



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 4, 2019

CBCA 6455-RELO

In the Matter of MELVIN J. GUTIERREZ

Melvin J. Gutierrez, Kansas City, MO, Claimant.

Larry R. Booker, Chief, PCS Travel Support Services, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

RUSSELL, Board Judge

Under 31 U.S.C. § 3529 (2012), a disbursing or certifying official or agency head may request a decision from the Board regarding expenses incurred by a federal civilian employee for official travel or relocation expenses incident to a transfer of official duty station. The Board's response to the agency's request is referred to as an "advance decision." *Danny Dean Butrick*, CBCA 515-RELO, 07-1 BCA ¶ 33,527, at 166,106, n.1; *Andrew W. Frank*, GSBGA 16919-RELO, 06-2 BCA ¶ 33,364, at 165,403.

The Department of Veterans Affairs (VA) has asked the Board whether it can reimburse an employee for relocation expenses under the Federal Travel Regulation (FTR) when the employee seeks to combine two separately deeded parcels of land for sale after official notification of transfer. For the reasons set forth below, we conclude that it can.

Background

On January 17, 2019, Melvin J. Gutierrez received notification of an intra-agency transfer, which he accepted the following day. The VA issued an official travel authorization on February 12, 2019, which authorized reimbursement of Mr. Gutierrez's residence transaction expenses in connection with his transfer from Marion, Illinois, to Kansas City, Missouri. But before Mr. Gutierrez listed his home, VA personnel perceived a potential

issue with his eligibility for full reimbursement in light of the fact that his residence comprised two separately deeded parcels at the time of the transfer notification.

The property in question was a single parcel measuring 24.77 acres when Mr. Gutierrez originally purchased it on January 4, 2011. Three years later, Mr. Gutierrez sought to use his veterans benefits to acquire a home loan to build a residence on the property. However, due to acreage limits, the VA required the property to be partitioned to qualify for a loan; Mr. Gutierrez complied. The smaller parcel on which the home is located covers 2.76 acres, and the larger parcel with a pole barn makes up the remaining 22.01 acres. None of the property is used to generate income. Mr. Gutierrez and his wife are listed on the titles for each parcel and have the right to convey interest.

Although neither parcel is landlocked by the other and each can be accessed by a shared driveway, the local realtors—on whose professional opinion the VA relies—aver that it would be “nearly impossible” to sell the parcels separately. The utility of the property comes from using both parcels as a whole, because of the way in which their property lines are drawn. The combined size of the two parcels is not atypical for the local real estate market, which consists of properties ranging from two to fifty acres.

Discussion

Under the Federal Travel Regulation, an agency may reimburse certain residence transaction expenses incurred in connection with a federal employee’s transfer from one official station to another. 41 CFR 302-11.2 (2018). If eligible, an employee may be reimbursed “for the one residence from which [the employee] regularly commute[s] to and from work on a daily basis and which was [the employee’s] residence at the time [the employee was] officially notified by competent authority to transfer to a new official station.” *Id.* 302-11.100. The title to the property must be in the employee’s name solely or jointly with an immediate family member, or the employee must hold a qualifying equitable title interest in the property, before the date on which the employee received notice of the transfer. *Id.* 302-11.101 to .105.

In requesting an advance decision, the VA expresses concern that the FTR could be interpreted to preclude reimbursement of Mr. Gutierrez’s relocation expenses because his residential property comprised two parcels of land at the time he received his transfer notification. The FTR does not define a residence as consisting of a single parcel of land. Review of this Board’s relevant case law, and that of its predecessor boards, does not offer a precedent for a situation in which a residential property is composed of more than one parcel of land. In light of the facts of Mr. Gutierrez’s case, we hold that reimbursing Mr. Gutierrez for the residence transaction expenses he is likely to incur in selling his

property after combining the parcels would not violate the FTR's stated purpose for an allowance of such expenses. *See* 41 CFR 302-11.1 ("The purpose of an allowance for expenses incurred in connection with residence transaction is to reimburse you when you transfer from an old official station to a new official station for expenses that you incur due to . . . [t]he sale of one residence at your old official station, and/or the purchase of a residence at your new official station. . . ."). Therefore, Mr. Gutierrez may be reimbursed for the sale of this property, because the title was jointly in his and his wife's name at the time of notification; the utility of the property comes from both parcels being used as a whole; it would be "nearly impossible" to sell the parcels separately; the parcels were originally purchased as a single parcel and only partitioned to comply with acreage limits for the VA-administered home loan program in which Mr. Gutierrez took part; and the property's total acreage falls well within the range of typical property sizes for the local real estate market. *See id.* at 302-11.308 (limiting reimbursement of expenses incurred for purchase or sale of property to land reasonably related to the residence site); *see also Frank A. Sterbenz*, GSBCA 13662-RELO, 97-1 BCA ¶ 28,871, at 144,004-05.

Decision

We find that Mr. Gutierrez may combine the two parcels of his property for sale and still be eligible for reimbursement of expenses incurred in connection with the residence transaction of his property in the same way that he would be if the property had consisted of a single parcel at the time of notification.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge