



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 30, 2016

CBCA 5332-RELO

In the Matter of ADELLA O'HARA

Adella O'Hara, San Antonio, TX, Claimant.

Capt. Peter S. Reith, Assistant Staff Judge Advocate, Headquarters, Air Force Academy, Department of the Air Force, Colorado Springs, CO, appearing for Department of the Air Force.

GOODMAN, Board Judge.

Claimant Adella O'Hara is a civilian employee of the Department of the Air Force. She has asked this Board to review the agency's denial of reimbursement of certain expenses she incurred when she sold her home at her old duty station incident to a permanent change of station (PCS) transfer.

Factual Background

Claimant was issued PCS orders to transfer from Colorado Springs, Colorado, to Joint Base San Antonio Randolph Air Force Base, Texas, in July 2015 and her orders authorized reimbursement of real estate expenses. The agency denied reimbursement of expenses in the amount of \$619.50 that claimant incurred with regard to an Inspection Resolution contract between herself and the buyer of her home at her old duty station. She states:

When my home was being sold, we entered negotiations with a buyer through an "Inspection Resolution" contract. The house was inspected (buyer purchased) in which the inspector found a variety of items that he felt needed to be fixed prior to receiving approval to purchase my house. After the items were identified I specified what items would be corrected in an "Inspection Resolution" contract in which the buyer and seller agreed. The buyer agreed

to my terms and conditions so I proceeded to fix the items identified in the modified “Inspection Resolution” contract in order for the sale of the home to proceed. These items had to be completed prior to [the buyer] purchasing the house so the date agreed for these items to be completed was 7/13/15. If these items had not been fixed the buyer would have not bought the home.

The “Inspection Resolution” contract was included in my initial package along with the receipts which totaled \$619.50 for verification. The “Inspection Resolution” is a contract between the buyer and seller. This is not insurance nor is it considered additional fees. Since these are actual expenses that were paid in accordance to the “Inspection Resolution” contract I would assume these would be considered incidental expenses since they are related or accompanied the sale of my home.

In support of the expenses incurred pursuant to the Inspection Resolution contract, claimant submitted receipts totaling \$619.50 for repairing bathroom leaks; sealing the garage wall with fire-resistant material; cleaning, checking, and repairing the furnace; evaluation and repair of the oven to place it in working order; evaluation and repair of glass in the entry door; and supplying a remote control for a ceiling fan.

Discussion

Claimant initially asserts that the expenses incurred pursuant to the Inspection Resolution contract for repairs required by the buyer as a condition for buying her home at her old duty station are reimbursable pursuant to the Joint Travel Regulations (JTR) and Federal Travel Regulation (FTR) which read in substantially similar language:

Expenses in connection with environmental testing and property inspection fees when required by Federal, State, or local law; or by the lender as a precondition to sale or purchase.

41 CFR 302-11.200 (f)(11)(2015)((FTR 30211.200(f)(11)); see JTR 5912 A.4.a(11).

In her reply to the agency’s report, claimant asserts that the expenses at issue “have nothing to do with maintaining my home” and alternatively states that the expenses should be reimbursable as a Miscellaneous Expense Allowance (MEA) for disconnecting/connecting appliances and utilities associated with an authorized/approved PCS. JTR 5814A.

The expenses incurred by claimant were not those within the FTR and JTR provisions cited by claimant, as they were not 1) environmental testing or property inspection fees required by federal, state, or local law; 2) required by the lender as a precondition of sale; or 3) incurred for disconnecting/connecting appliances and utilities. Rather, the expenses were repairs to the property as the result of an agreement between claimant and the buyer, and required by the buyer as a precondition of sale.

The agency correctly denied reimbursement for these expenses. JTR 5912 A.4.b(4) and FTR 302-11.202(f) expressly provide that operating or maintenance costs are not recoverable in connection with either the sale or purchase of a residence. The types of repairs for which claimant seeks reimbursement are precisely the type of maintenance costs that fall within these provisions of the JTR and FTR. *See, e.g., Herbert Austin*, CBCA 1241-RELO, 09-1 BCA ¶ 34,066; *Sandra L. Wilks*, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962 (upgrade of wood stove and installation of downspouts); *Janeen H. Rosenberg*, GSBCA 15591-RELO, 01-2 BCA ¶ 31,614 (various costs of repairs and cleaning); *Thomas E. Sullivan*, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339 (plumbing repairs); *George S. Chaconas*, GSBCA 14278-RELO, 98-1 BCA ¶ 29,728 (Correction of deficiencies required to be completed in order to make a home saleable - even when the requirement was not in effect at the time the residence was completed - are operating and maintenance expenses which the FTR expressly states are not reimbursable residence transaction expenses.).

The fact that claimant incurred these expenses immediately before she sold her house—to put systems in working order and to satisfy a potential buyer that the house has been properly maintained—does not deem the expenses to be incidental to the sale of the home. The Government is not obligated to reimburse such expenses when an employee is transferred, and there is no entitlement to reimbursement even though claimant performed these repairs as a pre-condition for the buyer to purchase her home.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge