



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 24, 2020

CBCA 6566-RELO

In the Matter of CHARLES BROWN

Charles Brown, Arvada, CO, Claimant.

Rico Clarke, Director, Financial Policy, Forest Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

O'ROURKE, Board Judge.

A federal employee transferred from Maryland to Colorado pursuant to official orders, entitling him to relocation benefits at government expense. These included certain expenses related to the sale of his condominium in Maryland, since those expenses were required by Maryland law as a precondition of the sale. The agency denied their reimbursement as not allowable under applicable regulations. We disagree and grant the claim in part.

Background

Claimant, Charles Brown, transferred from Maryland to Colorado in September 2018 to begin a new position with the United States Forest Service. Pursuant to his official transfer, Mr. Brown sold his condominium in Maryland. The sale was subject to both the Maryland Condominium Act and the Maryland Homeowners Association Act. These statutes require sellers to provide certain property-related disclosures to buyers, such as copies of the condominium rules and bylaws; a certification of compliance with health and building codes; information about fees, insurance, and the operating budget of the condominium association; and information detailing whether the property is subject to an extended lease.

Mr. Brown received an offer on his condominium on January 24, 2019, and sought the required disclosures and certifications on February 12, 2019. He paid a total cost of

\$1023 for the required documentation. The settlement occurred on February 25, 2019. He submitted a claim for reimbursement of the expenses, but the agency denied the claim, stating simply that “per [the National Finance Center] [they were] not . . . acceptable expense[s] to reimburse.” Mr. Brown contends that the fees were customary in the area because they were required by state law and should be reimbursed.

Discussion

The Federal Travel Regulation (FTR) authorizes a federal employee who transfers to a new duty station at government expense to be reimbursed for costs related to the sale of his residence at the old duty station if those costs are customarily charged to the seller of a residence in the locality of the old official station and are sufficiently supported by documentation. 41 CFR 302-11.200 (2018). Here, Mr. Brown asserted:

These resale documents were required by Maryland state law to be provided by the seller prior to settlement. Therefore, we paid those costs of sale prior to and outside of closing as indicated by the receipts provided.

Mr. Brown included a copy of the purchase agreement, which mandated compliance with the Maryland Condominium Act and the Maryland Homeowners Association Act, both of which permit a purchaser to cancel the contract without penalty if the required disclosures and certifications are not timely made. Mr. Brown also cited a decision by this Board in which we granted an employee’s request for fees paid to a homeowner’s association (HOA) because we found that the fees were required by state law. “A required service is one that is imposed by either a lender or by Federal, state, or local government as a precondition of sale.” *Gregory Cellos*, CBCA 5105-RELO, 16-1 BCA ¶ 36,430, at 177,586 (quoting *Barbara A. Maloney*, CBCA 2023-RELO, 10-2 BCA ¶ 34,593, at 170,524 n.2). We granted the claim after determining that the Texas Property Code not only required an HOA to provide certain information as a precondition of selling a home, but also allowed the HOA to charge the homeowner a reasonable fee for producing the information.

In denying Mr. Brown’s claim, the agency pointed to our decision in *Brian D. Szydluk*, CBCA 5581-RELO, 17-1 BCA ¶ 36,657. But in that case, the fee was not required by law. It was merely “an encumbrance on the property . . . which affected the market value of the residence—much as a lien against the property, an easement across some of the land, or a zoning restriction would affect the value.” *Id.* at 178,516. The Board held that “[a] diminution in market value is not an expense of sale and is therefore not reimbursable by the Government.” *Id.* We agree that the facts of this case are similar to those in *Gregory Cellos*. Maryland state law required the seller to provide specific documents and certifications to the buyer as a precondition of the sale. The law also established maximum allowable fees for

producing and delivering that information. Our task is to decide whether the agency must reimburse the seller for those expenses, and if it must, whether there are limits to such reimbursement. The FTR permits reimbursement for:

“other” miscellaneous expenses in connection with the sale and/or purchase of [the] residence, provided they are normally paid by the seller or the purchaser in the locality of the residence, to the extent that they do not exceed specifically stated limitations, or if not specifically stated, the amounts customarily paid in the locality of the residence. . . .

41 CFR 302-11.200(f).

Twelve categories of “miscellaneous expenses” are listed under the above provision. Number twelve is “[o]ther expenses of sale and purchase made for required services that are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station.” 41 CFR 302-11.200(f)(12). We analyze the fees at issue in Mr. Brown’s claim as “other miscellaneous expenses,” and find that they (1) were paid in connection with a home sale, (2) were paid by the seller as required by statute, and (3) were subject to specifically stated fee limitations.

The Maryland Condominium Act and the Maryland Homeowner’s Association Act specified maximum amounts payable to furnish and deliver the required resale information. Both statutes established a \$250 maximum fee for resale certificates, \$100 and \$50 (respectively) for inspections, and \$50 for delivery of the information within fourteen days after the request, or \$100 for delivery of the certificate within seven days after the request. Mr. Brown claimed a total of \$1023 for three resale packages and delivery fees. However, we deduct from this total \$98 in fees that were not allowable (\$50 over the maximum fee amount for the resale packages, \$10 in convenience fees, and \$38 that exceeded the maximum delivery fee). Accordingly, Mr. Brown is entitled to \$925.

Decision

We grant the claim in part. The agency shall pay Mr. Brown \$925.

Kathleen J. O’Rourke
KATHLEEN J. O’ROURKE
Board Judge