

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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January 11, 2002

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GSBCA 15377-RELO

In the Matter of CECILIA McNICOLL

Cecilia McNicoll, Leadville, CO, Claimant.

Rhonda M. Johnson, Office of the Chief Financial Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

**WILLIAMS**, Board Judge.

This is our second opinion regarding this employee's relocation benefits. In Cecilia McNicoll, GSBCA 15111-RELO, 00-1 BCA ¶ 30,810 (McNicol I), the United States Department of Agriculture (USDA) had requested our opinion on whether a claim for attorney fees and survey costs incurred in conjunction with claimant's permanent change of station and purchase of a residence on 37.10 acres of land could be paid. We ruled that the record contained insufficient evidence to permit a quantification of the allowable reimbursement and returned the matter to the agency for further development of the record and reimbursement consistent with the guidelines we articulated.

The agency transmitted questions to claimant and then forwarded the answers to the Board, again requesting the Board's decision on what costs could be reimbursed. See Rule 502 (48 CFR 6105.2 (2000)). Because the amounts claimant seeks are not all reasonably related to the residence site and exceed those customarily paid in the locality, we reduce them accordingly.

Background

Claimant, Cecilia McNicoll, an employee with USDA, was transferred from Missoula, Montana, to Leadville, Colorado, effective July 9, 1996. On May 11, 1998, claimant purchased a 37.10-acre parcel with a residence for a price of \$100,000; this land had been part of a larger 147-acre parcel. She paid attorney fees of \$4021 in conjunction with this transaction and seeks reimbursement of this amount. The attorney fees represent 32.108 hours between August 14, 1996, and May 27, 1998, at a rate

of \$125 per hour, plus recorder costs. An itemized bill from the attorney includes entries regarding a "survey to resolve title obligations," preparation of two warranty deeds, two quitclaim deeds, two promissory notes, and references to "miscellaneous matters relating to closing of ranch purchase." Although claimant purchased only Parcel A, the buyer's closing statement contains an entry for recording fees for Parcel B.

In our initial decision in this case, we pointed out that there are two restrictions which may limit recovery of attorney fees. First, only fees for legal services which "reasonably relate to the residence site" may be reimbursed. Second, the attorney fees must be customarily paid by the purchaser in the locale and may not exceed amounts customarily charged in the locale. McNicoll I, 00-1 BCA at 152,103. Because the record on the initial claim did not address these matters, we remanded the matter to the agency for supplementation.

On remand, the record indicates that a minimum of thirty-five acres is necessary to maintain a water right associated with a well in this locale and that a well was the sole source of water for claimant's residence and was needed for domestic use. Under zoning regulations for claimant's area, a minimum lot size of thirty-five acres is required, or application must be made to subdivide. Further, claimant's property is not used for commercial purposes and is at an elevation of over 10,000 feet, unsuitable for farming. Under these circumstances, we find that the 37.10 acres reasonably relates to the residence site. However, according to the detailed billing records of claimant's attorney, it is apparent that two parcels were sold, claimant's 37.10 acres and the remainder of 147 acres, some 110 acres. Legal services associated with both sales were included in the attorney fees being claimed here. In addition, this was no ordinary residential sale, but rather, a very complex transaction involving the drafting of an option contract with revisions and amendments, two warranty deeds, two joint claim deeds, two promissory notes, and deeds of trust as well as correspondence with two other attorneys, representing the seller and the purchaser of the adjacent 110-acre parcel.

The fees for legal work on the adjacent parcel, such as preparation of additional deeds and notes, do not relate to claimant's purchase and may not be reimbursed. In Lake County, Colorado, it is not customary for attorneys to charge a flat fee for residential closing. Rather, the legal work for standard residential closings is typically handled by title companies for a closing fee of \$150 and a title fee of \$120 plus recording costs. In unusually complex transactions such as this, Lake County attorneys bill at an hourly rate but were unable to estimate a standard fee because each fee depends upon the complexities of a given transaction.

Although this was an unusually complex transaction and the attorney fees were reasonable for the services performed, this Board cannot reimburse claimant for any fees above the average legal fee for a typical residential sale -- here, fees for services which are not typically performed by attorneys, but rather, by title companies.<sup>1</sup>

In Stanley H. Levine, GSBCA 14909-RELO, 00-1 BCA ¶ 30,603 (1999), the Board denied reimbursement for attorney fees above \$650, the average attorney fee for a residential sale in the Ft. Monmouth, New Jersey, locality. Id., at 2 (citing Margaret Kasper,

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<sup>1</sup>One local attorney indicated that he recommends that clients use title companies for standard closings since they can do the work less expensively and more efficiently.

GSBCA 14411-RELO, 99-1 BCA ¶ 30,119). In Kasper, the Board denied reimbursement of additional attorney fees above \$600, the average customarily paid in the locality, incurred in connection with a sale which never transpired. 99-1 BCA at 149,014 (citing Edward C. Brandt, GSBCA 13649-RELO, 97-2 BCA ¶ 29,054 (attorney fee of \$75 allowed as apparently within customary range paid in locality); Gregory A. Moore, B-249311, et al. (Feb. 4, 1993) (reimbursement limited to \$200, the amount of legal fees for real estate transactions customarily paid in Iowa City, Iowa); accord David R. Petak, B-247860 (July 23, 1992) (denial of legal fees over and above the amount customarily paid in Atlanta, Georgia)). Applying these principles here, claimant may recover \$270, the average fee customarily paid in Lake County, plus recording costs of \$7.50.

### Survey Costs

Although claimant only wanted to purchase 37.10 acres, because the seller offered a 147-acre lot, the entire 147 acres were surveyed at a cost of \$3750 by J. W. Land Survey Company. The seller paid \$1000 of the survey costs. The record does not indicate whether the purchaser of the 110-acre parcel bore any of this cost. Claimant seeks reimbursement of the entire \$3750.

Claimant is not entitled to reimbursement of the \$1000 portion of the survey costs, as she did not incur this cost. Marion L. Ladd, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890; Jacqueline B. Parrish, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605.

Applicable regulation permits the reimbursement of the cost of making surveys when required for legal or financing purposes, if two conditions are met: the costs are customarily paid by the purchaser of a residence at the new duty station and the amount does not exceed that customarily charged in the locality of the residence. 41 CFR 302.6.2(c); Dale W. Stakes, GSBCA 14613-RELO, 98-2 BCA ¶ 29,976.

According to the title company, the costs of a survey are customarily paid by the buyer in Lake County, Colorado. The cost of a survey in this locale ranges from \$250 to \$1000. Claimant admits that a survey was performed of the full 147 acres, but claims this had to be done in order for her to purchase the 37.10 acres. Claimant has offered no proof for this assertion. This Board has consistently limited reimbursable survey charges to that portion of the acreage surveyed which is reasonably related to the residence site. William D. Genda II, GSBCA 15227-RELO, 01-1 BCA ¶ 31,287; Larry D. Gatewood, GSBCA 15343-RELO, 01-1 BCA ¶ 31,211; Michael T. Matarrese, GSBCA 14769-RELO, 99-1 BCA ¶ 30,243. As such, claimant is entitled to 25% (37.1/147) of \$2750, the survey costs she actually paid, or \$687.50.

### Decision

The claim is granted in part. Claimant may be reimbursed \$277.50 in real estate legal expenses and \$687.50 for survey costs.

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MARY ELLEN COSTER WILLIAMS  
Board Judge