



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 5, 2020

CBCA 6596-RELO

In the Matter of MERRITT L. WHITELOW IV

Merritt L. Whitelov IV, Dexter, NM, Claimant.

April D. Jenkins, Relocation Counselor, Federal Employee Relocation Center, Business Development and Services Branch, Environmental Protection Agency, Cincinnati, OH, appearing for Environmental Protection Agency.

GOODMAN, Board Judge.

Claimant, Merritt L. Whitlow IV, is an employee of the Environmental Protection Agency. He has asked this Board to review the agency's decision denying certain costs incurred during his permanent change of station (PCS).

Background

Claimant made a PCS move from Georgia to New Mexico. He sold his residence in Georgia to Opendoor, a company that buys and sells homes. Claimant states that he chose to deal with Opendoor because this arrangement guaranteed that he would sell his home and receive the proceeds of sale before he moved, so that he could timely buy a new home at the new duty station.

Claimant agreed to sell his home to Opendoor for \$154,000. As a condition of the sale, he also agreed to pay Opendoor a fee equal to 7.5% of the sale price—\$11,557.50—and to give Opendoor a “repair credit” of \$14,131.49. The agency denied reimbursement of these two amounts, and claimant seeks review of the agency's denial.

Discussion

Claimant states that he was informed by the agency that no employee had previously submitted a claim for reimbursement of a fee from a home buying–selling company such as Opendoor. Claimant asserts that “the fee charged by Opendoor to sell my home is comparable to the traditional brokerage fee and should be reimbursed similarly,” as it is “close to the standard traditional brokerage fee being 6% of the sale price.”

It is claimant’s burden to establish the purpose of a particular fee and his entitlement under applicable regulations to be reimbursed. *Gerald Bates, Jr.*, CBCA 2789-RELO, 12-2 BCA ¶ 35,080; *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304. The Board has twice requested that claimant submit a copy of his agreement with Opendoor, so that we can review the terms and conditions. Although claimant has not submitted the agreement, the information which he provided with his request for review does include the settlement sheet. That sheet indicates the purchase price was \$154,000, with proceeds received by claimant reduced by Opendoor’s 7.5% fee and the repair credit.

While claimant asserts that the 7.5% fee is comparable in amount to that charged as a broker’s fee, Opendoor was not a broker, but the purchaser. As claimant chose to sell his home directly to Opendoor, claimant cannot be reimbursed based upon a hypothetical bargain—a brokered transaction—which did not occur. We must make our decision based upon the bargain actually made. *Todd W. Hulsey*, CBCA 1216-RELO, 08-2 BCA ¶ 33,962.

The 7.5% fee was simply a lump sum credit provided by claimant to the purchaser in order to reduce the sales price, rather than a payment by the seller of specific settlement charges customarily paid by the seller in that locality. The payment of the fee had the effect of reducing the purchase price by crediting this amount to Opendoor and withholding the amount from claimant at settlement. Such credits are not reimbursable as real estate transaction expenses. *Mahmood Ramzan*, CBCA 3287-RELO, 13 BCA ¶ 35,386.

Claimant states that the repair credit he gave to Opendoor “[came] out of the selling price.” While there is no explanation in the record, this credit is apparently for items that are in need of repair at the time of sale. Again, the amount of the repair credit had the effect of reducing the purchase price by crediting the amount to Opendoor and withholding the amount from claimant at settlement. Such expenses are not incidental to the sale of the property, but are operating or maintenance costs arising from the ownership of the property that are not reimbursable. 41 CFR 302-11.202(f)(2019); *Adella O’Hara*, CBCA 5332-RELO, 16-1 BCA ¶ 36,418.

Decision

The claim is denied.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge