



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 5, 2016

CBCA 5362-RELO

In the Matter of JOSH SHERMAN

Josh Sherman, Menomonie, WI, Claimant.

Robin L. Kelley, Branch Chief, Natural Resources Conservation Service, Department of Agriculture, Tolland, CT, appearing for Department of Agriculture.

RUSSELL, Board Judge.

Josh Sherman has requested that the Board review the decision of the Department of Agriculture denying his claim for \$6415.50 for a home marketing incentive payment. He requested the payment in conjunction with the sale of his home at his prior duty station before his April 2016 relocation to Wisconsin for another position with the Natural Resources Conservation Service. Mr. Sherman states that he relied on agency advice that he had to either sell his home himself or use a relocation company to receive the incentive payment. Mr. Sherman did not use a relocation company but instead sold his home himself. He subsequently submitted a voucher for an incentive payment. The agency denied Mr. Sherman's request for the payment because he did not select the "relocation option" to complete the sale of his home. For the reasons stated below, we affirm the agency's decision.

Discussion

Federal agencies may provide a home marketing incentive payment to those employees selling their home at one location and relocating to another for the benefit of the Government. 5 U.S.C. § 5756 (2012). For the employee to receive this payment, three requirements must be satisfied: (1) the employee must enter the residence being sold into the agency's relocation services program to arrange for the purchase of the residence; (2) the employee must find a buyer who completes the purchase of the residence through the

program; and (3) the sale of the house must result in a reduced cost to the Government. *Id.* The Federal Travel Regulation (FTR), which implements the statutory provision, describes the purpose of and requirements to receive payment under the program as follows:

§ 302-14.2 What is the purpose of a home marketing incentive payment?

The purpose of a home marketing incentive payment is to reduce the Government's relocation costs by encouraging transferred employees to participate in their employing agency's homesale program to independently and aggressively market, and find a bona fide buyer for their residence. This significantly reduces the fees/expenses their agencies must pay to relocation services companies and effectively lowers the cost of such programs.

41 CFR 302-14.2 (2016).

§ 302-14.5 Under what circumstances will I receive a home marketing incentive payment?

You will receive a home marketing incentive payment when:

- (a) You enter your residence in your agency's homesale program;
- (b) You independently and aggressively market your residence;
- (c) You find a bona fide buyer for your residence as a result of your independent marketing efforts;
- (d) You transfer the residence to the relocation services company;
- (e) Your agency pays a reduced fee/expenses to the relocation services company as a result of your independent marketing efforts;
- (f) You meet any additional conditions your agency has established, including but not limited to, mandatory marketing periods, list price guidelines, closing requirements, and residence value caps; and
- (g) Your agency has established a home marketing incentive program.

41 CFR 302-14.5.

The Board has consistently denied claims for a home marketing incentive payment when any of these regulatory requirements is not met. *Christopher L. McConnell*, CBCA 3455-RELO, 14-1 BCA ¶ 34,489; *Adella Hansen*, CBCA 819-RELO, 07-2 BCA ¶ 33,667. Here, it appears that, based on the advice of an agency employee, Mr. Sherman inadvertently selected not to participate in the home marketing incentive program. He sold his home himself instead of using a relocation company, as required by regulation. Mr. Sherman contends that the cost to the Government related to the sale of his home would have been the same if he had received and, presumably followed, correct information from the agency regarding the incentive program. However, by not using a relocation company, Mr. Sherman deprived the agency of information required to make its own determination of any cost savings in fees or expenses to the Government from the sale of his home. Accordingly, the agency was unable to assess Mr. Sherman's eligibility for an incentive payment, and properly denied his request for such payment.

It is regrettable that Mr. Sherman relied on incorrect advice from his employer in deciding to sell his home himself instead of using a relocation company. However, as has previously been noted by the Board, "even if an employee relies to his detriment upon the erroneous advice of seemingly knowledgeable agency employees, we cannot order payment if payment would contravene the requirements of a statute or regulation." *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205.

Decision

The claim is denied.

BEVERLY M. RUSSELL
Board Judge