



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 17, 2017

CBCA 5581-RELO

In the Matter of BRIAN D. SZYDLIK

Brian D. Szydlik, Hanover, MD, Claimant.

Amanda R. Fuller, Deputy District Counsel, Sacramento District, Army Corps of Engineers, Sacramento, CA, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Army Corps of Engineers transferred Brian D. Szydlik from California to Maryland in the interest of the Government. He reported for duty in Maryland in March 2014. In conjunction with the move, Mr. Szydlik sold his former residence in California. The Corps reimbursed him for all the costs he claimed as transaction expenses, save one: \$4050 he paid to Parkway Company, LLC (PWC) at settlement. Mr. Szydlik challenges the Corps' determination that this fee was not a reimbursable transaction expense.¹

The chief financial officer of PWC provided to Mr. Szydlik a statement regarding the fee charged by his company. We summarize the statement as follows: PWC developed the subdivision which included the employee's former residence. Working with the city in which the land is located, the company built roadways and otherwise developed the property.

¹ Mr. Szydlik filed this case with the Board on December 13, 2016. He attached to his filing a note which reads: "3rd submission; NO previous response. Previously sent 13 Sep 14, 1 Jun 15, now 2 Dec 16." If Mr. Szydlik did ask us to review this matter earlier than December 9, 2016, when he gave it to a private courier service to deliver to the Board, we have no record of such a request. The Corps has stated that it did not receive an earlier request, either.

It then sold lots to builders, each of whom constructed homes and sold them to individuals. As a condition of the sale of the lots, PWC required that a transfer fee of one percent of the sales price be paid to the company “on each transfer of each property” in the development. “The imposition of the fee was required simply as part of the economic consideration of the initial sales of the lots to the builders of those homes.” The fee does not cover landscaping, maintenance, or security within the subdivision; a homeowners association pays for those expenses. PWC has “little ongoing involvement in the developed portions of the project.”

Discussion

By statute, “an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station . . . , when the old and new official stations are located within the United States.” 5 U.S.C. § 5724a(d)(1) (2012). Specific rules implementing this law are established in the Federal Travel Regulation (FTR). *Id.* (citing *id.* § 5738). Part 302-11 of the FTR contains these rules. One provision, 41 CFR 302-11.200 (2013), delineates reimbursable transaction expenses, and another proscribes reimbursement for other expenses, *id.* 302-11.202. Reimbursable expenses include transfer taxes and “[o]ther fees and charges similar in nature to those listed [including transfer taxes], unless specifically prohibited.” *Id.* 302-11.200(f)(4), (6). Mr. Szydlik contends that the fee he paid to PWC is reimbursable because it is like a transfer tax. Fees and charges which are specifically prohibited include “[e]xpenses that result from construction of a residence,” unless they are “comparable to expenses that are reimbursable in connection with the purchase of an existing residence.” *Id.* 302-11.202(h) (referencing *id.* 302-11.200(f)(10)). The Corps maintains that the fee is not reimbursable because it is in the nature of an expense that resulted from construction.

The FTR’s rules regarding reimbursability of expenses associated with the sale of a residence work neatly when applied to fee simple transfers of real property. The rules are not designed, however, to apply to transfers of property which is part of a homeowners’, cooperative, or condominium association. These fees “come in many shapes and sizes,” *Richard J. Brenner*, GSBCA 15309-RELO, 00-2 BCA ¶ 31,014, and determining which are reimbursable and which are not has generated many cases for resolution by this Board and its predecessors in settling employee relocation claims (the General Accounting Office – now known as the Government Accountability Office – and the General Services Board of Contract Appeals).

In these cases, the decision-maker has determined that association fees which are similar to expenses made reimbursable by the FTR are reimbursable, and conversely, such fees which are similar to non-reimbursable expenses are not. *See, e.g., Brenner* (some fees reimbursable, others not); *Ronald R. Chronister*, B-177947 (June 7, 1973) (same). Fees

which have been found to be reimbursable include those for the provision of information to mortgage companies, title insurance companies, loan officers, realtors, and taxing authorities, as required by state law (*Gregory Cellos*, CBCA 5015-RELO, 16-1 BCA ¶ 36,430); those paid to a charitable endowment as a condition of securing a mortgage loan (*Wilbur W. Bhagat*, CBCA 1616-RELO, 09-2 BCA ¶ 34,280); and those obligated to be paid to public entities, such as city governments or agencies, as a condition of sale (*Nick V. Colucci*, GSBCA 16424-RELO, 04-2 BCA ¶ 32,719; *Marshall V. Washburn*, B-248301 (Sept. 25, 1992)).

Fees which have been found not to be reimbursable include those paid by buyers for membership in homeowners', condominium, or cooperative associations (*Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593; *Daniel T. Mattson*, CBCA 654-RELO, 07-2 BCA ¶ 33,635; *James A. Fairley*, B-258932 (Sept. 19, 1995); *Herbert W. Everett*, 60 Comp. Gen. 451 (1981)); community enhancement fees for maintenance or landscaping of the association's property (*Andreas Frank*, CBCA 557-RELO, 07-1 BCA ¶ 33,531; *Keith E. Mullnix*, B-216973 (Apr. 22, 1985)); and a "flip tax" paid to the association for the privilege of selling the residence on the open market, rather than to the association (*Irwin Bernstein*, GSBCA 14327-RELO, 98-1 BCA ¶ 29,596; *Ethan F. Roberts*, B-230741 (Sept. 19, 1988); *William D. Landau*, B-226013 (Oct. 28, 1987)).

The fee Mr. Szydlik paid to PWC when he sold his former residence is not like any of the fees described above. It was clearly not for the provision of administrative services or a condition for securing a mortgage loan. Nor could it be deemed akin to a transfer tax, for a "tax" involves payment to a public entity, and PWC is a privately-owned company. See *Webster's Third New International Dictionary* 2345 (1986): "tax: a [usually] pecuniary charge imposed by legislative or other public authority upon persons or property for public purposes"; *Black's Law Dictionary* 1685 (10th ed. 2014): "tax: [a] charge, [usually] monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue"). At the same time, the fee paid to PWC was not for membership in an association, for Mr. Szydlik was leaving the area, not joining it. And the fee was not for maintenance or landscaping of the association's property, for PWC does not perform those functions. Nor was the fee for the privilege of selling the residence on the open market; the seller had no choice but to pay the fee. Further, we cannot agree with the Corps that the fee was for something like construction of a residence, since neither Mr. Szydlik nor PWC was constructing anything associated with the sale.

We consider this fee to be best described as an encumbrance on the property, something which affected the market value of the residence – much as a lien against the property, an easement across some of the land, or a zoning restriction would affect the value. Any owner of a house in the development should know that when he sells his residence, he

will receive whatever the buyer pays, less one percent of that amount. A diminution in market value is not an expense of sale and is therefore not reimbursable by the Government on the occasion of the employee's transfer.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge