



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 8, 2019

CBCA 6313-RELO

In the Matter of WENDE J. THORNTON

Wende J. Thornton, Athens, AL, Claimant.

Rachel A. Acevedo, Human Capital Management Specialist, 20th Chemical, Biological, Radiological, Nuclear, and Explosives Command, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

DRUMMOND, Board Judge.

In 2017, the Department of the Army, agency, transferred Wende J. Thornton from Pine Bluff, Arkansas, to Redstone Arsenal in Alabama. Incident to the permanent change of station (PCS), Ms. Thornton sold her house in Sheridan, Arkansas, in August 2018. Subsequently, she filed a claim for reimbursement of the real estate expenses she incurred with respect to the sale of her house. The agency denied her claim for \$325 for an owner's title insurance policy premium, \$272.13 for a termite inspection, and \$6000 for seller-paid closing costs because it considered these expenses unallowable under the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR). Ms. Thornton seeks review of the agency's denial of reimbursement of these costs. For the reasons explained below, we affirm the agency's decision.

Owner's Title Insurance

Under the FTR and JTR, the cost of the owner's title insurance is reimbursable to the extent that it does not exceed the amounts customarily paid in the locality and only if it was a prerequisite to financing or the transfer of the property or was inseparable from the cost of other insurance that was a prerequisite. 41 CFR 302-11.200(f)(9) (2016) (FTR 302-11.200(f)(9)); JTR 5912-A.4.a(9). The JTR specifically requires that claimant provide

appropriate “supporting documentation” to prove that the amount claimed is customarily paid in the residence locality. JTR 5912-A.4; *James W. Orr*, CBCA 6218-RELO, slip op. at 4 (Nov. 20, 2018) (holding that a letter from a realtor representing that payment of owner’s title insurance was “commonly” a seller’s expense fell short of showing such a payment was customary). It is the claimant’s burden to provide proof of the financing requirements. *Yongping Yuan*, CBCA 5889-RELO, 18-1 BCA ¶ 36,945, at 180,039 (citing *Jeffrey B. Hicks*, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083, at 158,607).

Ms. Thornton produced two letters, one from the title insurance company and one from a realtor, in an effort to persuade us that her payment of the owner’s title insurance was customary in Sheridan, Arkansas. The letter from the realtor represented that owner’s title insurance “is typically issued on a sale.” The realtor continued by stating that title insurance is required on “99%” of all sales. The letter from the title company represented that the owner’s title insurance policy is commonly a seller’s expense. Ms. Thornton also produced a two-page closing statement, which includes a single line item under other costs for an owner’s title insurance (optional) policy in the amount of \$325. None of Ms. Thornton’s evidence is supported by any hard data or specifics.

The agency responded that conversations with several title agencies in the location of the residence confirmed that the owner’s title insurance fee is optional to the seller as stated on the closing statement. The agency concluded that Ms. Thornton had failed to show that this insurance was a prerequisite to financing or the transfer of the house. Ms. Thornton’s supporting documentation does not prove otherwise. Therefore, she is not entitled to be reimbursed for this expense and the agency properly denied her request for reimbursement.

Termite Inspection

Ms. Thornton seeks reimbursement of \$272.13 for a termite inspection. Pursuant to the FTR and the JTR, expenses in connection with environmental testing and property inspection are reimbursable only if they are: (a) customarily paid by the seller of a residence in the locality in question, (b) in an amount no greater than is customarily paid in that locality, and (c) required by federal, state, or local law, or by the lender as a precondition to the purchase. FTR 302-11.200(f)(9); JTR 5912-A.4a(11). This amount was properly denied as Ms. Thornton has failed to provide any documentation to satisfy these requirements. Accordingly, this expense is not reimbursable. Hence, the agency properly denied her request for reimbursement of the termite inspection fee.

Sellers Paid Closing Costs

Ms. Thornton seeks reimbursement of \$6000 for the seller-paid closing costs. Under the 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.” FTR 302-11.200. The JTR similarly limit reimbursement of certain costs related to the sale of a home to those “customarily paid in the residence locality with appropriate supporting documentation provided by the employee.” JTR 5912-A.4.a. The claimant has the burden of establishing by a preponderance of the evidence that “it is customary for the seller to assume . . . [some or all] of the buyer’s closing costs in the locality of the residence sold.” *Gary J. Maynard*, CBCA 5751-RELO, 17-1 BCA ¶ 36,874, at 179,174 (quoting *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930, at 171,748); *Thomas D. Martin*, 5082-RELO, 16-1 BCA ¶ 36,324, at 177,087. “An 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 the community.” *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727, at 170, 991 (quoting *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827 (2001)). As for proof, a letter from a realtor is acceptable if it includes “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.” *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA ¶ 36,192, at 176,575 (2015).

Ms. Thornton’s evidence, which is a letter from a realtor, asserts that the market in Sheridan, Arkansas, “is still considered a buyer’s market so that it is expected that the Seller pays buyers Closing Costs and fees.” The letter is not supported by any evidence of sales in the community over a period of time and therefore falls short of establishing that the payment was customary. Ms. Thornton has not met her burden of proof, and the agency properly denied her claim.

Decision

The claim is denied.

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge