



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 2, 2010

CBCA 1963-RELO

In the Matter of ALICE J. BUCHANAN

Alice J. Buchanan, Berkeley, CA, Claimant.

Debra J. Murray, Chief, Travel Section, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

KULLBERG, Board Judge.

The agency has requested an advance decision from this Board under 31 U.S.C. § 3529 (2006). This Board has been asked to advise whether the claimant, Ms. Alice J. Buchanan, should be reimbursed for the amount of a credit, \$2145, she paid to the purchaser of her home. The Board finds that the credit was a customary payment in that Ms. Buchanan was required by statute to either pay the credit in a transfer to a lower income purchaser or a transfer tax in the same amount to the District of Columbia. Reimbursement is allowed under those circumstances.

Background

Ms. Buchanan, an employee of Customs and Border Protection, an agency within the Department of Homeland Security (DHS), was relocated from Washington, D.C., to San Francisco, California. On December 1, 2009, Ms. Buchanan sold her home to a purchaser who qualified in the District of Columbia as a lower income homeowner. District of Columbia statute provides that sellers shall “pay for recordation a tax at the rate of 1.1% of the consideration paid for the transfer.” D.C. Code § 47-903(a)(1) (2001). The seller can be exempt from payment of the transfer tax in the case of “[t]ransfers of property to a

qualifying lower income homeownership household in accordance with § 47-3503(b).” *Id.* § 47-902(9). An exemption from payment of the transfer tax under those circumstances requires that the “purchaser receives a credit against the purchase price of the property in an amount equal to the total tax that would have been due.” *Id.* § 47-3503(b)(1)(B).

In this case, 1.1% of the sale price of Ms. Buchanan’s home was \$2145. Since the purchaser of Ms. Buchanan’s home qualified as a lower income purchaser, and Ms. Buchanan gave the purchaser a credit in that amount of 1.1% against the sale price of her home, she did not pay the 1.1% transfer tax. Ms. Buchanan subsequently sought reimbursement of the costs incurred in the sale of her home including the \$2145 credit.

Discussion

The issue presented in this case is whether Ms. Buchanan can be reimbursed for the amount credited in the sale of her home, which was the same as the 1.1% transfer tax she would have paid if she had not given the credit. The Federal Travel Regulation (FTR), which applies in this matter, states that reimbursement for certain costs related to real estate purchases are allowed “[p]rovided that they are customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official duty station.” 41 CFR 302-11.200 (2009) (FTR 302-11.200). The burden of proof is on the claimant to establish by a preponderance of evidence that a cost incurred in a real estate transaction is customarily paid in that locality. *Deborah A. Bentley*, GSBCA 16752-RELO, 06-1 BCA ¶ 33,197, at 164,568. “The fact that state law makes payment of a particular cost an obligation of the seller is clear proof of customary practice.” *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827 (2001).

The agency has sought guidance as to whether Ms. Buchanan can be reimbursed for a credit to the purchaser. The credit in this case was not the result of negotiation in order to facilitate the sale of her home. Instead, Ms. Buchanan was required by statute to pay \$2145 in order to transfer title to her home. She had two options for making this payment: she could have given the money to the District of Columbia Government, as a transfer tax, or given it to the purchaser, as a credit. The payment of the transfer tax or a credit against the sale price of her home was required by statute, and the cost incurred by Ms. Buchanan would have been 1.1% of the sale price in either case. Ms. Buchanan, therefore, has met her burden of proof in establishing that the credit of 1.1% of the sale price was customary in the District of Columbia in that such a payment was required under statute and, therefore, that credit is a reimbursable expense.

We trust that this decision provides DHS with sufficient guidance in reaching its decision with regard to Ms. Buchanan's claim.

H. CHUCK KULLBERG
Board Judge