



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 23, 2021

CBCA 7125-RELO

In the Matter of BYRON B.

Byron B., Claimant.

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

GOODMAN, Board Judge.

Claimant, Byron B., is a civilian employee of the Department of Defense. He has asked this Board to review the agency's denial of reimbursement of expenses arising from the sale of his residence during a permanent change of station (PCS) transfer.

In January 2020, claimant was issued PCS orders to transfer to a new duty station. He sold his residence at the old duty station to a company (the company). Claimant has submitted information that describes the company as an "iBuyer," a company that purchases homes directly from sellers for resale. Claimant and the company agreed upon a sale price, a repair credit to compensate the company for needed repairs before the house was resold by the company, and the company's service charge to compensate the company for the cost and risk of maintaining the home until it was resold. The amount claimant received at closing was the purchase price reduced by the repair credit, the service charge, and other charges paid by the company. Once the settlement occurred, the company owned the property and assumed the risks of maintaining it, as any other purchaser would have.

The company's service charge was \$19,082. Claimant requested reimbursement of real estate expenses incurred in the sale of his residence in the amount of \$17,873.60, and the agency denied reimbursement.

Brokerage Commission

Claimant states, “The ‘sales commission’ paid to a broker or real estate agent for selling [his] former residence equates to the [company’s] Service Charge.” He asserts that because the customary traditional realtor fee at his old duty station is 6%, he should be reimbursed that percentage of the purchase price, which is \$16,356, as that percentage of the purchase price “was paid in the service fee.” However, the settlement sheet does not indicate that claimant paid a customary traditional realtor fee.

Claimant also states that the company’s service fee paid for “the seller’s brokerage commission and the buyer’s brokerage fee of \$681.50.” The settlement sheet does not show that claimant paid a brokerage commission, and while a buyer’s brokerage fee of \$681.50 was listed as a buyer debit, there is no evidence that this charge was included in the service fee as alleged by claimant.

In denying reimbursement for the service charge, the agency relied upon this Board’s decision in *Merritt L. Whitelaw IV*, CBCA 6596-RELO (Mar. 5, 2020), which addressed the issue of a similar service charge when a company purchased the employee’s home directly. In that case, as here, the settlement sheet showed the employee’s proceeds received at settlement were reduced by a service charge. The employee made the same argument concerning the service charge as claimant makes here—that the service charge is comparable in amount to a broker’s fee, which is a reimbursable expense. The Board held that the argument did not have merit because the transaction was a direct sale to a purchaser, without the involvement of a broker, and stated further:

As claimant chose to sell his home directly to [a company], 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 [service charge] 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 [service charge] had the effect of reducing the purchase price by crediting this amount to [the purchaser] 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.

The service charge is therefore not reimbursable.

Legal and Related Fees

Claimant sought reimbursement for legal and related fees of \$1160. Except for a seller post-closing fee to the settlement attorney, \$75, which the settlement sheet indicates that claimant paid, this amount is comprised of costs which the settlement sheet indicates were paid by the company. Claimant states that the costs paid by the company were paid from the company's service fee and would normally have been paid by the seller: the settlement fee to the settlement attorney, \$785; the title examination fee, \$225; and the buyer post-closing fee, \$75. There is no evidence that the costs paid by the company were paid from the service fee. A claimant may not recover for real estate transactional expenses borne by others. *Adrian M. Wilson*, CBCA 4702-RELO, 15-1 BCA ¶ 36,031. The fact that claimant was charged the company's service fee does not mean that the company paid these other charges from the service fee or that claimant paid these fees.

The agency does not state why it denied reimbursement of the \$75 post-closing fee to the settlement attorney that the settlement sheet indicates claimant paid. The Joint Travel Regulations (JTR) provide that an employee is entitled to unitemized legal fees if they are within the customary range of residence transaction charges in that location. JTR 054504 (Jan. 2020). The agency should review this charge to determine if it is within the customary range.

Miscellaneous Costs

Claimant sought reimbursement for a transfer tax, \$297.60, and a recording fee, \$25, which the settlement sheet indicates were paid by the company. Claimant alleges, but provides no evidence, that these costs were paid from the service fee. The fact that the company charged claimant a service fee neither proves that these charges were paid out of it nor makes these charges reimbursable to claimant, and claimant may not recover for real estate transaction expenses borne by others. *Wilson*.

Claimant seeks reimbursement of other incidental expenses of \$60 (preparation of house for sale, \$25, and reproduction of documents and postage, \$35). There is no further explanation of these costs. Costs for preparation of the house for sale 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) (2020); *Whitelow*. The documents reproduced and postage are not identified in the record. These expenses are not reimbursable.

Cost of Shipping Pet Quarantine Documentation

Claimant seeks \$57.55 in miscellaneous expenses allowance (MEA) for an overnight shipment of mandatory quarantine documentation to the Hawaii Quarantine Center. The agency acknowledges that due to the late date of receiving PCS orders, claimant incurred this expense to assure that the test results for his two dogs were received timely before they were transported to his new duty station, but denied reimbursement, stating that pursuant to JTR 054103, non-transportation and handling pet-related expenses are not reimbursable. The regulation reads in relevant part:

JTR 054103. Pet Quarantine and Transportation

This paragraph clarifies pet quarantine reimbursement and transportation for PCS moves by a civilian employee. . . .

B. Non-reimbursable Pet Expenses. Non-transportation and handling pet-related expenses are not reimbursable. See the [Defense Travel Management Office] website for details on these expenses.

The agency is correct. The regulations do not provide for reimbursement of the cost of shipping documentation, which is a non-transportation expense. The expense of shipping documents is not reimbursable.

Decision

The agency should determine if claimant is entitled to the \$75 post-closing fee he paid to the settlement attorney. The remainder of the claim is denied.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge