



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 7, 2020

CBCA 6549-RELO

In the Matter of TIMOTHY W. PETERS

Timothy W. Peters, Harrisburg, PA, Claimant.

Deborah Gerchow, Travel Section, Processing Services Branch, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

KULLBERG, Board Judge.

Claimant, Timothy W. Peters, seeks reimbursement of closing costs, which he incurred after purchasing a home at his new duty station. The agency, the Department of Agriculture (USDA), contends that Mr. Peters' claim is for costs paid by the seller, which are not reimbursable. For the reasons stated below, the Board remands the claim to the agency for further action consistent with this decision.

Background

On or about April 19, 2019, Mr. Peters purchased a home at his new duty station. The sales agreement provided, in pertinent part, "Seller will pay \$7000 . . . toward [b]uyer's costs." The contract did not specify which closing costs were to be paid from that credit. The documentary record of Mr. Peters' home purchase included an American Land Title Association (ALTA) statement and a closing disclosure statement, which set forth the final terms of his loan. The ALTA statement showed a \$7000 credit to Mr. Peters and a debit to the seller in that same amount, but the closing disclosure statement did not show that credit. Both the ALTA statement and the closing disclosure statement listed the following closing costs:

Processing Fee	\$ 655.00
Appraisal Fee	\$ 505.00
Credit Report	\$ 15.43
Settlement Fee	\$ 50.00
ALTA Short Loan	\$ 100.00
Closing Protection Letter	\$ 125.00
Lender's Policy	\$1942.70
Courier Fee	\$ 42.69
E-Doc Fee	\$ 40.00
Notary Fee	\$ 25.00
Wire Fee	\$ 25.00
Recording Fee (Deed)	\$ 106.75
Recording Fee (Mortgage)	\$ 142.75

The ALTA statement showed those costs, which totaled \$3775.32, as a debit to Mr. Peters, but the closing disclosure statement showed that the seller paid those costs. The ALTA statement showed a debit in the amount of \$2900 for county and state stamp taxes, but the closing disclosure statement showed that Mr. Peters paid \$1450 for the county stamp tax and \$1228.52 for the state stamp tax.

Mr. Peters submitted his claim to the USDA for the above-described closing costs. The USDA determined that he was entitled only to reimbursement of the state and county tax stamps, which totaled \$2678.52, and the remaining closing costs in his claim had been paid by the seller. Additionally, the USDA noted that the closing disclosure statement showed that Mr. Peters had paid other closing costs, which totaled \$7060.77, but those costs were not reimbursable.¹

Mr. Peters subsequently submitted his claim to the Board for the portion of his claim that was not reimbursed. His claim did not dispute the amount of reimbursement for city and county tax stamps. The USDA's agency report contended that Mr. Peters was not entitled to any additional reimbursement because the closing disclosure statement showed that those remaining closing costs in his claim were paid by the seller. In his reply, Mr. Peters contended that the ALTA statement showed that he had paid those closing costs set forth in his claim. He also argued that the seller's credit of \$7000 should be applied to those closing costs that were not reimbursable.

¹ Those costs included: homeowners insurance premium, \$991; prepaid interest, \$60.78; homeowners insurance for three months, \$247.74; property taxes, \$3103.80; town property taxes, \$831.35; real estate commission, \$1450; and title owner policy, \$376.10.

Discussion

The issue in this matter is whether Mr. Peters is claiming closing costs that he incurred and, if so, the extent to which the seller's credit would limit reimbursement of those expenses. Statute provides that the Government will reimburse certain real estate transaction expenses that an employee incurs when transferring to a new permanent duty station. 5 U.S.C. § 5724a(d) (2018). The Federal Travel Regulation (FTR) provides for the reimbursement of real estate transaction expenses customarily charged to the purchaser of a residence at a new duty station. 41 CFR 302-11.200 (2018) (FTR 302-11.200). However, the Government will not reimburse such expenses that were not paid by the employee or a member of his or her immediate family. *Id.* 302-11.303.

In *Christy L. Paulk*, CBCA 5669-RELO, 18-1 BCA ¶ 36,961 (2017), the Board addressed facts similar to those presented in this matter. The Board stated the following:

In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement, which delineates what expenses are paid for by the buyer and what expenses are paid for by the seller. *See, e.g., Terence L. Lynch*, GSBCA 16678-RELO, 06-1 BCA ¶ 33,153 (2005); *Marion L. Ladd*, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890. We have also explained that “in the absence of any contractual agreement allocating the seller's credit to specific items, it is appropriate to apply the credit to the nonreimbursable expenses first.” *James C. Dalton*, CBCA 896-RELO, 08-1 BCA ¶ 33,743, at 167,045 (2007) (citing *Neal R. Eckrich*, CBCA 813-RELO, 07-2 BCA ¶ 33,663); *see also Cheryl A. Paulin*, CBCA 3818-RELO, 14-1 BCA ¶ 35,719; *Michelle D. Thomas*, CBCA 3572-RELO, 14-1 BCA ¶ 35,561 (same rule for lender credits).

Id. In *Paulk*, the Board found that the seller had provided the claimant with a cash credit, and the ALTA statement showed that the claimant had paid various closing costs. The closing disclosure statement, however, divided those costs between the claimant and the seller, but the Board noted that the closing disclosure statement did not show any evidence of an agreement between the buyer and seller as to how the cash credit should have been applied to the various closing costs. The Board remanded the matter to the agency to determine whether the contract for the purchase of the property apportioned the cash credit to any particular closing costs.

As was the case in *Paulk*, the closing disclosure statement here showed the seller as paying the closing costs at issue, but the ALTA statement showed that the buyer, Mr. Peters, paid those same closing costs. The contract for the purchase of Mr. Peters' home showed

that he and the seller agreed that the \$7000 cash credit was not to be apportioned to any particular closing cost or costs. Consistent with *Paulk*, the Board finds that the USDA should have first apportioned the \$7000 credit to Mr. Peters' nonreimbursable closing costs, which were in excess of \$7000. The USDA, consequently, erred in finding that the remaining closing costs set forth in Mr. Peters' claim, which totaled \$3775.32, were paid by the seller, and Mr. Peters is entitled to a reimbursement up to that amount provided those expenses are reimbursable under the relevant travel regulations (generally, FTR 302-11.200 to .202). The USDA has not made such a determination, and, accordingly, the Board remands this matter to the USDA for such a review of Mr. Peters' claim. *See James C. Dalton.*

Decision

The Board remands this matter to the agency for further review consistent with this decision.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge