



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 12, 2016

CBCA 5015-RELO

In the Matter of GREGORY CELLOS

Gregory Cellos, New Orleans, LA, Claimant.

Melanie Rose, Relocation Coordinator, Finance Relocation Support, Bureau of Safety and Environmental Enforcement, Department of the Interior, Sterling, VA, appearing for Department of the Interior.

CHADWICK, Board Judge.

Gregory Cellos, an employee of the Bureau of Safety and Environmental Enforcement (BSEE) within the Department of the Interior, paid \$300 in “transfer fees” to a homeowners’ association (HOA) in Texas when he sold his Texas home to move near a new duty station in Louisiana. He filed a timely request for review of the agency’s refusal to reimburse him for the transfer fees as relocation expenses. We grant the claim.

Expenses of selling a home in connection with a transfer of duty station in the interest of the Government are reimbursable under the Federal Travel Regulation (FTR) if the expenses were incurred for, among other things, “required services that are customarily paid by the seller of a residence at the old official station.” 41 CFR 302-11.200(f)(12) (2014). “A required service is one that is imposed by either a lender or by Federal, state or local government as a precondition of sale.” *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593, at 170,524 n.2.

The settlement statement prepared by the title company for the sale of Mr. Cellos's home indicated that he paid the HOA two "transfer fees" of \$150 each. After the sale, an HOA representative told Mr. Cellos, in an email message that he provided to the Board, that the association charges its members the fees when they sell their homes to offset the costs of "providing . . . information . . . to other entities like mortgage companies, title companies, loan officers, realtors, [and] taxing authorities . . . , then . . . chang[ing] the records to clear that seller from the records of the Association." BSEE acknowledged, in its response to the claim, that this message was evidence that the transfer fees are customarily paid by sellers, but the agency argued that we lacked evidence that the fees were for required services, as the FTR requires. Mr. Cellos responded that he believed it was "self-evident" that the fees were for required services, as the fees are "directly linked to . . . costs incurred by the HOA to dissolve the owner's/seller's contractual agreement . . . attached to the recorded deed," which he argued was a "required service" to allow the transfer of the deed to a buyer.

Before closing the record, the Board invited Mr. Cellos to submit evidence that a lender or a government required the HOA's services as a precondition of sale. In response, Mr. Cellos cited title 11, chapter 207, of the Texas Property Code, titled "Disclosure of Information by Property Owners' Associations." This law requires a property owners' association to provide a copy of the restrictions applicable to the subdivision's deeds, a copy of the association's bylaws, and a "resale certificate" containing detailed information about the association's finances and regulatory compliance, within ten business days of a written request by a homeowner or the homeowner's designated agent. Tex. Prop. Code Ann. § 207.003(a)-(b) (West 2012). Thereafter, the association must provide an updated resale certificate within seven days of a written request. *Id.* § 207.003(f). The association "may charge a reasonable fee" to prepare and deliver documents in compliance with the statute. *Id.* § 207.003(c). If the association fails to deliver the documents after two written requests, a homeowner may sue for specific and (limited) monetary relief and may provide an affidavit of nonreceipt to a buyer in lieu of a resale certificate. *Id.* § 207.004. BSEE did not respond to Mr. Cellos's statutory citation within the fourteen days afforded by the Board.

Although Mr. Cellos's argument has changed somewhat over time, a preponderance of the evidence indicates that he paid the HOA a total of \$300 for services required by the Texas Property Code. Initially, the HOA suggested, and Mr. Cellos argued, that the sole justification for the two transfer fees was to defray the HOA's costs of fielding inquiries from third parties and updating its membership records. Once Mr. Cellos referred the Board to the applicable provisions of the Texas Property Code, however, it became apparent that state law required the HOA to provide two resale certificates. While the settlement statement lacks specificity, the charging of two fees, rather than one, is consistent with the statutory requirement to provide two certificates, and the amount of each fee is reasonable for those services. BSEE declined the opportunity to comment on the applicability of the Texas

Property Code. It therefore appears more likely than not that the HOA charged Mr. Cellos for the two certificates required by the statute. Mr. Cellos has accordingly met his burden of proof by a preponderance of the evidence and is entitled to reimbursement for the fees.

Decision

The claim is granted.

KYLE CHADWICK
Board Judge