense that derives from the terms and conditions of sale and thus is not separately reimbursable to claimant. Finally, under well-settled precedent, the tax service fee, which is imposed incident to the extension of credit, is not reimbursable to either a buyer or seller. *E.g.*, *Steven L. Lanser*, CBCA 1674-RELO (Nov. 18, 2009); *Mark Bodycombe*, CBCA 1389-RELO, 09-1 BCA ¶ 34,022 (2008).

Decision

NASS should not have reimbursed Ms. Lopez for the subject expenses. The claim is denied.

CATHERINE B. HYATT
Board Judge