



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 6, 2014

CBCA 3455-RELO

In the Matter of CHRISTOPHER L. McCONNELL

Christopher L. McConnell, Youngsville, NC, Claimant.

William D. Robinson and Pawandeep K. Chatha, Assistant General Counsel,
Department of Justice, Washington, DC, counsel for Agency.

STEEL, Board Judge.

Claimant, Christopher McConnell, is an employee of the Federal Bureau of Prisons (BOP). In January 2013 he accepted a new position in Butner, North Carolina, necessitating a transfer from Washington, D.C. He claims entitlement to a home marketing incentive payment from the sale of his home in a Washington suburb. For the reasons stated, we find that the agency has properly denied the claim.

Background

When Mr. McConnell accepted the position in North Carolina, he was told that he was eligible for the agency's homesale program. Under this program, transferred employees may sell their homes to a relocation contractor at an appraised value. The program guarantees that the house will be sold, equity in the house becomes available to the employee as soon as the contractor's offer is accepted, and none of the selling costs are deducted from the employee's equity in the home. The BOP homesale program also offers a home marketing incentive payment of five percent of the selling price, not to exceed \$10,000, when the employee enrolled in the homesale program finds a bona fide buyer for the residence through his own marketing of the home within sixty days of receipt of the homesale contractor's offer. The BOP contract with its relocation contractor sets two fees – one a standard fee if the relocation contractor finds the buyer, and a markedly reduced fee if the employee

produces the bona fide buyer. If the employee finds the buyer, the BOP has to pay much less to the relocation contractor, and it shares its savings with the employee.

Mr. McConnell chose to enter the program through BOP's relocation services company, Brookfield Relocation, Inc. (Brookfield). He began to market his home per the instructions given to him by BOP and his real estate agent, seeking a purchaser with a bona fide offer he could present to Brookfield, so as to entitle him to the home marketing incentive payment. On March 3, 2013, Mr. McConnell received an offer which he neither accepted nor declined, but continued to negotiate with the offeror regarding closing cost terms.

The following day, March 4, he received the offer from Brookfield for the purchase of his home based on appraisals of the property. Brookfield's offer stated:

If [Brookfield] is notified **before** Seller signs this agreement of a valid written offer from a prospective buyer (a "Buyer's Offer") that would result in a sale providing an equal or greater net cash return than the Purchase Price, [Brookfield] will amend the Purchase Price to an amount equal to the Buyer's Offer price (the "Amended Value"), provided [certain] conditions are met

(emphasis supplied).

Under the homesale program, Mr. McConnell had sixty days from receipt of the Brookfield offer to attempt to find a bona fide buyer. He was informed that he could not accept the offer from Brookfield before April 7, 2013, and the offer would expire on May 3, 2013, sixty days after it was received. During this time, he continued his negotiations with the third-party offeror, but apparently did not believe that he had a worthy offer to convey to Brookfield.

On April 15, 2013, Mr. McConnell accepted the standard appraisal-based offer from Brookfield and signed the agreement. He informed Brookfield that he did not have a bona fide buyer. He did not inform Brookfield of the outstanding third-party offer. He officially transferred the property to Brookfield on that date.

On April 21, Mr. McConnell's original listing agent submitted the third-party offer to Brookfield. She was informed by Brookfield that it had already taken ownership of the property, and that any offer must now be submitted from the prospective buyer directly to Brookfield. The third party thereafter submitted her offer to Brookfield, which accepted her offer and then sold the house to her.

Mr. McConnell claims that he is entitled to the home marketing incentive payment under the homesale program, as he found the actual buyer through his own marketing efforts. His request for payment of the incentive was denied by the BOP Relocation Services Section on the ground that the applicable regulations would not permit BOP to pay the incentive. The BOP Finance Branch denied his request for a waiver of the regulations and referred him to this Board. Mr. McConnell contends that he was told that to receive the home marketing incentive payment, he had to market his home independently and aggressively, find a bona fide buyer, and transfer the property to Brookfield. He argues that because he completed all of those steps, he is entitled to the payment.

The agency's position is that Mr. McConnell is not eligible for the home marketing incentive payment because he transferred the property to Brookfield before submitting the third-party offer as a bona fide buyer, and as a result, BOP had to pay the higher standard fee to Brookfield. Because the purpose of the incentive payment is to reduce the cost of the contractor's service to the Government, the agency argues it makes little sense to pay the incentive to an employee when it has already paid the contractor the higher fee.

Discussion

Federal agencies are permitted to enter into relocation services contracts with private firms to arrange for the purchase by the relocation services contractor of a transferred employee's residence at the employee's old duty station. 5 U.S.C. § 5724(c) (2012). In addition, an agency may pay to a transferring employee a home marketing incentive payment when three requirements are satisfied: 1) the residence is entered into a relocations services program under a contract in accordance with section 5724c to arrange for the purchase of the residence, 2) the employee finds a buyer who completes the purchase of the residence through the program, and 3) the sale of the residence results in a reduced cost to the government. *Id.* § 5756(a).

Similarly, regulations issued by the Administrator of General Services provide:

Under what circumstances will I receive a home marketing incentive payment?

You will receive a home marketing incentive payment when:

- (a) You enter your residence in your agency's homesale program;
- (b) You independently and aggressively market your residence;
- (c) You find a bona fide buyer for your residence as a result of your independent marketing efforts;
- (d) You transfer the residence to the relocation services company;

- (e) Your agency pays a reduced fee/expenses to the relocation services company as a result of your independent marketing efforts;
- (f) You meet any additional conditions your agency has established, including but not limited to, mandatory marketing periods, list price guidelines, closing requirements, and residence value caps; and
- (g) Your agency has established a home marketing incentive program.

41 CFR 302-14.5 (2012).

We have consistently denied claims for the home marketing incentive payment when any of these requirements is not met. *Stefani Wacek*, CBCA 1796-RELO, 10-2 BCA ¶ 34,483. Mr. McConnell did not meet one of the “additional conditions” established for receipt of such a payment – notification to the contractor of the identity of a prospective buyer before accepting the contractor’s offer to buy his house. See 41 CFR 302-14.5(f). Because Mr. McConnell did not inform Brookfield of the bona fide third-party offer before accepting the Brookfield offer, Brookfield rightfully charged the BOP its standard fee, not the reduced fee that would have resulted in savings to the Government which could be passed on to the employee. The fact that the third-party herself later made an offer to Brookfield resulted in benefit to Brookfield, not the Government.

Accordingly, we find that the agency correctly denied the claim.

CANDIDA S. STEEL
Board Judge