



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 29, 2016

CBCA 5265-RELO

In the Matter of WILLIAM C. NUSBAUM

William C. Nusbaum, Englewood, OH, Claimant.

Dominique C. Jeter, Civilian Personnel Officer, Department of the Air Force, Joint Base Andrews Air Force Base, MD, appearing for Department of the Air Force.

KULLBERG, Board Judge.

Claimant, Mr. William C. Nusbaum, seeks reimbursement of the expenses that he incurred from the sale of his home at his previous permanent duty station (PDS). The Department of the Air Force (USAF) determined that the sale was not incident to his transfer. For the reasons stated below, the Board finds that Mr. Nusbaum is entitled to reimbursement for those allowable expenses related to the sale of his home, and this matter is remanded to the USAF to determine the amount of reimbursement.

Background

By orders dated January 21, 2015, the USAF transferred Mr. Nusbaum from his previous PDS at Fort Lee, Virginia, to Wright Patterson Air Force Base, Ohio. Mr. Nusbaum's orders provided for reimbursement of real estate transaction expenses, and his orders also reflected that he had executed a transportation agreement on December 31, 2014. Mr Nusbaum executed a contract for the sale of his home at his former PDS on May 1, 2015.

On October 14, 2015, Mr. Nusbaum submitted his claim for reimbursement of expenses related to the sale of his home at his former PDS. His claim totaled \$27,792.17. By letter dated March 9, 2016, the USAF denied Mr. Nusbaum's claim because he had placed his home on the market with a realtor on September 12, 2014, which was before the vacancy announcement for his current position was issued in December of 2014. Under those circumstances, the USAF determined that sale of his home was not incident to his transfer.

Discussion

The issue in this matter is whether the USAF can deny Mr. Nusbaum reimbursement for the expenses he incurred from the sale of his home because he listed his home with a realtor before he applied for his current position even though the sale of his home occurred after his transfer. Statute provides for reimbursing a transferring employee for expenses related to the sale of a residence at his or her old PDS. 5 U.S.C. § 5724a(d)(1) (2012). The Federal Travel Regulation (FTR), which applies to Mr. Nusbaum, provides that "reimbursement of any real estate transaction expenses . . . that occur[] prior to being officially notified (generally in the form of a change of station travel authorization) is prohibited." 41 CFR 302-11.305 (2014) (FTR-302-11.305). The Joint Travel Regulations (JTR), which also apply to Mr. Nusbaum, state that "[e]xpenses incurred before receipt of a written or oral order are not reimbursable unless the agency has manifested a clear 'administrative intent' to transfer the employee when the costs are incurred and subsequently issues orders authorizing reimbursement." JTR 2200-D.3. This Board has recognized that an agency may properly deny reimbursement for all expenses related to an employee's sale or purchase of a residence when "entered into prior to the agency's manifestation of an intent to transfer the employee." *Timothy A. McCoy*, CBCA 5003-RELO, 16-1 BCA ¶ 36,325, at 177,088.

In this case, the USAF denied Mr. Nusbaum's claim because he listed his home with a realtor before any of the events relevant to his transfer. It is well established, however, that "[t]he mere listing of property with a realtor does not constitute a contract for its sale." *Elizabeth Ann Moore*, B-173229 (Oct. 21, 1971). This Board has held that the date on which an employee became obligated to purchase or sell a home "is the date that is used to evaluate eligibility for reimbursement of the costs incurred at closing." See *Jorge L. Gonzalez*, CBCA 984-RELO, 08-2 BCA ¶ 34,004, at 168,161-62. Although Mr. Nusbaum acknowledges that he listed his home with a realtor for personal reasons unrelated to his eventual transfer, that listing agreement was not a contract with a purchaser for the sale of his home. It is the date that he contracted for the sale of his home that is relevant to whether the sale of his home was incident to his transfer. Mr. Nusbaum contracted for the sale of his home after his transfer, and he is entitled under statute and regulation to reimbursement for those allowable expenses that he incurred from that sale.

The USAF, consequently, erred in denying Mr. Nusbaum's claim. To the extent that the contract for the sale of Mr. Nusbaum's home created an obligation for him to pay certain expenses related to that sale, he is entitled to reimbursement of those expenses that are allowable under statute and regulation. The Board, accordingly, remands this matter to the USAF to determine the amount of reimbursement consistent with this decision.

H. CHUCK KULLBERG
Board Judge