



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 23, 2014

CBCA 3862-RELO

In the Matter of RICHARD A. KEELE

Richard A. Keele, Kiowa, CO, Claimant.

John M. Whittington, Chief, Civil Law Division, Department of the Air Force, Joint Base Elmendorf-Richardson, AK, appearing for Department of the Air Force.

SOMERS, Board Judge.

Richard A. Keele, a civilian employee with the Department of the Air Force, asks the Board to review his agency's decision not to reimburse him for all expenses he incurred from the sale of his home in Alaska. For the reasons set forth below, we grant Mr. Keele's claim in part. We deny a portion of Mr. Keele's claim because he is not entitled to those costs which are customarily paid by the buyer.

Background

On February 9, 2014, Mr. Keele received orders transferring him from Alaska to Colorado. As a result, Mr. Keele sold his residence in Wasilla, Alaska. On April 1, 2014, he submitted a claim to recover his real estate sale expenses. The claim included the following:

Appraisal fee	\$750
Attorney document preparation	\$51.50 (x 2)
Commitment fee (points)	\$309.29
Credit report	\$29.85
Escrow closing fee	\$553 (x 2)
Flood certification	\$10

Home inspection	\$400
Lender's title insurance premium	\$382.80 (x 2)
Loan tracking	\$5
Loan origination fee	\$2726.80
Property taxes	\$1183.72
Recording charges	\$140
Risk-based price disclosure	\$2
Septic pump services	\$375
Septic tank inspection	\$399
Title insurance	\$1038
Total	\$9343.26 ¹

The agency determined that Mr. Keele should have requested the attorney document preparation fee, escrow closing fee, and lender's title insurance premium only once in his HUD-1 form, so the agency treated the requested amount as \$8355.96. The agency then partially approved Mr. Keele's claim, allowing: the appraisal fee (\$750), half of the escrow closing fee (\$276.50), and the attorney document preparation fee (\$51.50), totaling \$1078. The agency denied the other costs because the agency determined that those costs are customarily paid by the buyer in the locality.

On May 16, 2014, Mr. Keele appealed to the Board. Using the agency's adjusted total of \$8355.96, Mr. Keele seeks all of the costs that the agency denied him, with the exception of the property tax charge of \$1183.72, for a total claim of \$7172.24.

In support of his claim, Mr. Keele supplied a letter from a mortgage loan processor at First National Bank of Alaska (FNBA), the bank that provided loan services in the sale. The letter included a table showing the allocation of costs in real estate transactions. The table shows that the seller would typically pay the appraisal fee (\$750) and attorney document preparation fee (\$51.50), for a total of \$801.50.

Discussion

Statute provides that "an agency shall pay to or on behalf of an employee who transfers in the interest of the government, expenses of the sale of the residence . . . that are required to be paid by the employee[.]" 5 U.S.C. § 5724a(d)(1) (2012). The Federal Travel Regulation (FTR) implements the statute: "[p]rovided the residence transaction expenses are

¹ Mr. Keele submitted a claim for \$9343.46, but the components as listed add up to \$9343.26.

customarily charged to the seller of a residence in the locality of the old official station . . . [the] agency will, with appropriate supporting documentation provided by [the employee], reimburse [the employee] . . .” 41 CFR 302-11.200 (2013). The Joint Travel Regulations (JTR) are also applicable to Mr. Keele and have the same requirements as the FTR. JTR C5756-A.4.a-b. The burden is on the claimant to establish by a preponderance of the evidence that it is customary for the seller to assume some or all of the buyer’s costs in the locality where the residence is located. *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930, at 171,748 (citing *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727, at 170,991). The burden may be met by showing, for example, that a cost is allocated to the seller in a pre-printed form, or via historical data and letters from a real estate professional confirming that a particular cost is invariably assumed by the seller. *See Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133.

We have previously held that a claimant can meet his burden by providing documentation from real estate professionals. *See, e.g., Charles W. Worsham*, CBCA 3401-RELO, et al., 14-1 BCA ¶ 35,504. In this case, Mr. Keele has similarly met his burden to show that some of the requested costs are properly reimbursable. The table from FNBA establishes that the appraisal fee and the attorney document preparation fee are usually paid by the seller in the locality. These expenses total \$801.50.

The evidence also indicates that the other costs included in his claim could be allocated to either the buyer or the seller. As to those costs, Mr. Keele has not produced evidence to show that they are customarily paid by the seller. Thus, he is not entitled to be reimbursed for them.

Decision

The Board grants Mr. Keele’s claim in part. Mr. Keele is entitled to reimbursement of \$801.50.

JERI KAYLENE SOMERS
Board Judge