



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 14, 2020

CBCA 6697-RELO

In the Matter of ELSA Q. NEWLAND

Elsa Q. Newland, Claimant.

Candy L. Nimey, Financial Analyst, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

SOMERS, Board Judge (Chair).

The agency has submitted this claim on behalf of claimant, Elsa Q. Newland, an employee of the Department of Defense. Claimant seeks review of the agency's decision to deny reimbursement of a portion of the real estate expenses she incurred when she sold her house as a result of a transfer from one duty station to another. The Defense Finance and Accounting Service (DFAS) contends that claimant has not met her burden of proof that payment of such costs is customary. We agree and deny the claim.

Background

In April 2018, the agency issued claimant orders to transfer from one duty location to another. When she submitted her claim for real estate expenses resulting from the sale of her home, she sought reimbursement of \$28,330.50. The agency granted the majority of her claim, but denied reimbursement of \$3700, because that amount had been identified as a "seller's credit," which is not reimbursable.

Among her supporting documents, claimant provided a letter from a broker stating that it is customary for sellers to pay buyer closing costs up to 3% of the sales price of the home, and that the amount paid by claimant represented less than 1% of the sales price. In

addition, claimant provided data covering a one-year period of time that indicated that seller credits were paid in 18% of sales in her local community. Claimant supplemented her documentation with data covering a longer period of time for 46,342 homes sold between 2014 and 2018. However, the information provided did not indicate the total number of homes sold in the area of claimant's former residence and included in neighborhoods more than fourteen miles away.

Under the Federal Travel Regulation (FTR), the seller of a residence is entitled to reimbursement for costs that are "customarily charged to the seller of a residence in the locality of the old official station." 41 CFR 302-11.200 (2018) (FTR 302-11.200). The Joint Travel Regulations (JTR), which also apply to claimant, similarly limit reimbursement of certain costs related to the sale of a home to those "customarily paid in the location of the residence with . . . appropriate supporting documentation provided by the . . . employee." JTR 054504-D. In *Thomas D. Martin*, CBCA 5082-RELO, 16-1 BCA ¶ 36,324, we summarized how a claimant can establish that a seller's credit toward a buyer's closing costs is an expense customarily paid by the seller:

This Board has long recognized that "[a]n expense is 'customarily' paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community." *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (quoting *Christopher L. Chretien*, GSBICA 13704-RELO, 97-1 BCA ¶ 28,701 (1996)). The claimant must prove by a preponderance of the evidence that a buyer's closing costs are "customarily" paid by the seller in the community where the residence is located. *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA ¶ 36,192, at 176,574 (2015). This burden may be met by showing "specific evidence of the number and percentage of sales in the same community, over a substantial period of time, that involved seller contributions to buyer's closing costs." *Id.* at 176,575. On the other hand, "[l]etters from realtors asserting only that many, or even most, sellers contribute to buyers' closing costs, unaccompanied by concrete data, do not generally suffice to establish that a practice is customary." *Id.*

Alternatively, a claimant may meet the burden of proof by showing "that a cost is allocated to a particular party in a preprinted sales form." *Joseph B. Wade*, GSBICA 15889-RELO, 03-1 BCA ¶ 32,128 (2002).

Reviewing the data submitted by claimant, we cannot conclude that home sellers in the area of her former residence customarily pay some portion of a buyer's closing costs. The percentage of home sales included in her data, specifically, that sellers contributed to

closing costs in 18 % of home sales, comes nowhere near to the expected showing of a commanding majority of such home sales. For the same reasons described in *Kevin T. Lyster*, CBCA 5853-RELO, 18-1 BCA ¶ 39,924 (2017), we deny the claim.

Jerí Kaylene Somers
JERI KAYLENE SOMERS
Board Judge