



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 12, 2010

CBCA 1762-RELO

In the Matter of MICHAEL K. DANIEL

Michael K. Daniel, Sumter, SC, Claimant.

Capt. Jennifer M. Sanchez, Claims Officer, Department of the Air Force, Langley Air Force Base, VA, appearing for Department of the Air Force.

STERN, Board Judge.

Claimant, Michael K. Daniel, was transferred by the United States Air Force from Langley Air Force Base, Virginia, to Shaw Air Force Base, South Carolina. As a result of the move, claimant incurred real estate expenses from the sale of his home in Virginia.

The Air Force paid \$23,763 of claimant's expenses. It refused reimbursement of the pest inspection (\$460) and title search (\$22) fees paid by claimant. The fees were disallowed on the basis that these fees are not customarily paid by real estate sellers in this locale.

Claimant seeks the payment of these two fees. While the fees may not be ordinarily borne by a seller, claimant submits that he would have been unable to sell his house, in the difficult housing market of 2009, if he did not pay these fees.

Statute and regulations obligate an agency to reimburse an employee whom it has transferred to a new duty station the expenses incurred in selling his or her house. Each expense may not exceed that customarily paid by a seller in the locality where the residence is located. 5 U.S.C. § 5724a(d)(4) (2006). Under the Federal Travel Regulation (FTR), which is applicable in this case, the seller of a residence is entitled to reimbursement for those costs that are "customarily paid by the seller of a residence at the old official station" 41 CFR 302-11.200 (2009). The Joint Travel Regulations (JTR), which also apply

to claimant, require that reimbursement of costs related to the sale of a home be “[r]easonable in amount, and . . . [c]ustomarily paid by the seller . . . in the locality where the property is located.” JTR C5759. C.1.

Claimant agrees that the pest inspection and title search fees are not customarily paid by sellers in the area in which this house sale occurred. Claimant argues that in order to sell his house in the poor housing market of 2009, he had to pay for these costs. Claimant has offered no evidence in support of this statement. In any event, claimant’s payment of these costs does not, in and of itself, change the custom for the allocation of closing costs in the area of sale.

We have previously considered this issue and stated that, “the term customarily is unrelated to the strength or weakness of the real estate market. The term customarily simply means what is usual, normal, habitual, or routine.” *Anthony J. Kress*, CBCA 877-RELO, 08-2 BCA ¶ 33,903, at 167,778. In *Kress*, we concluded that those expenses that are customarily paid by a buyer do not change that characteristic solely because a seller, in response to a declining real estate market, pays certain closing costs normally paid by a buyer. In a more recent decision we stated, “A seller’s agreement to pay some portion of the buyer’s closing costs as part of the bargain to arrive at a sales price, however, does not establish that the payment of such closing costs was **customary**.” *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (emphasis added).

Here, the costs of the termite inspection and title search were not customarily paid by the seller in the locale from which claimant was transferred. These costs are, therefore, not reimbursable.

Decision

The claim is denied.

JAMES L. STERN
Board Judge