



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 30, 2011

CBCA 2231-RELO

In the Matter of THERESA M. GRIMM

Theresa M. Grimm, Harvest, AL, Claimant.

Judith A. Fishel, 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.

Claimant, Theresa M. Grimm, a civilian employee with the Department of the Army, seeks review of the denial of her claim for reimbursement of real estate expenses paid in association with the sale of her home in Alexandria, Virginia.

Background

In March 2009, Ms. Grimm submitted a real estate reimbursement claim for \$19,295 for the real estate commission, which is 7% of the sales price of \$270,000, incurred in the sale of her home. The agency authorized reimbursement of the real estate commission of \$16,200, or 6% of the sales price, finding 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 submitted a claim to the Board for reimbursement of \$2700, or the remaining 1% of the real estate commission.

By decision dated April 28, 2010, the Board denied Ms. Grimm's claim. *Theresa M. Grimm*, CBCA 1743-RELO, 10-1 BCA ¶ 34,428. Based upon the evidence presented, the

Board determined that 6% represented the usual commission rate customarily paid in the area and denied the remainder of Ms. Grimm's claim.

On April 5, 2010, prior to the Board's issuance of its April 28, 2010, decision, Ms. Grimm submitted an amended claim to the agency. In her amended claim, Ms. Grimm requested reimbursement of the previously denied 1% of the real estate commission, as well as \$275 paid for a condominium disclosure statement, and \$8100 for a "seller's subsidy," used to entice the buyer to purchase her home. The agency authorized reimbursement of \$275 for the condominium disclosure statement and denied her other claims.

In her submission to the Board, Ms. Grimm presents evidence to show that the real estate market in Alexandria, Virginia, has been in steady decline since 2006, and that payment of the extra commission of 1% is an effective method to attract agents in an effort to sell a property. In addition, she provides data compiled by a real estate agent to show that in the majority of sales within a one-year period, sellers paid a subsidy. Specifically, from March 1, 2008 to April 1, 2009, of thirty-four condominiums sold in the Kingstown community, where Ms. Grimm's property was located, 83% of sellers paid a subsidy. Of the 310 townhomes sold, 48% of the sellers paid a subsidy.

#### Discussion

As we noted in our April 28, 2010, decision, 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) (2010) JTR C5756-A.1; see *Theresa M. Grimm*, 10-1 BCA at 169,934.

In response to Ms. Grimm's claim for the additional sales commission, the Army notes that to the extent that Ms. Grimm is seeking reconsideration of the Board's earlier decision denying her claim, Ms. Grimm failed to file her appeal within thirty calendar days after the date of our decision, as required by Board Rule 407 (48 CFR 6104.407 (2010)). Ms. Grimm disagrees, contending that she did not intend for the Board to consider her claim for the Alexandria sale at that time. In addition, Ms. Grimm needed time to acquire the evidence necessary to show what should be considered customary for real estate commissions for sales in the Alexandria area.

If Ms. Grimm did not intend for this Board to consider her claims relating to her sale of her property located in Alexandria, Virginia, in her earlier appeal, she failed to so advise the Board. Nor did she request reconsideration when the Board denied her claim related to this property within the required thirty calendar days. The Board's previous decision clearly addressed the issue of entitlement with regard to claims relating to the Alexandria, Virginia,

property, including the request for reimbursement of the additional 1% sales commission. Therefore, to the extent that Ms. Grimm now seeks review of the agency's denial of her claim for an additional 1% sales commission, her request is untimely. A timely reconsideration request should have been submitted to the Board no later than May 28, 2010.

In any event, even if we were to deem the request timely, the arguments Ms. Grimm presents are insufficient to warrant reconsideration. Ms. Grimm asserts that relying upon what is customary in the area is based upon subjective factors. As we noted in our earlier decision, the term "customarily" is unrelated to the strength or weakness of the real estate market. *Grimm*, 10-1 BCA at 169,934. The arguments that Ms. Grimm presents here do not provide sufficient ground for reconsideration of the opinion. Under Board Rule 407, "[m]ere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration."

As to the issue of reimbursement of the 3% "seller's subsidy," which represents the amount of the buyer's closing costs that are assumed by the seller, Ms. Grimm asserts that payment of this subsidy is customary in the area. As evidence, Ms. Grimm presents a document from her realtor identifying subsidies paid by sellers of condominiums and townhomes in her local community over the course of thirteen months in her area. The analysis performed by the realtor, described above, is simply not enough. The analysis is too limited in scope of properties and time period to be an adequate measure of what should be considered "customary." As we noted in *Shen L. Lin*, CBCA 1827-RELO, 10-2 BCA ¶ 34,521, at 170,252, the seller can meet the burden to prove that it is "customary" for a seller to assume a particular cost in a variety of ways:

These include showing that a cost is allocated to a particular party in a preprinted sales form, submitting letters from local realtors and brokers confirming that a particular cost is invariably assumed by the seller for the buyer, providing data showing that over the years a commanding percentage of sellers have contributed to buyers' closing costs, and the like. In contrast, letters from realtors simply asserting that many sellers contribute to buyers' closing costs do not establish that a practice is customary. [*Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827-28 (2001).] A common occurrence does not necessarily rise to the level of a custom, although over time a custom may be determined to have evolved.

*Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (quoting *Joseph B. Wade*, GSBCA 15589-RELO, 03-1 BCA ¶ 32,128, at 158,815-16 (2002)).

Ultimately, the fact that a seller paid the purchaser's closing costs does not in and of itself establish a customary practice. *Shen L. Lin*, 10-2 BCA at 170,252. The term "customarily" is unrelated to the strength or weakness of the real estate market; rather, it simply refers to what is usual, normal, habitual, or routine. *Id.*

#### Decision

For the reasons stated above, we deny Ms. Grimm's claim.

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JERI KAYLENE SOMERS  
Board Judge