



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 7, 2017

CBCA 5853-RELO

In the Matter of KEVIN T. LYSTER

Kevin T. Lyster, San Diego, CA, Claimant.

Candy L. Nimey, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Rome, NY, appearing for Department of Defense.

RUSSELL, Board Judge.

Claimant, Kevin T. Lyster, seeks reimbursement in the amount of \$13,290 for his payment toward buyer's closing costs when he sold his home at his previous permanent duty station (PDS). The Defense Finance and Accounting Service (DFAS) contends that Mr. Lyster has not met his burden of proof that payment of such costs is customary. For the reasons stated below, the claim is denied.

Background

In July 2016, Mr. Lyster, an attorney for the Navy, relocated from his former PDS in Norfolk, Virginia, to San Diego, California. In December 2016, Mr. Lyster sold his Norfolk home and submitted costs for reimbursement. Mr. Lyster's claim included reimbursement for his payment of a portion of the buyer's closing costs in the amount of \$13,290. DFAS rejected the claim because Mr. Lyster failed to show that closing costs are customarily paid by sellers in the area of his former residence. Among his supporting documents, Mr. Lyster provided correspondence from realtors asserting that it is customary for a seller to pay a portion of a buyer's closing costs in Virginia Beach. However, one mortgage lender merely drew on her "20 years experience" as support for this contention. Another broker referenced market analysis her firm conducted that was used by another claimant (Thomas D. Martin)

in a previous relocation case. *See Thomas D. Martin*, CBCA 5082-RELO, 16-1 BCA ¶ 36,324. The broker's letter indicates that, since *Martin*, her brokerage firm conducted additional market analysis between 2013 and April 2016, an approximate three-year timeframe. The letter is accompanied by search results of 197 home sales in seven neighborhoods, showing that between 80 – 100% of sellers paid some portion of closing costs for buyers, depending on the neighborhood. However, Mr. Lyster's former residence does not seem to be within these seven neighborhoods and actually appears to be approximately fourteen miles away from them.

Discussion

Under the Federal Travel Regulation, a person selling a residence is entitled to reimbursement of costs “customarily charged to the seller of a residence in the locality of the old official station.” 41 CFR 302-11.200 (2015) (FTR 302-11.200). The claimant has the burden of establishing by a preponderance of the evidence that “it is customary for the seller to assume . . . [some or all] of the buyer's closing costs in the locality of the residence sold.” *Gary J. Maynard*, CBCA 5751-RELO, 17-1 BCA ¶ 36,874, at 179,747 (quoting *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930, at 171,748). “An expense is ‘customarily’ paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community.” *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701, at 143,315 (1996)). As for proof, a letter from a real estate broker is acceptable if it includes “specific evidence of the number and percentage of sales in the same community, over a substantial period of time, that involved seller contributions to buyer's closing costs . . .” *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA, ¶ 36,192, at 176,575 (2015).

Reviewing the market analysis provided by Mr. Lyster, the data is not sufficient to conclude that home sellers in the area of his former residence customarily pay some portion of a buyer's closing costs. The analysis has a sample size of 197 homes in seven neighborhoods. However, these neighborhoods appear to be at least fourteen miles from Mr. Lyster's former residence. In *Martin*, the claimant's address was within the sample he provided to the Board. Here, Mr. Lyster's former address does not appear to be within the community of the sample. Accordingly, he has not met his burden showing that sellers customarily pay a portion of the buyer's closing costs within the area of his former residence. Mr. Lyster may, if he chooses, submit additional evidence consistent with this decision to DFAS in further support of his claim.

Decision

The claim is denied.

BEVERLY M. RUSSELL
Board Judge