



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 4, 2019

CBCA 6443-RELO

In the Matter of MIGUEL A. SANTIAGO DIAZ

Miguel A. Santiago Diaz, Melbourne, FL, Claimant.

Timothy G. Aiken, Jr., Civil Law Division, Office of the Staff Judge Advocate, 78th Air Base Wing, Department of the Air Force, Robins Air Force Base, GA, appearing for Department of the Air Force.

DRUMMOND, Board Judge.

In 2017, the Department of the Air Force transferred claimant, Miguel A. Santiago Diaz, from one permanent duty station to another and authorized him to incur reimbursable real estate transaction expenses. Claimant purchased a house near his new duty station in Melbourne, Florida, and submitted a claim to the agency for reimbursement of real estate expenses incident to the transaction. The agency denied reimbursement of \$2918.30 for state tax stamps and \$1039.15 for city/county tax stamps after determining claimant had failed to demonstrate that these expenses are customarily paid by a purchaser in Melbourne, Florida. Claimant has requested the Board's review of that decision. Claimant has offered no new evidence or arguments in support of his claim.

The statute provides that, pursuant to regulations prescribed by the Administrator of General Services, an agency shall pay real estate purchase expenses on behalf of an employee who transfers from one permanent duty station to another within the United States in the interest of the Government. 5 U.S.C. § 5724a(d)(1) (2012). The Federal Travel Regulation (FTR) implements this statutory directive by establishing procedures that agencies use to process claims for real estate transaction expenses. 41 CFR 302-11.200 (2017) (FTR 302-11.200). Under the FTR, the purchaser of a residence is entitled to reimbursement for certain residence transaction expenses if the expenses are "customarily . . . paid by the purchaser at

the new official station” and appropriate supporting documentation is provided by the purchaser. *Id.* The Joint Travel Regulations (JTR), which apply to claimant as a Department of Defense employee, also limit costs related to the purchase of a residence to those customarily paid in the residence locality with appropriate supporting documentation provided by the employee. JTR 054504; *Janet D. Winn*, CBCA 4434-RELO, 15-1 BCA ¶ 35,978; *Steven D. Ward*, GSBCA 14306-RELO, 98-2 BCA ¶ 29,813. Neither regulation expressly mentions state tax stamps or city/count tax stamps as reimbursable expenses. However, these taxes are similar in nature to “state revenue stamps” and therefore may be reimbursable as “miscellaneous expenses,” provided the amounts paid by the employee do not exceed amounts customarily paid in the locality of the residence, as shown by appropriate supporting documentation. FTR 302-11.200(f)(5)–(6); JTR 054504-D.5 to 6; *Charles W. Worsham*, CBCA 3401-RELO, et al., 14-1 BCA ¶ 35,504 (2014); *Martha V. Hooks*, GSBCA 16754-RELO, 06-1 BCA ¶ 33,198; *Dawn S. Daugherty*, GSBCA 14065-RELO, 97-2 BCA ¶ 29,050.

This Board has long recognized that 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.” *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055, at 168,412 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996)). The burden is on claimant to prove that these expenses are customarily paid by the buyer in Melbourne, Florida. *See Winn; Daugherty*. “General, conclusive statements of customary practice . . . are not persuasive.” *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133. The burden may be met through specific evidence showing the “number and percentage of sales in the same community, over a substantial period of time,” that have involved the expense claimed. *Charity Hope Marini*, CBCA 4760-RELO, 16-1 BCA ¶ 36,192, at 176,575 (2015).

Claimant asserts that it is customary for a buyer in Melbourne, Florida, to pay these expenses when the builder is the seller. Claimant has produced two letters, one from his real estate broker and one from his title company. The letter from the real estate broker represented that tax stamps are always paid by the buyer, especially for new home purchases in Melbourne. The letter from the title company indicates that the seller and buyer agreed that the buyer would pay all closing costs, including the tax stamps. Claimant’s statement and the evidence in support fall short of the persuasive evidence that we require for a claimant to establish entitlement to reimbursement of the disallowed expenses. The letters are not accompanied by any data or specific evidence that these expenses are customarily paid by the buyer of a residence in the locality. Without more specific evidence, we cannot determine whether the practice is customary based on the representations in these letters.

Claimant also produced a Closing Disclosure and ALTA Settlement Statement. While the naming/characterization of these expenses varies between the ALTA Settlement Statement and the Closing Disclosure — the ALTA Settlement Statement labels the expenses as “Documentary Stamps on Deed” (\$2918.30) and “Documentary Stamps on Mortgage” (\$1039.15) and the Closing Disclosure refers to these expenses as state tax stamps and city/county tax stamps — nothing in the record explains the discrepancy in the naming. These documents also do not suffice to establish the practice is customary.

This Board has previously observed, “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.” *Richard E. Hearne*, CBCA 3851-RELO, 15-1 BCA ¶ 35,837, at 175,257 (2014).

Claimant has not met his burden. If claimant is able to produce more compelling proof that its customary to pay these expenses, he may ask the agency to reconsider. *See* FTR 302-11.306; *Hearne*; *Worsham*; *Hooks*; *Daugherty*.

Decision

The claim is denied.

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge