



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 1, 2012

CBCA 2937-RELO

In the Matter of DAVID J. STILL

David J. Still, Upper Marlboro, MD, Claimant.

Lia Neill Wentworth, Administrative Law Practice Group, Office of the General Counsel, Defense Information Systems Agency, Ft. Meade, MD, appearing for Department of Defense.

VERGILIO, Board Judge.

The claimant is entitled to full recovery of reimbursable expenses when title is shared with an accommodation party in the purchase of a residence at the new duty station.

The claimant, David J. Still, a civilian employee of the Department of Defense, was relocated within the continental United States, with a reporting date of March 15, 2011. He was authorized to recover relocation benefits, including home purchase transaction expenses. Given his credit rating and history, the claimant was unable to obtain financing on his own from a given bank to purchase a residence. The bank advised that the only way he could obtain mortgage financing under current lending guidelines was to obtain a co-signer with acceptable credit. With the addition of the claimant's fiancée's name and credit to the loan application, the claimant obtained a mortgage and purchased a residence. The claimant's name and that of his fiancée appear on the title. The claimant, through an individual account in his name, has paid the mortgage, as well as costs for which he seeks reimbursement.

The claimant sought reimbursement of costs incurred in the purchase. The agency deemed four inspection-related costs to be not reimbursable. The agency also determined that, because the claimant shares title with other than a dependent or member of his immediate family, the claimant is entitled to recover only one half of the reimbursable costs. The claimant maintains that he is entitled to full recovery of all requested costs because the

title included an accommodation party and/or because of acceptable other equitable title situations pursuant to regulations.

The agency initially deemed non-reimbursable the costs incurred for four inspections. Upon the review of additional information (including a statement from the lending institution that such inspections were required by underwriting as preconditions to qualify for conventional financing, and material indicating the claimant's cost comparisons of various vendors for the inspections), the agency has deemed the costs (totaling \$1200) to be reimbursable (although limiting reimbursement to fifty percent because of the claimant's title interest in the residence). With the agency conclusion that the costs are reimbursable, the Board need not make particular findings.

Regarding the title requirements for and limitations on reimbursement, one must look to applicable regulations; i.e., those in effect at the time of reporting to the new duty station. Federal Travel Regulation (FTR), 48 CFR 302-2.3 (2010) (FTR 302-2.3). The FTR details title requirements in a subpart addressing a residence at the old duty station. 41 CFR 302-11.100 - .106. The provisions have been applied to purchasing a residence. *Fred Borakove*, GSBKA 15379-RELO, 01-1 BCA ¶ 31,409; *Wanda S. Mohr*, GSBKA 16938-RELO, 06-2 BCA ¶ 33,438. The also applicable Joint Travel Regulations (JTR) specify the title requirements for selling and purchasing a residence. JTR C5750-G.1. While the express language of the regulations addresses an accommodation party for selling a residence, the regulations recognize, without rejecting, case law utilizing the same tests for purchasing property. JTR C5750-G.2.b(3).

The agency concluded that the claimant is entitled to only one half of the claimed expenses incurred in purchasing a residence in conjunction with a relocation, because the claimant shares title with his fiancée, that is, someone other than a member of his immediate family or a dependent. Indeed, regulations specify that title to the property must be solely in the name of the claimant, or solely or jointly by or with a member of the claimant's immediate family or dependents. FTR 302-11.101; JTR C5750-G1. However, in addition to legal title, the regulations recognize equitable title with an accommodation party as a basis for reimbursement. FTR 302-11.102, .106; JTR C5750-G.2.

The record, as supported through signed statements, including a witnessed memorandum of agreement signed by the claimant and his fiancée prior to closing on the purchase, establishes particular facts pertinent to the determinations regarding an accommodation party. With the claimant, the claimant's fiancée signed the financing agreement. The property is the claimant's residence. The claimant has the right to use the property and to direct property conveyance. The lender required the accommodation party's signature on the finance document. The claimant is liable for payments under the financing

agreement. The accommodation party's name is on the title. The accommodation party does not have a financial interest in the property unless the employee defaults on the financing arrangement. And, the documentation well supports the status of the fiancée as an accommodation party to the claimant. JTR C5750-G.2.b(3)(b). This claimant has taken the necessary steps to establish his sole equitable title interest in the property. It is this interest that permits him to recover one hundred percent of the reimbursable expenses.

The agency suggests that the legal implications of joint tenancy in Maryland demonstrate an impermissible financial interest of the accommodation party. The agency relies upon Maryland law and an earlier board case, *Mohr* ("as a joint tenant, claimant's fiancée possessed a financial interest in the property and claimant did not have a right to direct conveyance of the property"). Here, despite the joint tenancy identification on the title, the claimant and his fiancée explicitly state in their memorandum of agreement that only the claimant has a financial interest in the property. Necessary financial obligations arising from co-signing a mortgage, as would be true of an accommodation party, cannot serve to thwart the provisions of the regulation.

This claimant held legal title with his fiancée. Here, as the claimant maintains, his fiancée is an accommodation party satisfying the prerequisites of the regulation to deem the claimant the sole holder of the equitable title. This entitles the claimant to recover one hundred percent of the reimbursable costs.

JOSEPH A. VERGILIO
Board Judge