



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 14, 2010

CBCA 1796-RELO

In the Matter of STEFANI WACEK

Stefani Wacek, Bay Pines, FL, Claimant.

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

DRUMMOND, Board Judge.

Stefani Wacek, an employee of the Department of Veterans Affairs (VA), transferred from one permanent duty station to another in April 2008. Ms. Wacek, who owned a home at her old duty station, applied for inclusion in the agency's relocation services program, with home sale assistance, including guaranteed buyout.

Under the VA's relocation services program, which is provided through a contract with Cartus Corporation (Cartus), various services are provided to transferring employees. Ms. Wacek was told by the VA and Cartus that although she could take advantage of the direct reimbursement program, she was not eligible for the company's home sales service program. Under the home sales service program, Cartus agrees to purchase the employee's residence in the event it cannot be sold independently. The Cartus contract, however, specifically provides that Cartus agrees to purchase an employee's residence based on the average of two market value appraisals prepared by qualified appraisers approved by the General Services Administration (GSA). However, the owner of the land upon which Ms. Wacek's home was located had restricted sales to its appraised prices and approved buyers. The owner of the land was not a qualified appraiser approved by GSA. Only employees who participate in the home assistance program and close through an amended value sale are eligible for a 2% home marketing incentive award not to exceed \$8000.

Ms. Wacek sold her home on her own and received reimbursement for expenses. She has now asked that the Board order the VA to pay her a marketing incentive award totaling \$5800 (selling price of \$116,000 x 5%). She asserts that the VA promised this benefit at the time she accepted the position and should honor its promise. She further asserts that there is sufficient funding in fiscal year 2008 for her expenses and alleges that she was misled by Cartus and trapped in the new position. The VA asserts that the applicable percentage is 2%, not 5%, and that she is not entitled to a home marketing incentive payment because she did not qualify for the home assistance program and did not successfully close through an amended value sale. The VA asserts further that Cartus acted reasonably.

Discussion

Government agencies may contract with private relocation companies to provide employees who are being transferred with relocation assistance, including the sale of their homes. 5 U.S.C. § 5724c (2006). In addition, an agency may implement a home marketing incentive payment program. This program allows the agency to save on relocation costs and provides the employee with an incentive payment. Under the program, an employee is entitled to an incentive payment when:

- (1) the residence is entered into a relocation services program established under a contract in accordance with section 5724c of this title [5 U.S.C.] to arrange for the purchase of the residence;
- (2) the employee finds a buyer who completes the purchase of the residence through the program; and
- (3) the sale of the residence results in a reduced cost to the Government.

5 U.S.C. § 5756(a). The Federal Travel Regulation further details when an employee would be entitled to receive an incentive payment. 41 CFR 302-14.5 (2008). In this case, the VA further requires that the employee close through an amended value sale. This Board and its predecessor board in deciding these matters have issued several decisions where failure to meet the conditions specified in statute and regulation has served as a basis to deny an employee's claim. *Carolyn Elizabeth Watts*, CBCA 1443-RELO, et al., 09-2 BCA ¶ 34,219; *Charles Ingram*, CBCA 1050-RELO, 08-1 BCA ¶ 33,847; *Laura E. Kilpatrick*, GSBCA 15814-RELO, 02-2 BCA ¶ 31,957.

Here the VA correctly determined that Ms. Wacek was not entitled to an incentive payment. Though the services may have been promised to Ms. Wacek, on these facts we cannot find entitlement to a payment. To qualify for an incentive payment, her residence must have been enrolled in the VA's home sales program and closed through an amended value sale. That did not occur here.

We do not find that Cartus and the VA actions were improper or that they wrongfully deprived Ms. Wacek of a benefit for which she otherwise qualified. As she was ineligible for the program and did not successfully close through an amended value sale, she is ineligible for an incentive payment. *Regina M. Rochefort*, GSBICA 15127-RELO, 00-1 BCA ¶ 30,879. The points raised by Ms. Wacek do not alter the outcome.

JEROME M. DRUMMOND
Board Judge