



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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August 9, 2022

CBCA 7340-RELO

In the Matter of BRUCE J.

Bruce J., Claimant.

Tracey Z. Taylor, Office of Counsel, Humphreys Engineer Support Activity, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

**KULLBERG**, Board Judge.

Claimant, Bruce J., seeks reimbursement of \$1316.58 for the costs that he incurred from the sale of his home at his former duty station. His employer, the United States Army Corps of Engineers (USACE), contends that the claimed costs are not reimbursable. For the reasons stated below, the claim is denied.

Background

Claimant transferred to his current permanent duty station (PDS) pursuant to orders dated January 31, 2020. On April 29, 2020, claimant sold his home at his former PDS to a purchaser who qualified for Department of Veterans Affairs (VA) financing. Claimant paid real estate closing costs that included a "Seller Credit for VA Escrow Fee" in the amount of \$1016.58 and a "Seller Credit for VA non allowables" in the amount of \$300. USACE denied reimbursement for those costs. In a letter dated May 21, 2020, the claimant's broker stated the following:

The Seller did not pay Buyer[']s concession towards closing cost. But the Buyer used his VA home loan benefits and it is a regulation that a lender is Not allowed to charge the buyer for certain items on the home loan which are NON-ALLOWABLES.

In the contract/Form 22A para 4 says[:] “Seller shall pay up to . . . [a dollar amount] or [percentage] of the purchase price which shall be applied to the Buyer[’]s loan and settlement cost, including prepaids, loan discount, loan fee, interest buy down, financing, closing or other cost allowed by lender. That amount shall include the following cost[s] that lender is prohibited from collecting from Buyer[:] (a) up to \$300 for Buyer[’]s loan and settlement cost for FHA/USDA/VA loans; and (b) unless agreed otherwise below, Buyer’s share of the escrow fee for a VA Loan. Seller shall pay the cost[s] for (a) and (b) even if the amount agreed upon in this paragraph 4 is insufficient to pay for those cost[s].

....

The Seller paid the Buyer[’]s \$300 in NON Allowables and the buyer[’]s escrow fees. Totaling \$1316.58.

By letter dated June 5, 2020, USACE advised claimant that he was entitled to reimbursement in the amount of \$25,052.08 for the costs related to the sale of his home, but “[t]he VA escrow fee of \$1,016.58 and VA non-allowable fee of [\$]300 are not reasonable or customarily paid by the seller in the sale of a residence in the [former PDS] area.” Claimant subsequently submitted his claim to the Board.

### Discussion

Statute provides that the Government will reimburse an employee “who transfers in the interest of the Government, expenses of the sale of the residence . . . of the employee at the old official station . . . that are required to be paid by the employee.” 5 U.S.C. § 5724a(d)(1) (2018). The Federal Travel Regulation (FTR), which applies to claimant, states that reimbursement for certain costs related to the sale of real estate are allowed, “[p]rovided the residence transaction expenses are customarily charged to the seller of a residence in the locality of the old official station.” 41 CFR 302-11.200 (2020) (FTR 302-11.200). The Joint Travel Regulations (JTR), which also apply to claimant, similarly limit reimbursement of certain costs related to the sale of a home to those “expenses . . . reasonable in amount and customarily paid by the seller . . . in the location of the property.” JTR 054506-B.1 (Apr. 2020).

The claimant has the burden of proof to show by a preponderance of evidence that an incurred cost is customary in the locality in which the real estate transaction occurred. *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727, at 170,991. “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.” *Id.* at 170,991-92

(quoting *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827 (2001)). “The term ‘customary’ must be applied strictly, for the statute on which the regulatory phrase is based makes agencies responsible for paying transferred employees’ closing costs only where those costs ‘are required to be paid.’” *Bradley N. McDonald*, CBCA 5025-RELO, 16-1 BCA ¶ 36,345, at 177,204 (quoting *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533, at 174,133 (quoting *Monika J. Dey*)).

Claimant has not met his burden of proof to show that he is entitled to reimbursement of the costs of seller credits for “VA Escrow Fee” and “VA non allowables.” There is no evidence that payment of such costs was reasonable and customary. The letter from a real estate broker only indicates that claimant paid such costs pursuant to the contract. Nothing in the record suggests that such payments are reasonable and customary in other real estate transactions in the area of his former PDS. Claimant argues that the lender cannot charge such costs to the purchaser, but that fact alone does not establish that charging those fees to the seller is customary and reasonable. While the Board understands that claimant desired to sell his home to a veteran and was willing to pay those costs at issue in this matter, the Board cannot create an exception to established law and precedent for that reason.

#### Decision

The claim is denied.

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge