



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 14, 2011

CBCA 2356-RELO

In the Matter of PHILLIP T. RIPPÉ

Phillip T. Rippé, Jacksonville, FL, Claimant.

Russell W. Blount III, Realty Specialist, Real Estate Division, Army Corps of Engineers, Department of the Army, Mobile, AL, appearing for Department of the Army.

POLLACK, Board Judge.

In connection with his duties as a civilian employee at the United States Army Corps of Engineers (USACE or Government), Phillip Rippé made a permanent change of station from Madison, Alabama, to Jacksonville, Florida. In February 2011, Mr. Rippé applied for agency reimbursement in the amount of \$24,850.50 for real estate expenses incurred selling his old home pursuant to the move.¹ USACE partially granted the application, allowing for reimbursement of \$9720 paid to the selling agent, but denying \$12,960 paid to the listing agent, Carnival Real Estate Agency (Carnival). Claimant appeals the denied real estate expenses.

To facilitate the sale of his home in Madison, Mr. Rippé engaged Carnival to serve as listing agent. At the time he sold his home, Mr. Rippé's wife, Cynthia Rippé, worked as

¹ USACE adjusted the claim to \$20,680 based on limitations in the Joint Travel Regulations (JTR). JTR C5756-A.1 provides that brokers' fees and real estate commissions are reimbursable to the extent they do not exceed rates generally charged for such services in the locality of the employee's original work station. USACE based its adjustment on the 7% commission fee typically charged in Mr. Rippé's old duty station. Mr. Rippé does not challenge the adjustment.

a real estate agent for Carnival and was licensed to sell real estate in the state of Alabama. She served as the listing agent on the Rippé property throughout the entire selling transaction. It is our understanding that she received a commission from Carnival out of the proceeds paid to that firm. The arrangement between Mrs. Rippé and Carnival is common in the industry. In the closing documents, both Mr. and Mrs. Rippé were listed as sellers, as the property was jointly owned.

As part of the conveyance, Carnival, through Ms. Rippé, performed the typical services of a listing agent. For these services, Carnival was to receive \$12,960. Keller Williams Realty (Keller) received \$9720 in commissions for its role as selling agent.

USACE alleges that Ms. Rippé's involvement in the sale may constitute a conflict of interest that precludes reimbursement under the Joint Travel Regulations (JTR). USACE argues that because Ms. Rippé lived in the residence, and was thus a party to the conveyance, no real estate fees were actually incurred. As USACE was unable to ascertain precisely what percentage of the fees went to Ms. Rippé and what portion was retained by Carnival (the information was not provided by Mr. Rippé), USACE denied the full amount of Carnival commissions. Mr. Rippé timely appealed. This Board has jurisdiction to decide the claim under 31 U.S.C. § 3702 (2006).

The JTR delineates certain relocation allowances to which civilian personnel working for the Department of Defense (DoD) are entitled upon a change of permanent duty station (PDS). Where a federal employee is transferred from one station to another in the interest of the Government, without a break in service, he may recover certain expenses related to the transfer. 5 U.S.C. § 5724a(d)(1) (2006); JTR C5000-A.2. Specifically, chapter 5, part P of the JTR addresses reimbursable expenses incident to sale of a residence.

Brokers Fees or Real Estate Commission. A brokers fee/real estate commission for services in selling the residence is reimbursable, but not in excess of rates generally charged for such services in the old PDS locality.

JTR C5756-A.1. Aside from the general requirements of the JTR, the sole limitation on the recovery of costs associated with selling a personal residence is that the expenditures conform to the going rate in the proximity of the old duty station.

The Federal Travel Regulation also provides guidance for employees of the Federal Government seeking reimbursement of real estate costs. At the time Mr. Rippé brought his claim, the regulation in effect stated the following:

Provided 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 station, your agency will pay for the following expenses: (a) Your broker's fee or real estate commission that you pay in the sale of your residence at the last official station, not to exceed the rates that are generally charged in the locality of your old official station.

41 CFR §302.11-200 (2010).

Discussion

The issue before the Board is whether, under the JTR, the Government may deny an otherwise valid claim for reimbursement of real estate fees based on the existence of a spousal relationship between the claimant and his real estate agent. We find that in the absence of any legal authority barring such reimbursement, the instant claim should be granted.

Aside from the alleged conflict of interest, USACE does not dispute that Mr. Rippé met all the pertinent requirements for reimbursement of real estate fees under the JTR. Presumably, if Mr. Rippé had transacted through any real estate agency other than Carnival, or had he used another Carnival agent, USACE would have granted his claim in full. In essence, the Government argues that where money changes hands between claimant husband and real estate agent wife, no real expense is suffered by the employee, and therefore, he is not entitled to agency reimbursement. However, the agency decision fails to cite language in the JTR or any other legal authority that supports this proposition.

The Board recognizes that to be compensated for real estate expenditures, an employee must actually incur the costs claimed as a result of the transfer of station. *Walter W. Pyrik*, CBCA 1883-RELO, 10-2 BCA ¶ 34,466; JTR C5750-H.1. However, there is no statutory or regulatory support for the notion that legitimately-earned compensation paid to a licensed real estate agent is not actually incurred for purposes of agency reimbursement. That Ms. Rippé is married to the claimant does not alter the fact that, acting as an agent of Carnival, she provided the necessary brokerage services for which Mr. Rippé contracted.

Under the JTR, qualification for reimbursement of real estate expenses is relatively straightforward. Generally, a permanent change of station in the interest of the Government during continuous service warrants reimbursement of reasonable real estate fees actually sustained. JTR C5005-A.1, C5750-H.1, C5756-A.1. The JTR contains no general provision addressing potential conflicts of interest between claimants and the people whom they hire during a move.

In denying the claim, USACE relied on *Clarence Hester, Jr.*, GSBCA 16253-RELO, 04-1 BCA ¶ 32,460 (2003), in which DoD refused to reimburse real estate expenses because the claimant sold his home without using a realtor. For purposes of JTR C5750-H.1, there is a clear distinction between selling a home independently and paying a licensed real estate agent with whom one happens to have a familial relationship. The *Hester* decision indicates that for expenses to be “actually incurred” there must be some financial exertion to a third party - employees will not be reimbursed solely for their own time and effort.

Mr. Rippé has furnished the Board with ample evidence that the services rendered by his wife and Carnival were both real and substantial. The record contains a contract between Mr. Rippé and Carnival setting out Mr. Rippé’s obligation to the listing agent. The record includes a copy of the listing advertisement, inspection forms, and various other sheets pertaining to the sale of the residence. The fact that Cynthia Rippé, as opposed to another Carnival agent, receives the benefit of the sales commission, does not change the fact that Mr. Rippé paid the fees in question to Carnival at the time his residence was sold. How much Carnival retained and what it paid to Ms. Rippé is a matter between those entities. Mr. Rippé’s expenditures were made in exchange for valuable services rendered. Reimbursement in this case does not violate the regulations.

Decision

Ms. Rippé’s participation in the real estate transaction at issue does not preclude her husband’s claim. In light of the explicit authorization for real estate allowances in the JTR, the evidence of services rendered, and the lack of any authority to the contrary, we grant the claim for reimbursement in the amount of \$10,960 (the difference between the adjusted claim of \$20,680 and the \$9720 commission paid to Keller).

HOWARD A. POLLACK
Board Judge