



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 29, 2010

CBCA 1660-RELO

In the Matter of GORDON M. CHANCEY

Gordon M. Chancey, Norfolk, VA, Claimant.

Robert A. Mangrum, Office of Procurement Law, United States Coast Guard, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

POLLACK, Board Judge.

Gordon M. Chancey (claimant), a civilian employee of the Department of Homeland Security (DHS), United States Coast Guard (CG), appealed the denial of refinancing expenses submitted in connection with his 2007 permanent change of station (PCS) move from Wallops Island, Virginia (where he was employed by National Aeronautics and Space Administration (NASA)), to Norfolk, Virginia, where he took on employment with the CG. He accepted the job with the CG in November 2007 and reported to his new duty station on December 9, 2007. In connection with the move, the CG issued travel orders providing for reimbursement of certain relocation expenses, including temporary quarters subsistence expenses (TQSE) for 120 days (as extended) and various home transaction costs. The orders did not include or authorize the use of a relocation contractor to handle the sale of claimant's residence (located in nearby Maryland). There is no evidence that at the time the orders were issued, claimant had sought the use of a relocation contractor from the CG.

During the TQSE period, claimant attempted to sell his residence. Also, at some point during that period, he entered into a contingency contract to purchase a home at the new duty station. However, because he was unable to sell his Maryland home by the contingency date in his purchase contract, he allowed that purchase to expire.

Near the end of April 2008, claimant received a contract offer for the purchase of his residence. It, however, carried a sixty-day contingency for the buyer to sell his house, therefore, not guaranteeing consummation of the sale. Nevertheless, armed with a potential sale (albeit with a contingency), claimant resumed his search for a new dwelling and at some point in May 2008, found a house to purchase. The seller, however, would only accept a non-contingency offer. Mr. Chancey was faced with a dilemma in that the seller in Virginia would not accept a contingency, while the purchase for Mr. Chancey's home in Maryland remained uncertain. If Mr. Chancey proceeded with the purchase, he was taking a risk that the sale of his Maryland residence might fall through, and he would not have the proceeds of the sale to use for his down payment and mortgage. In addition, Mr. Chancey's buyer was having difficulty selling his property and as such sought additional time to sell.

Thus, as of May 2008, the claimant had a contingency contract on the sale of his residence, but no guarantee that the sale would go through and at the same time had found and wanted to purchase a house at the new duty station (at a favorable price). As described by claimant, he had to make a decision. He understood that if he proceeded with the non contingency contract sale, he might have to make the purchase without the benefit of having the proceeds of sale from his Maryland house. As such, he would have to finance the down payment on the mortgage by other means. His alternative was to let the house go and commit to a rental property.

Mr. Chancey decided to proceed with the purchase at the new duty station. In order to fund the down payment, he borrowed funds from his government retirement account, expecting to refinance, once he sold his home at the prior duty station. Because he used retirement funds, rather than funds from sale of his residence, he provided a smaller down payment than he would have had his Maryland house been sold. Settlement on the purchase took place on May 30, 2008, and he was paid \$12,540.36 for costs associated with that transaction.

As of August 2008, claimant still had not been able to sell his house. Market conditions remained unfavorable. Having no success in selling the house, claimant approached the CG in August 2008 and sought from the agency the use of a relocation contractor to facilitate the sale. The CG approved the use of the relocation contractor and claimant's official orders were changed accordingly. Ultimately, the relocation service purchased claimant's home in November 2008.

Once claimant received the proceeds of sale through the relocation contractor, he then proceeded to use the cash payment to refinance the house he had purchased in May 2008 at the new duty station. Because he now had proceeds from the sale, he was able to put

significantly more down than he had at the earlier and with that secure a lower mortgage payment than what he had secured at the original settlement.

On March 17, 2009, claimant submitted DD Form 1351-2 to the CG and therein sought reimbursement for closing costs in connection with the purchase of the house. He asked for "First Closing Costs" of \$14,538.53 and for "Following Closing Costs" of \$8,418.37. The latter were for essentially the same categories of cost as the former, the difference being that the "Following Closing Costs" related to the settlement of February 20, 2009, which was the refinancing on the purchased Virginia property. The record contains a number of other documents showing various dollar figures; however, in issuing this decision, we need not reconcile those numbers. What both parties have agreed to is that under Federal Travel Regulation (FTR) 302-11.300, there is a limitation on reimbursement for settlement at five percent of the actual purchase price of a property. In this case, the parties agree that the cap is \$18,000, based on the purchase price of the house. Mr. Chancey, in seeking relief, has adjusted his numbers to reflect that limitation.

The CG reviewed the claim and denied it on the basis that a claim for closing costs on refinancing was an unallowable loss under FTR 302-11.304, which deals with reimbursement for losses due to market conditions or prices at the old and new duty stations. More specifically, the CG concluded that the refinancing costs being claimed were due to market conditions and as such barred by the above regulation. In addition, the CG determined the claim was not payable, because finance costs had already been paid at the first settlement and, thus, this was a duplication of costs.

On July 17, 2009, claimant submitted his claim to the Board. The CG replied with a detailed brief, and claimant submitted several letters, the last dated January 29, 2010, laying out his position. Claimant, in making this claim, and in his presentation to the Board, states that poor market conditions caused him to be unable to sell his house and put him in the situation where he had to go through a second financing transaction. He contests the CG's contention that reimbursement for the second set of closing costs are barred under FTR 302-11, noting that the regulations do not necessarily cover costs such as those here. He asserts that the refinancing for which he seeks compensation was a follow on, continuation, or completion of the original settlement, and as such, should not be characterized as a duplication of an earlier paid cost. Alternatively, he argues that the CG should be responsible for reimbursing him in this instance, because, had the CG acted earlier and provided him the relocation contractor option, the costs could have been avoided. Finally, he asserts that he should be reimbursed due to hardship.

Discussion

Claimant refinanced and incurred the costs at issue essentially in order to undo an unfavorable mortgage that he had entered into when he initially purchased the home at his new duty station. It is reasonably clear that he proceeded with the initial financing of his purchase (the first settlement) under less than ideal circumstances. He proceeded as he did, because he had been unable to sell his home due to poor market conditions. In order to finance the initial sale, he had to use his retirement funds, rather than sale proceeds, and thus logically had less money to put down. We have little doubt that had he been able to sell his residence before the purchase, he would have used the proceeds of the sale for down payment and secured a better mortgage, thus making it unlikely that he would have refinanced in February 2009.

While we fully understand claimant's situation, our decision has to be predicated on what is allowable under the regulations, as to financing costs. When we look at the regulations and, in particular, cases decided by this Board and its predecessor, it is clear that claimant is not entitled to the reimbursement being sought. Put simply, one cannot be paid for the same item twice. What claimant is seeking here (financing costs in February 2009) is a duplication of costs incurred in May 2008. He can only be paid once for those costs. See *Milton E. Geiger*, CBCA 758-RELO, 08-1 BCA ¶33,764; *Lincoln E. Burton*, CBCA 682-RELO, 07-1 BCA ¶33,561; *Steven F. Bushey*, GSBCA 15,289-RELO, 01-1 BCA ¶31,291. While we recognize that claimant has characterized the February 2009 refinancing as a continuation of financing and not a duplication, that simply does not stand up factually. Accordingly, and because we find that refinancing here was a duplicate cost, it is not necessary for us to analyze the parties' arguments as to the application of FTR 302-11.304.

Finally, we find no merit in claimant's position that the CG should pay the reimbursement because the CG should have acted more timely with providing a relocation contractor. While it is clear in retrospect that an earlier use of a relocation contractor may have avoided the situation now before us, that in no way establishes a legal obligation on the part of the CG to provide a relocation contractor, nor does it justify the reimbursement being sought. The decision to provide a relocation contractor in a case such as this is a matter within the discretion of the agency. Moreover, claimant made no requests for a relocation contractor until after it became clear he could not sell his house and after having already purchased a home at the new duty station. If claimant, at the time the orders were issued, considered it necessary to have a relocation contractor provided as part of his move, it was up to him to request the inclusion of that option in his orders. He cannot now shift the blame.

In summary, our precedent is clear that a real estate cost can only be reimbursed once. Claimant was paid settlement and mortgage costs in the first settlement. He cannot be reimbursed for the same categories a second time. The claim is denied.

HOWARD A. POLLACK
Board Judge