



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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January 14, 2009

CBCA 1245-RELO

In the Matter of NISHELLE GRANT

Nishelle Grant, Aberdeen, MD, Claimant.

Marion Deutsch, PCS Claims Officer, Real Estate Division, United States Army Corps of Engineers, Baltimore, MD, appearing for Department of the Army.

**McCANN**, Board Judge.

Ms. Nishelle Grant received permanent change of station (PCS) orders transferring her from Fort Monmouth, New Jersey, to Aberdeen Proving Ground, Maryland, in December 2007. On February 9, 2008, she signed a purchase agreement to buy a house in Aberdeen, Maryland. On February 27, 2008, the parties executed an addendum to that agreement wherein the seller agreed to increase the price of the house by \$6000 and agreed to pay \$6000 of Ms. Grant's closing costs. On April 30, 2008, Ms. Grant closed on the house.

After closing, Ms. Grant submitted a claim for \$6568.70 as reimbursement for closing costs that she had paid at settlement. The Army granted her \$568.70 for closing costs that she had paid as shown on the HUD-1 statement. However, it denied the remaining \$6000 on the grounds that the seller and not her had paid those costs according to the HUD-1 statement. The Army does not dispute that Ms. Grant would have been entitled to the \$6000 had the HUD-1 statement shown that she had paid these closing costs.

The items of disallowed costs are as follows:

Title examination	\$ 300.00
Mortgage title policy (lender coverage)	\$ 517.00
City and state tax stamps	\$1906.18

County transfer tax	\$1625.20
Loan origination fee	<u>\$1651.62</u>
Total	\$6000.00

Ms. Grant claims that she did, in fact, pay the closing costs. She points to the addendum which specifically states that the price of the house was increased by \$6000 for the very purpose of the seller paying \$6000 of the buyer's closing costs.

### Discussion

Allowances for expenses incurred by transferred employees in connection with residence transactions are governed by 41 CFR part 302-11 (2007). One of the primary requirements that must be met before an employee can be reimbursed is that the employee must actually incur an expense. 41 CFR 302-11.1(a). When making this determination we generally look to the settlement sheets which usually delineate clearly what expenses are paid for by the buyer and what expenses are paid for by the seller. *Harlan C. Thiel*, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710 (1996). However, we are not inextricably bound to the settlement sheets. There are exceptions. Under some circumstances we follow a longstanding precedent set forth by the Comptroller General that held that an employee could be reimbursed for closing costs that were included in the purchase price of the house and paid for by the seller so long as the purchaser could establish that "(1) the closing costs were clearly discernible and separable from the price paid for the house, (2) both the seller and the purchaser regarded the costs as having been paid by the purchaser, and (3) documentation showed the amount of closing costs and the purchaser's liability for them." *Roger L. Bankert*, CBCA 558-RELO, 07-2 BCA ¶ 33,601, at 166,421 (quoting *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605, at 151,114 (1999)).

In this case, unquestionably, the criteria set forth in *Parrish* have been met. The \$6000 in costs were clearly discernable and separable, the parties regarded the costs as being paid by the purchaser, and the documentation showed the amount of closing costs and the purchaser's liability to pay for them. The addendum and the HUD-1 form make this abundantly clear. Accordingly, the additional \$6000 claimed by Ms. Grant is payable to the extent that each claimed cost is deemed reasonable and appropriate.

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R. ANTHONY McCANN  
Board Judge