



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 28, 2020

CBCA 6763-RELO

In the Matter of JACQUELINE A. GEMMELL

Jacqueline A. Gemmell, Pace, FL, Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

RUSSELL, Board Judge.

In conjunction with a permanent change of station (PCS), claimant, Jacqueline Gemmell, was authorized reimbursement of real estate expenses. Ms. Gemmell has asked the Board to review the Defense Finance and Accounting Service's (DFAS's) disallowance of certain expenses that she incurred in connection with the purchase of a home at her new duty station.

Background

On September 9, 2019, Ms. Gemmell was issued a PCS order for a transfer from Chambersburg, Pennsylvania, to Pensacola, Florida. On November 15, 2019, Ms. Gemmell closed on a home at her new permanent duty station (PDS) and submitted a form to the reviewing agency for reimbursement in the amount of \$9031.25 for certain real estate expenses incurred in purchasing her new home.

DFAS authorized reimbursement of \$1180, denying reimbursement for certain claimed expenses. Of the expenses denied, Ms. Gemmell is seeking reimbursement for a mortgage recording fee (\$251), a transfer tax (\$1828.75), and a title recording fee (\$13.50). In denying reimbursement, DFAS argued that Ms. Gemmell failed to prove that she incurred

these expenses and also failed to show, as required by applicable travel regulations, that the expenses are customarily paid by the purchaser in the location of Ms. Gemmell's new PDS.

Discussion

Seller's Credit

In support of its position denying Ms. Gemmell's claim, DFAS referenced an American Land Title Association (ALTA) statement for the purchase that showed a seller's credit of \$8000. DFAS explained that it followed up with the mortgage company as to the closing costs covered by the credit. The mortgage company representative initially stated that the credit was provided to cover a recording fee and transfer taxes, charges for which Ms. Gemmell was seeking reimbursement, as well as other expenses. However, in a subsequent communication, the mortgage company representative stated that she had made a mistake. She explained that there was a seller credit listed on the ALTA statement but not on the closing disclosure, and that the only credits of which she was aware were for a policy discount for title work and a lender credit. Ms. Gemmell asserted that the seller's credit was for a roof. DFAS still denied the requested reimbursement, stating that Ms. Gemmell failed to submit documentation to substantiate that the seller's credit was for a roof and that the expenses at issue are customarily paid by the purchaser in the area of her new PDS.

However, Ms. Gemmell submitted three documents to the Board which we find persuasive evidence in showing that the seller's credit was for a roof, and not provided to cover the expenses at issue in this case. Specifically, she submitted an addendum to the home purchase contract confirming that the seller's payment was for repairs and an email from her realtor stating:

The \$8000 [c]redit from your house purchase was broken out on the ALTA as a seller credit. But it was not on the closing disclosure because it was paid as a check to you for repairs. The house was part of an estate and so \$7500 was paid out of the seller[']s proceeds and the rest was paid by myself and the seller[']s agent. . . . I believe it was done this way because the \$8000 did not have any value to the lender[;] it was strictly for repairs to the roof after the closing of the sale.

Ms. Gemmell also submitted a receipt dated January 11, 2020 from the roofing contractor reflecting payment of \$7245 for re-roofing and associated work. Given the submitted documents, we find that Ms. Gemmell has shown that the seller's credit that she received as part of her home purchase was not provided to cover the expenses at issue in this case.

Expenses

It is well established “that the authority to reimburse relocation costs ‘is grounded in subchapter II of chapter 57 of title 5, United States Code, and the regulations issued by the Administrator of General Services (under express Congressional charge) to implement that statute.’” *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727 (quoting *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900). The Federal Travel Regulation (FTR), issued to implement the statute, specifically mentions mortgage and transfer taxes as types of reimbursable expenses, provided the expenses are customarily paid by the employee purchaser at the new official station, as shown by appropriate supporting documentation. 41 CFR 302-11.200 (2019). Costs of “searching title, preparing abstracts, and the legal fees for a title opinion” are also reimbursable “to the extent such costs . . . [h]ave not been included in other related transaction costs (i.e., broker’s fees or real estate agency fees)” and “[d]o not exceed the charges, for such expenses, that are customarily charged in the locality of [the] residence.” *Id.* at 302-11.200(e). The JTR, which supplement the FTR and are applicable to Ms. Gemmell as a civilian employee of the Department of Defense, contain similar provisions regarding reimbursement of expenses for transfer taxes and title costs. JTR 054504. The JTR also allows reimbursement of the cost of recording fees “for selling a residence if customarily paid by the seller at the old PDS, and purchasing a residence if customarily paid by a purchaser at the new PDS.” JTR 054504-C. The “[p]ayable expenses are limited to the amounts customarily charged where the residence is located.” *Id.* Based on the applicable provisions of the FTR and JTR, the expenses incurred for the transfer tax (\$1828.75), title recording (\$13.50), and the mortgage recording fee (\$251) are reimbursable if certain requirements are met.

As indicated above, one requirement that must be met is proof that the expense at issue is of a type customarily paid by the home purchaser at the new PDS. Our Board has explained that “[a]n 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 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996)). In addition:

[M]any of the expenses for which the FTR and JTR [Joint Travel Regulations] permit reimbursement are payable on the condition that the claimant shows that the cost incurred is customarily incurred by the purchaser of property in the locality of the new residence, or that it was required as a condition of financing. It is the purchaser’s burden to demonstrate that the fee charged was reimbursable, reasonable, and not in excess of the amount generally assessed in that locality. *E.g.*, *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304; *Timothy R. Defoggi*, GSBCA 16496-RELO, 05-1 BCA ¶ 32,907.

When a charge has been questioned by the agency, this burden is usually met by furnishing statements from knowledgeable real estate and mortgage company professionals who are familiar with the prevailing customs in the locality of the new residence, and able to explain the nature of a particular fee. *Ioan V. Sere*, GSBICA 16815-RELO, 06-2 BCA ¶ 33,412.

Vernon K. Register, CBCA 871-RELO, 08-1 BCA ¶ 33,790; *see also William C. Nusbaum*, CBCA 5641-RELO, 17-1 BCA ¶ 36,706 (“The claimant has the burden of proving by a preponderance of evidence that such costs incurred in a real estate transaction are customarily paid in that locality.”).

In this matter, we have no evidence in the record that the disputed expenses are customarily paid by the home buyer in the area of Ms. Gemmell’s new PDS. Accordingly, we must deny her claim. This decision, however, does not preclude Ms. Gemmell from presenting the required documentation to her agency in further support of her claim.

Decision

The claim is denied.

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge