



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 28, 2010

CBCA 1743-RELO

In the Matter of THERESA M. GRIMM

Theresa M. Grimm, Harvest, AL, Claimant.

Cartavius A. Whitehead, Paralegal Specialist, Office of the Command Counsel, United States Army Materiel Command, Department of the Army, Fort Belvoir, VA, appearing for Department of the Army.

SOMERS, Board Judge.

The Department of the Army transferred Theresa M. Grimm from Virginia to Alabama in 2009. In conjunction with this transfer, Ms. Grimm and her husband sold their residence in Alexandria, Virginia, and purchased a home in Harvest, Alabama. Ms. Grimm seeks reimbursement for costs related to these two real estate transactions.

Sale of Residence: In March 2009, Ms. Grimm submitted a real estate reimbursement claim for the sale of the residence in Alexandria, Virginia. Ms. Grimm stated that based upon the difficult real estate market at that time in the Washington, D.C., area, she voluntarily offered to pay a 7% real estate commission, which is 1% over the customary commission rate of 6%. Ms. Grimm sought reimbursement of \$19,295 for the real estate commission, which is 7% of the sales price of \$270,000.

The agency granted part of Ms. Grimm's claim, stating that reimbursement of the commission would be limited to \$16,200, or 6% of the sales price. The agency found that a 6% real estate commission is reasonable in amount and consistent with the percentage customarily paid in the locality where the property had been sold. Ms. Grimm challenges the agency's determination; she contends that she has been disadvantaged by the Army adjudication of her claims in that real estate values have declined, particularly in the area where her home was sold, and that it is customary for condominiums to take the biggest hit first.

The agency's reading of the law is correct. In accordance with the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR), reimbursement of broker fees or real estate commissions in connection with the sale of a home may not exceed those customarily charged in the locality where the residence was sold. 41 CFR 302-11.200(a) (2008) (FTR 302-11.200(a)); JTR C5756-A.1; *See also William K. Raiford*, CBCA 804-RELO, 07-2 BCA ¶33,692. Consequently, a declining market "does not change the definition of 'custom or customarily' as that term is used in this provision of the FTR. . . . [because] the term 'customarily' is unrelated to the strength or weakness of the real estate market." *Anthony J. Kress*, CBCA 877-RELO, 08-2 BCA ¶ 33,903. The agency presented evidence consisting of twenty claims submitted prior to, including, and after Ms. Grimm submitted her original claim that demonstrated 6% represented the usual commission rate. Agency's Submission, Exhibit 4. Ms. Grimm presented no evidence in rebuttal.

We conclude that the agency properly rejected Ms. Grimm's claim for reimbursement of the additional 1% real estate commission paid above the customary 6% in connection with the sale of her home. The regulations do not allow for reimbursement for any real estate commission that exceeds the customary rate.

Purchase of Residence: In August 2009, Ms. Grimm submitted a real estate reimbursement claim related to her purchase of a residence in Harvest, Alabama. She requested reimbursement of \$2802 for a real estate sales commission paid in connection with the purchase. The agency denied her claim because the regulations do not allow reimbursement of broker fees or real estate commissions paid in connection with the purchase of a home.

Ms. Grimm argues in her claim that, although she knew that it was customary that buyers do not pay brokerage fees, she was required to sign an exclusive buyer agency agreement with the realtor, which required payment to her real estate agent of a brokerage fee equal to 1% of the purchase price. Ms. Grimm believes that it is customary practice to sign an agency agreement with a realtor in Alabama.

Again, the agency's reading of the applicable law is correct. In accordance with FTR 302-11.202 and JTR C5756-A.1, broker fees or commissions paid with the purchase of a home are not reimbursable. *See also Richard G. Britner*, GSBCA 15542-RELO, 02-1 BCA ¶ 31,774. In *Britner*, a case decided by the General Services Board of Contract Appeals, our predecessor in settling claims by federal civilian employees for relocation expenses, an employee entered into a "Buyer Broker Agreement" to facilitate the purchase of the employee's home at the new duty station. The Board denied the employee's claim for

the entire commission, and reiterated the FTR's express provision that "broker fees or real estate sales commissions are not reimbursable in connection with the purchase of a home at the new official station." *Id.*

We conclude that the agency properly rejected Ms. Grimm's claim. Regulations prohibit the payment of a commission paid to a real estate broker for the purchase of a home, regardless of any equitable considerations which might otherwise favor payment of her claim. *See, e.g., Jeffrey L. Troy*, GSBCA 16072-RELO, 03-2 BCA ¶ 32,329 ("While it may be grossly unfair that a claimant cannot be paid under these or similar circumstances, it must be recognized that the overriding concern in such cases is the protection of the taxpayers' interest in not having unlawful disbursements made from public funds.").

Decision

The agency's decisions are correct. For the reasons stated above, we deny Ms. Grimm's claim.

JERI KAYLENE SOMERS
Board Judge