UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 1, 2012

CBCA 2582-RELO

In the Matter of KAL INTHASOROTH

Kal Inthasoroth, Edwards Air Force Base, CA, Claimant.

Sharon K. Parr, Senior Assistant General Counsel, Defense Contract Audit Agency, Fort Belvoir, VA, appearing for Department of Defense.

POLLACK, Board Judge.

Kal Inthasoroth (claimant), an employee of the Defense Contract Audit Agency (DCAA), seeks reimbursement of real estate expenses relating to the sale of a residence in Centreville, Virginia. This claim was submitted in conjunction with the transfer of claimant from South Korea to Edwards Air Force Base (AFB) in California. Prior to his posting in South Korea, claimant had been stationed in the Washington, D.C. area, and the property in issue had been his home from approximately June 1994 up to the date he moved to South Korea. Following that move, his wife remained in residence at the property. The claim here relates to the sale of that residence and specifically to the question of its ownership at the time the sought-after costs were incurred.

Background

At the time of his transfer to Korea, claimant and his wife were undergoing marital problems. As a result, on August 11, 2007, they entered into a property settlement agreement (PSA). The PSA states, "Husband has agreed to give the marital property to Wife and continue making their mortgage payments on the marital residence, until the current mortgage is paid in full. Once the mortgage is paid in full, Husband shall sign a quit claim deed conveying his interest in the marital property to Wife, then making Wife the owner of the marital property."

On the same date as the parties entered into the PSA, claimant and his wife executed a grant deed, wherein they conveyed to the wife full interest in the property, granting it to her in her name only. Claimant states that if he had known that title to the property was to be used as a basis for determining his permanent change of station (PCS) reimbursement, he would never have signed the deed.

Claimant proceeded to South Korea in August 2007. On December 8, 2008, while claimant was still in South Korea, the Circuit Court for Fairfax County, Virginia, issued a divorce decree. The decree stated that the PSA was ratified, incorporated, and affirmed, but not merged into the divorce decree.

On January 7, 2010, the DCAA issued claimant a Request/Authorization for Change of Station between South Korea and Edwards AFB, California. The form showed a checked box for reimbursement of real estate expenses.

On August 8, 2010, claimant provided his now ex-wife with a specific power of attorney relating to the Centreville property. The power of attorney granted to Ms. Inthasoroth the power to act on his behalf as to closing the sale of the Centreville property and paying off the primary mortgage. On August 25, 2010, his ex-wife contracted to sell the property.

On September 18, 2010, claimant and his ex-wife amended the PSA, providing that the ex-wife could place the property on the market for sale, pay off any remaining encumbrances on it, and retain all net proceeds from the sale.

The property went to settlement on October 22, 2010. On March 10, 2011, claimant submitted to DCAA a request for reimbursement of the costs associated with the sale, including broker and other fees.

In reviewing claimant's request, DCAA determined that claimant was not entitled to reimbursement, on the basis that at the time the property was sold, he did not own it; rather, his ex-wife did, and she, not he, paid all expenses of the transaction.

The Joint Travel Regulations (JTR) at JTR C5750-G provide as follows with regard to eligibility for reimbursement of real estate transaction expenses:

G. General

1. Title Requirements. The title to the residence at the old/new PDS [permanent duty station], or the interest in a cooperatively owned dwelling or in an unexpired lease, must be:

a. In the employee's name alone,

b. Jointly in the names of the employee and one or more dependent(s), or

c. Solely in the name of one or more dependent(s).

2. Title Interest Must Have Been Acquired Prior to Transfer Notification. At the old PDS, the employee's property interest must have been acquired prior to the date the employee was officially notified of transfer to the new PDS. In the case of an employee covered by par. C5750-D, the employee's interest must have been acquired prior to the date the employee was officially notified of the foreign area transfer.

a. Legal Title Interest. Except as in par. C5750-G2b, title to the residence is determined by the name of the party (or parties) on the title document (e.g., the deed).

b. Equitable Title Interest. An employee, and/or dependent(s), in a situation described below is deemed to have title to the residence whether or not named on the title document.

At the time the property was sold, in 2010, title was not in claimant's name. Nor was it in the name of a dependent; his ex-wife, who owned the property, had not been a dependent since 2008, when the couple divorced.

To establish equitable title interest, the regulations set out five separate categories of alternative ownership which allow an employee to qualify for reimbursement, even though there is not full legal ownership in the employee or a dependent. The five categories are: title held in trust, title held by financial institution, title includes an accommodation party, tittle held by the property seller, and other equitable title situations. JTR C5750-G.2. Each is defined by a unique set of circumstances. In assessing the claim at issue, we find no evidence that the property was titled in any of these ways. A mortgage lien is not title in a financial institution. The last three categories require involvement of an employee or dependent which was not present here. Neither the employee nor a dependent was named on the title (as required for inclusion of an accommodation party) or had the right to direct conveyance of the property (as required for "title held by property seller" and "other equitable title situations").

In addition, even if the Board somehow found that claimant held a title interest, he would still not be eligible for reimbursement because he did not meet the requirements of JTR C5756. That provision requires that the costs for which he seeks reimbursement were incurred by him or a dependent. Again, his ex-wife does not qualify as a dependent.

The record is uncontroverted that on August 11, 2007, claimant and his wife conveyed title, by a grant deed, to claimant's wife individually. Regardless of claimant's intentions, once claimant and his then-wife executed the grant deed, title conveyed. It conveyed regardless of the inconsistent language in the PSA. While claimant did not understand the impact that conveying title would have as to future reimbursement, the fact remains that title was transferred. However, at that point, the transfer may not have been fatal to claimant qualifying for reimbursement, for as long as Ms. Inthasoroth continued to qualify as a dependent. Once the divorce decree was entered, however, Ms. Inthasoroth was no longer a dependent and with that any possibility of reimbursement was lost.

Finally, claimant charges that granting the deed to his wife must be deemed irrelevant, because the job announcement, under which he accepted the Edwards Air Force Base job, indicated that he was entitled to reimbursement of PCS expenses with the understanding that he was rightful owner of the property. He says that what was indicated in the announcement controls, regardless of what the deed says. Claimant's position is unreasonable. The indication as to reimbursement implicitly carries with it the proviso that the employee otherwise qualifies. There is no evidence that in issuing the announcement and effectuating the transfer, DCAA had any reason to know of the title status of the property.

We are constrained by the clear language of the regulations which require title either in the name of claimant or a dependent, or an equitable title interest through one of five other qualifying situations. The fact claimant was paying the mortgage may have given him a financial interest in the property, but it did not give him title. Claimant fails to qualify under the regulations, which make title the controlling criteria.

Accordingly, the claim is denied.

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HOWARD A. POLLACK
Board Judge