

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 3, 2001

GSBCA 15503-RELO

In the Matter of RICK L. SPRING

Rick L. Spring, Sierra Vista, AZ, Claimant.

W. David Sims, Acting Travel Team Leader, U.S. Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

BORWICK, Board Judge.

Claimant, an employee of the United States Customs Service, Department of the Treasury (agency), relocated in the interest of the Government from Los Angeles, California, to Douglas, Arizona, and was granted permanent change of station (PCS) relocation entitlements. Claimant sold a residence in California in conjunction with the move. The agency determined that he was entitled to only half of the allowable expenses for the sale of that residence because his ex-spouse jointly owned the residence. Claimant appealed that determination to the Board. We sustain the decision of the agency, as it correctly applied the governing provisions of the Federal Travel Regulation (FTR).

The facts as indicated by the record are as follows. Claimant, who worked in Los Angeles, California, was married in 1990, but on December 7, 1998, the Superior Court for Los Angeles County entered a judgment of divorce, with the effective date of the termination of marital status on March 4, 1999. Under the terms of the judgment, claimant received his residence as his sole and separate property, and was responsible for all mortgage payments, taxes, insurance, and maintenance until such time as "the property is sold or has been paid off." The judgment also provided that "at such time as either the property was sold or petitioner [claimant] buys respondent [the ex-spouse] out of her interest in the property, respondent was to receive an amount equal to one-half of any equity the property acquired over seven years."

On or about April 20, 2000, claimant and his ex-spouse signed a deed of trust for refinancing the residence. The deed of trust denominated claimant and his ex-spouse as "husband and wife," despite the terms of their judgment of divorce in December 1998 and the effective date of the termination of marital status on March 4, 1999.

Claimant explained why he and his ex-wife were stated to be husband and wife on the loan document:

In September 1998, my wife and I decided to divorce. In order to assist her in her move and consolidate some bills, we decided to refinance the house. Again, in order for either one of us to qualify, we both had to be on the papers because of the cost of the house. It was agreed upon by myself and my ex-spouse that her name would stay on the papers until I sold the house and then we would decide on how much each one of us would get after all the expenses were taken out. . . .

Neither one of us could have stayed in the house if we didn't make this agreement. The house loan was just too high for one income to qualify. It was agreed upon by myself and my ex-spouse.

On August 22, 2000, the agency confirmed claimant's selection for a position in Douglas, Arizona. On or about August 28, it issued claimant a relocation expenses authorization for his PCS from Los Angeles to Douglas. The authorization granted claimant a house hunting trip, temporary storage of household goods, temporary quarters subsistence expenses, and expenses for the sale of a residence at the old station. The authorization did not grant entitlements for dependents.

Claimant signed an employment agreement on August 30, and reported for duty at the new station on September 24. On November 6, claimant submitted a PCS expense reimbursement application and sought \$28,027.94 for reimbursement of expenses in selling the residence at his old station. The settlement sheet claimant submitted to support the application listed claimant and his ex-spouse as the sellers.

In examining the voucher, an agency employee noticed that claimant's ex-spouse was listed as a seller on the settlement sheet but that no dependents were listed on the agency's expense authorization. This employee asked claimant about his family relationship. Claimant explained the circumstances and timing of his divorce and explained that he had been the only resident at the house before its sale.

The agency determined that of the \$28,027.94 claimed, \$24,719.70 of expenses were allowable. The agency concluded that claimant was entitled to half of that amount--\$12,359.85--because claimant and his ex-wife, who was not a member of claimant's immediate family, had joint ownership of the residence.

Claimant submitted a claim to this Board challenging the agency's determination that claimant was entitled to \$12,359.85 and not the full \$24,719.70. The agency stated that it denied the claim because claimant's "ex-wife continued to hold title to the residence jointly with [claimant] at the time the residence was sold as a result of [claimant's] permanent change of station to Douglas, Arizona." The agency explained that " a [fifty] percent pro rata share of the expenses claimed [was] allowed because of the joint ownership of the residence according to the title and [claimant's] joint owner, [claimant's] ex-wife, was not a member of Mr. Spring's immediate family."

Statute authorizes the agency to pay, in accordance with prescribed regulations, to or on behalf of an employee who transfers in the interest of the Government, the expenses of sale of the residence at the old official station that are required to be paid by the employee, when the old and the new official station are located within the United States. 5 U.S.C. § 5724a(d)(1) (Supp. V 1999). Under the FTR, which implements the statute, title to the residence must have been in the name of the employee or in the joint name of the employee and one or more members of his or her immediate family. 41 CFR 302-6.1(c)(2000).

The employee must actually incur the expense. An employee shall be reimbursed for expenses actually incurred and paid by the employee or a member of the employee's immediate family. If any expenses were shared by persons other than the employee or a member of his or her immediate family, reimbursement is limited to the portion actually paid by the employee and/or a member of his/her immediate family. 41 CFR 302-6.1(f)(1).

When the title possessed by an employee is not full title, whether actual or equitable, the employee shall be reimbursed on a pro-rata basis to the extent of the employee's actual title interest plus the employee's deemed title interest in the residence. 41 CFR 302-6.1(f)(2).

Here, claimant does not dispute the agency's conclusion that during the relevant time frame, claimant and his ex-spouse held joint legal ownership or title to the residence.¹ In such cases, unless the employee can establish that he possessed equitable title in his ex-spouse's share, the employee is entitled to only half of the allowable residence transaction expense. Robert J. Voltz, 13656-RELO, 97-2 BCA ¶ 29,037 (citing Kathleen Juenger Chandler, B-250378 (Aug. 5, 1993))

Does claimant possess the requisite equitable title interest in the house such that he would be eligible to recover all of the allowable expenses of sale? Equitable title may be based on a title held in trust, by a financial institution, by both a family member and an accommodation party who is not a family member, or by the seller of the property or other equitable title situations. 41 CFR 302-6.1(c)(3)(i)-(v). See Daniel J. Cushine, GSBCA 15357-RELO, 00-2 BCA ¶ 31,130. The last category applies when the title is held in the name of a family member and an individual who is not a member of an employee's immediate family and the property is the employee's residence; the employee and/or a member of the immediate family has a right to use and to direct conveyance of the property; the employee and/or a member of the immediate family has made payments on the property; and the employee and or a member of the immediate family receives all of the proceeds from sale of

¹ Claimant and his ex-spouse refinancing the house pursuant to a deed of trust does not detract from that conclusion. Under California law, a deed of trust, which technically transfers the property's title to a trustee to hold as security for the debt, is the equivalent of a mortgage with the power of sale. Bank of Italy National Trust & Savings Assoc. v. Bentley, 20 P.2d 940, 943-44 (Cal. 1933). The title transferred to a trustee by deed of trust conveys none of the incidents of ownership other than right to convey the property upon default of the debtor in the payment of the debt. Id. Some authorities have therefore concluded that in practical effect the transfer of title under a deed of trust merely amounts to a lien on the property. Alliance Mortgage Company v. Rothwell, 900 P.2d 601, 606 (Cal. 1995); Monterey S.P. Partnership v. Bangham, Inc., 777 P.2d 623, 626 (Cal. 1989) .

the property. 41 CFR 302-6.1(c)(3)(v)(A)-(D). The employee must provide suitable documentation to the agency to establish that the conditions in (A)-(D) have been met. 41 CFR 302-6.1(c)(3)(v)(E).

Claimant does not argue that he has equitable title based on 41 CFR 302-6.1(c)(3)(i)-(iv). The agency considered whether claimant possessed equitable title based on 41 CFR 302-6.1(c)(3)(v). The agency accurately noted that since claimant had an agreement with his ex-spouse to share the proceeds of sale of the residence, he would not receive all of the proceeds from the sale. The agency correctly concluded, therefore, that claimant could not be deemed to possess equitable title under that subsection. 41 CFR 302-6.1(c)(3)(v)(D). The agency acted correctly in denying the claim.

ANTHONY S. BORWICK
Board Judge