



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 9, 2016

CBCA 4997-RELO

In the Matter of MAGDY M. SORIAL

Magdy M. Sorial, Bonaire, GA, Claimant.

Laura A. Merritt, Civilian PCS Program Administrative Specialist, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

KULLBERG, Board Judge.

Claimant, Magdy M. Sorial, seeks review of the decision by his agency, the Department of the Air Force (USAF), that denied his request for a one-year extension in which to claim reimbursement for real estate transaction expenses. For the reasons stated below, the Board remands the claim to the USAF for further consideration.

Background

By orders dated May 19, 2014, Mr. Sorial was transferred from his former permanent duty station (PDS) at Eglin Air Force Base (AFB), Florida, to his current PDS at Robins AFB, Georgia. His orders provided that “[a]uthorized travel and transportation allowances, to include real estate sale and purchase transactions, must be completed within 1 year of the effective date of transfer . . . which is the date an employee . . . reports for duty at a new . . . PDS.” Mr. Sorial began working at his new duty station on or about July 28, 2014, while his family remained at his former residence.

Mr. Sorial signed a listing agreement for the sale of his home on February 1, 2015. On April 23, 2015, Mr. Sorial received an offer for the purchase of his home, and he

executed a contract with the purchaser on May 10, 2015. The contract provided, in pertinent part, the following:

Seller will pay the following closing costs: Title Search & Opinion, recording fees, survey, appraisal, Deed Doc[,] Stamps[,] and Realtors Fee. Buyer shall pay all remaining closing costs. Buyer will have a home inspection on or before May 22, 2015. Owner will pay Homeowners Association, Property Taxes[,] and Property Insurance until closing.

Buyer will Lease the property for a period of one year from the Seller Lease agreement will be in effect starting July 1, 2015. Buyer may close on the property at anytime during the year BUT no later than July 1, 2016.

Mr. Sorial made a timely written request to the USAF for a one-year extension in which to submit his claim for real estate expenses. In his letter, Mr. Sorial stated that “[t]here are limited buyers in the market for my Florida home, this why I accepted an offer with a delayed closure.” He also explained that he did not list his home until February 1, 2015, so that one of his children could complete high school and his wife could take an examination for her professional license.

By memorandum dated August 27, 2015, the USAF denied Mr. Sorial’s request.¹ In pertinent part, the letter stated that Mr. Sorial’s “decision to accept the delayed transaction does not constitute an extenuating circumstance that prevented him from selling [his] home within the 1-year period.” Mr. Sorial subsequently submitted his claim to the Board.

After this matter was docketed at the Board, the USAF submitted its agency report that stated the following:

In his appeal to the board, Mr. Sorial states there were two primary factors our agency neglected to consider when reviewing the merits of his claim; the local market conditions and price bracket of his home. Although the price bracket for Mr. Sorial’s home targets a specific market, our agency reviewed third party valuation estimates . . . and determined that market conditions were not as severe as the claimant suggested. . . . In addition, Mr. Sorial did not list/market his home for sale until 1 Feb 2015 The agency believes that

¹ The USAF’s August 27, 2015, memorandum superseded its previous memorandum, which was dated June 15, 2015, on the same subject.

the delay in marketing his home further exacerbated his ability to sale [sic] his home within the one-year time limitation.

In response to the agency report, Mr. Sorial provided a letter from his real estate agent regarding the sale of his home that stated the following:

We only received one offer to purchase the house[,] which was on April 23, 2015[,] and after much negotiation[,] the actual contract date was May 10, 2015. This offer included a requirement for the buyer to lease the house for 12 months because he was not able to close immediately. Mr. Sorial asked me to keep the house on the market until July 2015[,] and had me hold an open house on May 3, 2015 hoping to get another buyer. As Mr. and Mrs. Sorial's furniture move in June 2015 approached, the Sorial's [sic] reluctantly accepted the only offer [they] had.

I removed the "For Sale" sign on the date the Buyers took possession of the property[,] which was July 15, 2015.

Mr. and Mrs. Sorial have a higher priced house that is often difficult to sell without some concessions. The requirement to delay closure is a typical concession. Further, there is little traffic in this price range as it is considered beyond the range of a majority of the residence[s] of this income locality.

Discussion

The issue in this case is whether the USAF properly exercised its discretion in denying Mr. Sorial's request for a one-year extension to claim real estate transaction expenses for the sale of his home because the terms of the contract for the sale included a lease of the property to the buyer, which delayed closing for more than a year after reporting to his new PDS. Under the Federal Travel Regulation (FTR), "the settlement dates for the sale . . . transactions for which reimbursement is requested must occur not later than 1 year after the day [an employee] report[s] for duty at [his or her] new official station." 41 CFR 302-11.21 (2014) (FTR 302-11.21). An employee's agency may extend that one-year period by an additional year "for reasons beyond [the employee's] control and acceptable to [his or her] agency." *Id.* 302-11.22.

An agency's determination of whether to grant a one-year extension is subject to the following:

What must we consider when authorizing an extension of time limitation?

When authorizing an extension of time limitation, you must determine that the:

- (a) Employee has extenuating circumstances which have prevented him/her from completing his/her sale and purchase or lease termination transactions in the initial authorized time frame of one year; and
- (b) Employee's residence transactions are reasonably related to his/her transfer of official station.

FTR 302-11.421. The Joint Travel Regulations (JTR), which also apply to Mr. Sorial, provide that “[a]n extension may be granted only if extenuating circumstances prevented the employee from completing the sale, purchase and/or lease termination transactions within the initial 1-year period and that the delayed transactions are reasonably related to the [permanent change of station].” JTR C5692-C.7.

In addressing the issue of whether an employee has encountered extenuating circumstances that justify a time extension in which to claim real estate transaction expenses, the Board has recognized the following:

[T]he governing regulations require the agency official to make three determinations: (1) Did extenuating circumstances prevent the employee from completing the sale within the [one]-year window? (2) Were those circumstances acceptable to the official? (3) Were the residence transactions reasonably related to the permanent change of station? *David B. Yorkowitz*, GSBICA 15337-RELO, 00-2 BCA ¶ 31,052; *Stephanie P. Riddle*, GSBICA 15027-RELO, 99-2 BCA ¶ 30,533. The decisions also recognize that determinations to extend the time for reimbursement of real estate transaction expenses are discretionary and will not be overturned except in cases of abuse of discretion. *Yorkowitz*. However, the agency's exercise of discretion must be reasonably based. *Benjamin A. Hanfelder*, CBCA 1294-RELO, 08-2 BCA ¶ 33,987.

Judith A. Sukol, CBCA 2092-RELO, 10-2 BCA ¶ 34,574, at 170,459-60.² This Board has also held that it “will not disturb an agency's decision unless it is arbitrary, capricious, or

² The time period for filing a claim under FTR 302-11.21 had been two years when the Board issued the *Judith Sukol* decision, which referenced the “two-year” time limit, but a subsequent amendment to the FTR reduced that period to one year. 76 Fed. Reg. 18,343 (Apr. 1, 2011).

clearly erroneous.” *Eugene Andruchowicz*, CBCA 3022-RELO, 13 BCA ¶ 35,200, at 172,700 (2012) (citing *Nhat D. Nguyen*, GSBCA 15859-RELO, 02-2 BCA ¶ 31,986).

The Board’s discussion, therefore, turns to whether Mr. Sorial encountered extenuating circumstances in connection with the sale of his home. A determination that an employee encountered extenuating circumstances does not require a finding that “the circumstances have been ‘beyond the employee’s control.’” *Stephanie P. Riddle*, 99-2 BCA at 150,798. “Any action which has contributed to the predicament in which the employee finds [himself or] herself may be considered in evaluating whether the circumstances were excusable.” *Id.*

In this matter, Mr. Sorial contends that he had only one offer for the sale of his home, and the buyer insisted that the terms of the sale included leasing the property before closing. This Board has recognized “that a weak housing market may indeed be one of the considerations in the agency’s exercise of its discretion.” *Judith A. Sukol*, 10-2 BCA at 170,460 (citing *Peter J. Grace*, GSBCA 16790-RELO, 06-1 BCA ¶ 33,219). In *Peter J. Grace*, the General Services Board of Contract Appeals (GSBCA) noted that the claimant sought an extension of time in which to file his claim for the expense of the sale of his home because of “a poor housing market in the area of the residence, which effectively forced him to delay settlement until his contract buyer’s divorce became final.” 06-1 BCA at 164,636. The GSBCA remanded the claim back to the agency to consider the effect of the housing market on the sale of the claimant’s home. *Id.*

The circumstances of this case are similar to those in *Peter J. Grace*, and the remand of this matter back to the USAF for further consideration is warranted. Mr. Sorial has presented documentary evidence, which is the letter from his real estate agent, that explained why the sale of his home included a lease by the buyer before closing. That letter establishes that Mr. Sorial’s home was difficult to sell because of its high price, and it is a “typical concession” under such circumstances for the seller to lease the property to the buyer before closing. Also, Mr. Sorial received no other offers for his home.

The USAF, however, did not have the letter from Mr. Sorial’s real estate agent when it reviewed his request for an extension of time. Given the fact that Mr. Sorial was confronted with the choice of either selling his home subject to an additional agreement to lease it or not sell it at all, the Board finds that he has presented facts that are sufficient to establish extenuating circumstances that should have been considered by the USAF. The Board does not find, as suggested in the USAF’s agency report, that Mr. Sorial’s decision to wait until February 1, 2015, to list his home is a reason to deny his request for an extension. As discussed above, an agency has broad discretion, but in this case, the Board does not find that it would be reasonable for the USAF to assume that an earlier listing of

Mr. Sorial's home would have resulted in obtaining another offer from a buyer with better terms. The fact that Mr. Sorial received only one offer during the period from February 1 to July 15, 2015, indicates the less than favorable market that he encountered.

Discussion

This matter, accordingly, is remanded to the USAF for further review consistent with this decision.

H. CHUCK KULLBERG
Board Judge