



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 7, 2010

CBCA 1828-RELO

In the Matter of MICHAEL VINCELLI

Michael Vincelli, Elkton, MD, Claimant.

Eric J. Feustel, Chief, Client Services Division, Office of the Staff Judge Advocate, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of Army.

KULLBERG, Board Judge.

Claimant, Michael Vincelli, brings this claim as a result of the Department of Army's (Army's) decision to request that the Defense Finance and Accounting Service (DFAS) recoup previously reimbursed costs related to the purchase of a home at his new duty station. The costs that the Army seeks to recoup include the Maryland transfer tax, \$624.17, and one half of the recordation tax, \$1025. For the reasons stated below, the Board denies the claim.

Background

Mr. Vincelli, a civilian employee of the Department of the Army, was relocated from his former duty station at Fort Monmouth, New Jersey, to Aberdeen Proving Ground, Maryland. He purchased a home at his new duty station, and settlement took place on August 28, 2008. Mr. Vincelli and the sellers executed a contract for the sale of the house that was a standard Maryland Association of Realtors' form that had been in use since October 2007. Paragraph twenty-four of the contract stated the following:

RECORDATION AND LOCAL TRANSFER TAX. If the Buyer is a first-time Maryland homebuyer, Buyer and Seller expressly agree, in accordance with Section 14-104(c) of the Real Property Article, Annotated Code of Maryland, that payment of recordation tax and local transfer tax shall be shared equally between the Buyer and Seller unless a “First-time Maryland Homebuyer Transfer and Recordation Tax Addendum” is attached, which contains a different express agreement.

STATE TRANSFER TAX: Under Section 13-203(b) of the Tax-Property Article, Annotated Code of Maryland, the amount of state transfer tax due on the sale of property to a first-time Maryland homebuyer is reduced from 0.50% to 0.25% and shall be paid entirely by the Seller. Buyer is hereby notified that to ensure receipt of the above reduction, Buyer should so indicate on Page 10 of this Contract and complete the required affidavit at settlement indicating that the Buyer is a first-time Maryland homebuyer.

The contract included an affidavit executed by Mr. Vincelli that stated he was purchasing a home in Maryland for the first time. The contract also incorporated by reference a first-time Maryland home buyer transfer and recordation tax addendum dated July 27, 2008, in which Mr. Vincelli agreed to pay the full amount of both the recordation and transfer tax.

Subsequent to settlement, Mr. Vincelli submitted a claim for real estate expenses that he incurred for the purchase of his home in Maryland. An itemized list of expenses attached to his claim included \$2050 for the state recordation tax and \$624.17 for the state transfer tax. Both the state recordation and transfer taxes were shown as costs paid by the purchaser on the settlement statement. On March 17, 2009, the Army approved Mr. Vincelli’s claim for reimbursement of various real estate expenses that included the full amounts of both the recordation and transfer taxes.

By an electronic mail message dated November 2, 2009, Mr. Vincelli was informed by the Army that an audit was being conducted with regard to his reimbursement for the state recordation and transfer taxes. He was advised that because he was a first-time homebuyer in the state of Maryland, it was customary that the purchaser and seller share equally the cost of the state recordation tax and the seller pays the full amount of the state transfer tax. In a subsequent electronic mail message from the Army dated November 3, 2009, Mr. Vincelli was further informed that unless he could substantiate why he paid at settlement the full

amount of the state recordation and transfer taxes, DFAS would recoup those portions of the recordation and transfer taxes that had been improperly reimbursed. In an electronic mail message dated November 30, 2009, Mr. Vincelli was informed that DFAS would begin recouping \$624.17, the full amount of the state transfer tax, and \$1025, one half of the state recordation tax. Mr. Vincelli subsequently submitted his claim.

Discussion

The issue presented in this case is whether the Army correctly determined that it had improperly reimbursed Mr. Vincelli for one half of the state recordation tax and the full amount of the state transfer tax. The Joint Travel Regulations (JTR), which apply to Mr. Vincelli, limit reimbursement of costs related to the purchase of a home to those “customarily paid by a buyer of a residence at the new [permanent duty station].” JTR C5756-A.4. The Federal Travel Regulation (FTR), which also applies to Mr. Vincelli, similarly states that reimbursement for certain costs related to real estate purchases are allowed “provided they are normally paid by . . . the purchaser in the locality of a residence at the new official duty station.” 41 CFR 302-11.200 (2009) (FTR 302-11.200).

The burden of proof is on the claimant to establish by a preponderance of evidence that a cost incurred in a real estate transaction is customarily paid in that locality. *Deborah A. Bentley*, GSBCA 16752-RELO, 06-1 BCA ¶ 33,197, at 164,568. “General statements as to customary practice, particularly by real estate firms that have participated in the real estate transaction involved are not as persuasive as sales data from independent real estate firms.” *Id.* Such evidence of customary practice in a locality includes the preprinted sales contract form or historical data showing that a cost was assumed by a particular party in a commanding percentage, seventy-five to ninety percent, of the transactions from that locality. *James E. Miller*, GSBCA 16123-RELO, 04-1 BCA ¶ 32,450, at 160,525.

The General Services Administration Board of Contract Appeals (GSBCA), which previously decided relocation cases, addressed a similar issue of whether it was customary practice for a buyer in the area around Aberdeen Proving Ground, Maryland, to assume the full cost of the Maryland state transfer tax, and the GSBCA found no evidence that such a practice was customary. *Robert J. Szerszynski*, GSBCA 14350-RELO, 98-2 BCA ¶ 29,984, at 148,302. The GSBCA noted that the contract for sale specifically stated a first-time homebuyer was not required under Maryland state law to pay the tax. *Id.* In this case, Mr. Vincelli assumed responsibility for the full amount of both the state recordation and transfer taxes by means of an addendum that varied from the terms of the standard form real estate agreement that would have, otherwise, required the seller to pay half of the recordation tax and all of the transfer tax. There is no evidence that payment of both the state recordation

and transfer taxes by a first-time homebuyer occurred in a commanding percentage of the transactions in the locality where Mr. Vincelli purchased his home.

In support of his claim, Mr. Vincelli submitted a letter from the same realtor who prepared the contract for sale. That letter stated “[i]t is not uncommon for buyers to agree to pay these closing cost items, in fact in the new construction market in Cecil/Harford area, you will be hard pressed to find a builder willing to share any of those costs.” The realtor supplied no statistics as to the frequency that first-time homebuyers assumed the full cost of both the transfer and recordation taxes. Additionally, the realtor mentioned that buyers assumed the payment of those taxes in transactions involving the purchase of new homes from builders, but such a practice does not apply in this case because Mr. Vincelli did not purchase a new home from a builder.

Mr. Vincelli contends that since he incurred the cost of the full amounts of the state recordation and transfer taxes, he should be reimbursed for the amounts paid, and repaying those overpayments would be difficult since has other debts due to his relocation. This Board does not have the authority to reimburse an employee where neither statute nor regulation authorizes such reimbursement. *Richard C. Flegal*, GSBCA 16872-RELO, 06-2 BCA ¶ 33,308, at 165,149. Additionally, the Army has requested that DFAS recoup those portions of the recordation and transfer taxes that were improperly reimbursed, and this Board has no authority to relieve Mr. Vincelli of a debt that can only be waived if “the head of the agency determines that collection of the debt ‘would be against equity and good conscience and not in the best interests of the United States.’” *RuthAnne S. Darling*, CBCA 1461-TRAV, 09-2 BCA ¶ 34,153, at 168,825.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge