



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 1, 2020

CBCA 6863-RELO

In the Matter of LESLIE A. SANTOS

Leslie A. Santos, Claimant.

Megan E. Parker, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant Leslie A. Santos is an employee of the Department of Homeland Security. She has asked this Board to review the agency's denial of reimbursement of closing costs with regard to a residence purchased at her new duty station when she accomplished a permanent change of station (PCS).

Background

Claimant was issued orders for a PCS to report to her new duty station on September 29, 2019. She was authorized reimbursement of real estate transaction costs for purchase of a residence at her new duty station. The agency has denied her request for reimbursement of these costs, and she has requested this Board to review the agency's denial.

On May 2, 2019, claimant submitted a relocation form listing herself and her minor daughter as authorized family members for whom the agency would pay relocation expenses and stating the estimated closing costs for purchase of a residence at the new duty station.

On June 23, 2019, claimant and her fiancée signed a purchase agreement for a property at her new duty station. On July 30, 2019, claimant signed a gift letter, certifying

that she was giving her fiancée thirteen thousand dollars and “no repayment of this gift is expected or implied either in the form of cash or future services of the recipient.” The gift was to be applied to the purchase of the property in the purchase agreement.

At closing on August 28, 2019, claimant’s fiancée was named as the owner of the property on the deed and the borrower on the mortgage instrument. Claimant states that she was not named as an owner on the deed and was not a party to the mortgage because “[t]he mortgage company at [sic] last minute and by mistake left me out of the mortgage commitment.” However, the agency states in its response to this Board:

This account differs significantly from information regarding the sale and mortgage that [claimant] recounted . . . when discussing her travel voucher with a Financial Program Specialist in the [agency] . . . Travel Section. In an email . . . , [claimant] affirmed that the title was solely in [her fiancée]’s name at the time of settlement and recounted the reasons therefore:

[T]he title was coming with [my fiancée] only because he was the only one on the Mortgage. . . . [T]his is what took place on this purchase: Coming back to live in US I was going to need a car, also I have a daughter in college for whom I’m taking/signing students’ loan therefore I needed certain amount of credit available. We planned it like this for credit purposes, he helped me with this and that I can help my daughter.

On October 5, 2019, claimant’s fiancée executed a quitclaim deed transferring title of the property to himself and claimant as joint tenants with right of survivorship. Claimant and her fiancée married in December 2019. On February 11, 2020, claimant requested reimbursement for \$12,924.91 in closing costs associated with the purchase of a new residence. The agency denied claimant’s request, as it determined that claimant was not eligible for reimbursement of closing costs because neither claimant nor an eligible dependent was listed on the deed at the time of closing. It is the agency’s position that actions subsequent to the date of closing, such as claimant acquiring title by the quitclaim deed, did not retroactively confer title of the property on her on the date of closing.

After receiving the denial of reimbursement, claimant inquired from the agency whether refinancing the property to include her as a party to the mortgage would qualify her for reimbursement of the closing costs. The agency reaffirmed its position that reimbursement for residence transaction expenses is limited to an employee and immediate family members. Since claimant was not named as an owner of the property on the deed at the time of settlement, a subsequent refinancing to include her as a party on the mortgage would not create entitlement to closing costs.

After submitting her request for review to this Board, claimant responded to the agency report, stating that she had paid all of the mortgage payments since the closing and had received loans for a new roof and solar panels solely in her name. She also stated that she and her husband have commenced a refinance process which has not been concluded, and the mortgage company has requested her name to be on the mortgage since she now has title.

Discussion

For purposes of reimbursement of real estate transaction expenses incident to relocation, the Federal Travel Regulation (FTR)¹ states as follows:

§ 302-11.101 Must the title to the property for which I am requesting an allowance for residence transactions be in my name?

The title to the property for which you are requesting an allowance for residence transaction must be:

- (a) Solely in your name; or
- (b) Solely in the name of one or more of your immediate family members; or
- (c) Jointly in your name and in the name of one or more of your immediate family members.

41 CFR 302-11.101 (2019).

An employee's fiancée is not an immediate family member for the purpose of claiming a residence transaction allowance. *Fred Borakove*, GSBICA 15379-RELO, 01-1 BCA ¶ 31,409. For the purpose of entitlement to reimbursement of real estate transaction expenses, claimant's fiancée was therefore not a member of claimant's immediate family at the time of settlement.

¹ While these title provisions of the FTR are drafted largely to address the sale of a residence at a relocating employee's old duty station, these provisions have been regularly applied to limit reimbursement of residence transaction expenses associated with the purchase of a residence at the employee's new duty station, as well. *David J. Still*, CBCA 2937-RELO, 12-2 BCA ¶ 35,176.

The following provision of the FTR governs how the Government will determine the titleholder of the property:

§ 302-11.102 How will the Government determine who holds title to my property?

The Government will determine who holds title to your property based on:

- (a) Whose name(s) actually appears on your title document (e.g., the deed); or
- (b) Who holds equitable title interest in your property as specified in § 302-11.105.^[2]

41 CFR 302-11.102.

The determination as to who holds title to the property is determined at the time of settlement. *Daniel J. Cushine*, GSBCA 15357-RELO, 00-2 BCA ¶ 31,130. Claimant's fiancée's name was on the title documents at settlement, and claimant's name was not. While claimant stated to this Board that her omission was a "last minute . . . mistake," in an earlier conversation with an agency official she stated that, before the settlement, she and her fiancée had decided that he would take sole title to preserve her credit for other purposes. Claimant's later receipt of title via a quitclaim deed from her fiancée, before they were married, does not create eligibility for reimbursement. That claimant subsequently married, has received loans for home improvements in her own name, and has commenced refinancing the property cannot alter the fact that she did not take title to the property at settlement, and do not make her eligible to receive reimbursement for closing costs.

Neither claimant nor an eligible immediate family member had actual or equitable title to the property at the time of purchase. Claimant is not eligible for reimbursement of the requested real estate transaction expenses.

² The circumstances that result in equitable title do not apply to claimant's situation.

Decision

The claim is denied.

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge