



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 17, 2014

CBCA 3851-RELO

In the Matter of RICHARD E. HEARNE

Richard E. Hearne, Lithia, FL, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

POLLACK, Board Judge.

Claimant, Richard E. Hearne, a civilian employee of the Army Corps of Engineers (Army), was transferred from Fort Belvoir, Virginia to Sebring, Florida. He sought reimbursement for a number of items associated with the purchase of a newly constructed home in the greater Tampa, Florida area (Hillsborough County). The Army disallowed a number of items associated with the settlement. Some of the disallowance was based on items not being payable under the regulations, while others arose because of Army accounting errors in the initial reimbursement. On the initial record, it was difficult to discern exactly which items on the settlement sheet were being reimbursed and which were not, or how the Army and Mr. Hearne were arriving at their respective figures. Accordingly, the Board held a conference call to secure clarification and thereafter allowed the parties to each provide further support in writing to their respective positions. Both provided information.

In his submission of October 14, 2014, Mr. Hearne withdrew his claims concerning three items in dispute, conceding the disallowance was warranted. He however, continued to contest the reduction as to the appraisal fee and the denial of payment for state tax stamps on the deed. We therefore confine this decision to the two matters that remain in dispute.

As part of the purchase process, Mr. Hearne paid \$425 for an appraisal. The Army does not contest that the appraisal was an appropriate cost category or that Mr. Hearne was charged \$425. It does, however, contend that Mr. Hearne is entitled to only \$400 and not the \$425 he paid. The Army asserts that \$400 is the customary charge for an appraisal in that locality and therefore \$25 must be disallowed.

The Army has provided no document or other evidence to support its assertion. While Mr. Hearne did not produce a separate document or other supporting evidence to firmly establish that there is a range for appraisal costs in Hillsborough County, Florida, we do know, as a fact, that he was charged and paid \$425 and that sum appeared to be paid to a conventional appraiser in Hillsborough County.

As to the second item, the stamps, the record shows that Mr. Hearne paid \$3035.90 for the state tax stamps on the deed. The Army asserts that at the time of settlement it was not customary in new construction in the Tampa area for tax stamps to be paid by the buyer. The Army provided no support for its determination. In contrast, Mr. Hearne, following up on the conference, provided a letter from the chief financial officer of Homes by West Bay, LLC, the firm that sold him the house. The letter states that payment of stamps by a buyer for such homes is customary for the company and for the new construction market in the greater Tampa area.

This case is very similar to the matter addressed by this Board in *Charles W. Worsham*, CBCA 3401-RELO, et. al, 14-1 BCA ¶ 35,504, which arose out of the same Corps of Engineers District. That case specifically involved the payment of stamps on the deed for new construction. In that decision, we pointed out that the claimant had amply demonstrated through letters from real estate agents in Florida that it was customary for the buyer to pay the expense when a builder was the seller. In fact, in *Worsham*, the Army (prior to the Board issuing its decision) abandoned its contention as to what was customary for new construction in the area, thereby essentially conceding that matter. Instead, there the Army argued, as an alternative, that the expense should be denied because it stemmed from new construction. In *Worsham*, the Board rejected that argument and specifically found that “[t]his is not the type of expense resulting from construction of a new residence excluded by FTR [Federal Travel Regulation] 302-11.202(h), but rather is an expense in connection with the conveyance of property.”

The law and regulations call for the payment of reasonable transaction expenses associated with the purchase of a home when an employee relocates in the interest of the Government. Both the payment of appraisal fees and payment of stamps are common costs. We find it to be unreasonable for the Army to conclude without some evidence that a payment of \$400 for an appraisal constitutes “a line in the sand” and that, on its face, a

charge of \$425 for an appraisal is excessive and must be denied. Appraisal services are not a fair trade item, but rather are professional services. In that context, absent evidence showing otherwise, we conclude that \$425 is within a reasonable range and should be paid. As to the stamps, not only has Mr. Hearne repeatedly stated that the custom in the county where he purchased the property is for the buyer to pay for the state stamps on new construction, but he has also produced a letter from a realtor that confirms this. The Army, again, provides nothing in rebuttal. Accordingly, we find the stamps in this instance are customarily paid in this type of settlement.

We do point out that in many jurisdictions the payment of all or part of the stamps are by the seller; however, different areas and different forms of construction do not necessarily always yield the same result. An agency must look to the locality.

Based on the record before us, we find that Mr. Hearne is entitled to payment on both matters.

Decision

We grant Mr. Hearne's claim for an additional \$25 for the appraisal and \$3035.90 for the stamps.

HOWARD A. POLLACK
Board Judge