



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 29, 2007

CBCA 819-RELO

In the Matter of ADELLA HANSEN

Adella Hansen, Berlin, MD, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Herndon, VA, appearing for Department of the Interior.

WALTERS, Board Judge.

Adella Hansen has requested that the Board review the decision of the Department of the Interior denying her claim for \$8625 for a home marketing incentive payment in conjunction with her 2006 permanent change of station from Hyde Park, New York, to Berlin, Maryland. For the reasons explained below, we affirm the agency's decision.

Background

In April 2006, claimant, Adella Hansen, an employee of the Department of the Interior (Department), National Park Service (NPS), was permanently relocated from the Roosevelt-Vanderbilt National Historic Site, Hyde Park, New York, to the Assateague Island National Seashore, Berlin, Maryland. In connection with this transfer, Ms. Hansen sold her home in New York and submitted a claim for a home marketing incentive payment in the amount of \$8625. The Department denied that claim, because, although Ms. Hansen had entered into the Department's home sale program, she failed to comply fully with the regulations and departmental guidance associated with home marketing incentive payments. Ms. Hansen has asked the Board to review this decision.

Discussion

Under statute, federal agencies may make a home marketing incentive award payment to an employee in conjunction with his/her permanent change of station when: (1) the employee enters the residence at the old duty station into a relocation services program under

which a private relocation services contractor agrees to purchase the residence; (2) the employee finds a buyer who completes the purchase of the residence through the program; and (3) the sale of the residence results in a reduced cost to the Government. 5 U.S.C. § 5756 (2000).

The Federal Travel Regulation (FTR), which implements the statute, provides the following advice to federal employees regarding home marketing incentive payments, stating that such payments will be made to the employee when:

- (a) You enter your residence in your agency's homesale program;
- (b) You independently and aggressively market your residence;
- (c) You find a bona fide buyer for your residence as a result of your independent marketing efforts;
- (d) You transfer the residence to the relocation services company;
- (e) Your agency pays a reduced fee/expenses to the relocation services company as a result of your independent marketing efforts;
- (f) You meet any additional conditions your agency has established, including but not limited to, mandatory marketing periods, list price guidelines, closing requirements, and residence value caps; and
- (g) Your agency has established a home marketing incentive program.

41 CFR 302-14.5 (2005) (FTR 302-14.5).

As explained in the National Park Service Permanent Change of Station Information Packet, part of the relocation assistance offered by a relocation services contractor is the guaranteed purchase of an employee's residence. An appraised value for the employee's property is established, which value the relocation services contractor agrees to pay should the property not be sold to another buyer. When the employee elects to participate in the home marketing incentive program, the employee must list the property with a real estate broker under a listing agreement that contains a specified "exclusion clause" that permits the employee to sell the property to the relocation services contractor. Through the broker, the employee aggressively markets the property in an attempt to secure an offer from a willing buyer that is above the appraised value.

Should the employee succeed in finding such a buyer, he or she then transfers the property to the relocation services contractor, and the relocation services contractor proceeds with the sale to the offeror, and pays the agreed upon commission to the broker as well as bearing all seller closing costs. *See* Department of Interior Travel Management Policy 347 DM 302-14 DOI FTR Implementing Instructions, *available at* http://www.doi.gov/pfm/trav&relo/ft_347dm1/ch302-14.html.

The regulations, and related Department of the Interior National Park Service guidance in effect in April 2006, at the time of Ms. Hansen's relocation, provided for the home marketing incentive payment to be the lesser of "(a) [f]ive percent of the price the relocation services company paid when it purchased the residence from you; or (b) [t]he savings your agency realized from the reduced fee/expenses it paid as a result of you finding a bona fide buyer." FTR 302-14.6; *see also* NPS PCS Information Packet, Employee Relocation Information at 3.

The Department here states in its response to the instant claim that, although Ms. Hansen fulfilled the terms of paragraphs (a) through (c) of FTR 302-14.5, i.e., she signed on to the Department's program and then independently and aggressively marketed her property and thereby found a bona fide buyer, she failed to fulfill the requirements of paragraphs (d) through (f); in particular, she failed to transfer the residence to the relocation services company (Prudential Relocation) as required by paragraph (d). The Department also notes that Ms. Hansen failed to enter into a listing agreement containing the specified "exclusion clause."

Ms. Hansen acknowledges that she failed to comply fully with the regulations and, in this regard, pleads "ignorance," asserting that she had not been furnished the NPS PCS Information Packet or given any instructions about the home marketing incentive program. Nevertheless, she contends she is due the incentive payment "based on equity," since her independent marketing efforts purportedly "saved the Government \$22,252.50" The \$22,252.50 figure Ms. Hansen calculates by multiplying the actual sales price, \$172,500, by 12.97%, the fee percentage she believes would have been paid by the Department to the relocation services contractor had the sale been consummated through the contractor.¹ Ms. Hansen's claim to an incentive payment of \$8625 is based on applying 5% to the actual sales price received for her residence, \$172,500.

The Board follows the dictates of statute and regulation in settling relocation claims.

¹ Actually, 12.97% of \$172,500 is \$22,373.25. The difference between this number and Ms. Hansen's is immaterial to our decision.

As stated in *Judy Schutza*, GSBCA 16475-RELO, 04-2 BCA ¶ 32,801, the General Services Administration Board of Contract Appeals (GSBCA), our predecessor board for handling relocation claims, consistently denied claims for home marketing incentive payments when any one of the requirements of either the statute or the regulation [had] not been met.” *Id.*(citing *Laura E. Kilpatrick*, GSBCA 15814, 02-2 BCA ¶ 31,957; *Mark R. Tayler*, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816; *Gregory R. Littin*, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; *Regina M. Rochefort*, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879). Like the Department of Agriculture (USDA) employee in *Schutza*, Ms. Hansen here failed to transfer the property to the relocation services contractor, in accordance with the requirements of the regulation. Like the employee in *Schutza*, Ms. Hansen also indicates that she was not furnished adequate guidance by agency personnel in connection with the home marketing incentive payment program. (Ms. Hansen states that she was not made aware that she needed to contact the relocation company -- to arrange for the transfer of the property.) The Board in *Schutza* made the following observation in that regard:

Even if the information provided by USDA did not set out each of the steps Ms. Schutza needed to take in order to receive an incentive payment, inadequate advice provided by agency employees does not provide USDA with the authority to expend public funds and make an incentive payment contrary to the provisions of statutes and regulations. *Clarence Hester, Jr.*, GSBCA 16253-RELO, 04-1 BCA ¶ 32,460 (2003).

04-2 BCA at 162,224.

The same can be said in the present case. Moreover, as noted above, the incentive payment itself is to be computed based on either what a relocation service contractor paid to the employee for the property or the actual savings in fees paid by the government to that contractor. 41 CFR 302-14.6. Here, the relocation services contractor was never involved. Under these circumstances, it is “now impossible to recreate history to enable claimant to properly invoke the home sale incentive program.” *Schutza*, 04-2 BCA at 162,224 (quoting *Rochefort*, 00-1 BCA at 152,445).

The Department’s denial of Ms. Hansen’s claim was correct.

Decision

The agency's decision is affirmed.

RICHARD C. WALTERS
Board Judge