

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

January 31, 2002

GSBCA 15580-RELO

In the Matter of JAMES M. TURNER

James M. Turner, Olney, MD, Claimant.

Helen O. Sherman, Director, Office of Financial Policy, Department of Energy, Washington, DC, appearing for Department of Energy.

WILLIAMS, Board Judge.

A relocated employee is not entitled to a home marketing incentive payment when the buyer whom the employee located does not complete the sale.

Background

Claimant was transferred from Oakland, California, to Washington, D.C., with a reporting date of May 8, 2000. On December 21, 2000, the Department of Energy (DOE) found that claimant was ineligible for a home marketing incentive payment associated with the sale of his home in California in conjunction with his permanent change of station. DOE had in place a home marketing incentive program. Claimant contracted with Associates Relocation and actively marketed his home. In fact he found a qualified buyer to purchase the home. The sale was canceled by that person.

Nonetheless, the agency paid Mr. Turner a marketing incentive payment of \$5809.50 based upon erroneous information received from the relocation contractor. The relocation contractor later retracted that information due to the canceled sale. As a result, DOE has requested that claimant return the \$5809.50, because the sale was not consummated. The agency advised claimant that the home marketing incentive program as implemented by DOE is intended to reduce the agency's relocation costs by paying reduced fees to the relocation contractor when the employee finds a bona fide buyer and completes the sale. The agency's fee to the relocation contractor when the seller fails to produce a bona fide buyer who completes the sale is 26.45% of the appraised value, but the fee is 10.40% when the employee finds a bona fide buyer who completes the sale.

Discussion

Under 5 U.S.C. § 5724c (Supp. V 1999), federal agencies are permitted to enter into relocation services contracts with private firms to provide a variety of relocation services to employees who are transferred. These services include arranging for the purchase by a relocation services contractor of a transferred employee's residence at the old duty station under a home sales program. Gregory R. Littin, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; Charles T. Loverdi, GSBCA 14232-RELO, 98-2 BCA ¶ 29,795; Dan R. Mayer, GSBCA 14347-RELO, 98-1 BCA ¶ 29,506 (1997); Paul E. Marshall, GSBCA 13811-RELO, 97-2 BCA ¶ 29,036. The relocation services program was modified by the Federal Employee Travel Reform Act of 1996 to add a home marketing incentive program. 5 U.S.C. § 5756. Under this program, an agency may pay an employee who is transferred in the interest of the Government an amount to encourage the employee to aggressively market his or her residence at the former official station when (1) the residence is entered into a relocation services program under which the private contractor will purchase the house; (2) the employee finds a buyer who completes the purchase of the residence through the program; and (3) the sale of the residence results in a reduced cost to the Government. Id.; Donald L. Boyle, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653.

The Federal Travel Regulation delineates the circumstances under which a transferred employee may qualify for an incentive payment. The employee may receive a payment when (a) the residence is entered in the home sale program; (b) the employee has independently and aggressively marketed the property; (c) the employee has found a bona fide buyer as a result of independent marketing efforts; (d) the employee has transferred the residence to the relocation services provider; (e) the agency realizes reduced fee expenses as a result of the employee's independent marketing efforts; and (f) any other conditions established by the agency have been met. 41 CFR 302-14.5 (1999).

Claimant contends that he did all that was required to earn the marketing incentive even though the sale was not consummated. Further, after the initial sale fell through, claimant continued to receive inquiries, had his own agent involved, and experienced frustration in dealing with the relocation company. Claimant complained that the relocation contractor did not act professionally and responsibly and that the ultimate sale was delayed by several weeks.

The agency correctly concluded that claimant is not entitled to a marketing incentive payment because the sale was not consummated and DOE could not avail itself of the reduced fee which is the objective of the program. The other matters about which the employee complains relate to actions of the relocation services contractor, not the agency. The employee could have rejected the contractor's offer, 41 CFR 302-12.107, but apparently did not do so. Consequently, the complaints have no impact on the financial relationships resulting from the sale of the house.

Decision

The claim is denied. Claimant is indebted to DOE in the amount of \$5809.50.

MARY ELLEN COSTER WILLIAMS

Board Judge