

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 14, 2001

GSBCA 15615-RELO

In the Matter of MONICA ALEXANDER

Monica Alexander, Temple Hills, MD, Claimant.

Jeanne DiGange, Certifying Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

BORWICK, Board Judge.

The Department of Agriculture, agency, requests a decision pursuant to 31 U.S.C. § 3529 (Supp. IV 1999) (section 3529 decision) in the matter of Monica Alexander, claimant, an employee who transferred in the interest of the Government. The agency asks if it may reimburse claimant for fees assessed by the AmeriDream down payment assistance program after claimant's house sale incident to her transfer. We conclude that there is not authorization under the Federal Travel Regulation (FTR) for reimbursement of the fee.

The facts as indicated by the record are as follows. On or about October 3, 2000, the agency notified claimant of her transfer in the interest of the Government from Cleveland, Ohio, to Washington, D.C. The agency authorized claimant's reimbursement of the expenses of her permanent change of station (PCS), including real estate transaction expenses. Claimant elected to use the agency's relocation services program, but due to a coding error in the agency's travel authorization, her choice was not reflected in the authorization. When claimant spoke with her agency about using a relocation services firm, the administrative officer of her employing office asked her to try to sell the home on her own.

Claimant agreed to do so and listed her home, located in the Cleveland, Ohio, area, for sale with a realtor. Within four days, she had a prospective buyer, and the closing date was set for December 21, then pushed up to December 12. However, the purchaser's original financing was canceled, so the closing was delayed until the purchaser could find a new lender. The purchaser did find a new lender and the closing was set for January 12, 2001.

At the closing, the purchaser's mortgage company informed claimant as seller that it would only finance the purchase if claimant agreed to participate in the AmeriDream down payment assistance program, operated by the AmeriDream Charity, Inc. (AmeriDream).

Under the AmeriDream program, AmeriDream gives up to five percent of the purchase price of homes to a purchaser who meets AmeriDream's eligibility criteria. As described by AmeriDream, the down payment money is transferred from AmeriDream to the buyer's lender at closing. The seller agrees, after the sale is completed, to remit 3.75 % of the purchase price of the home to AmeriDream. As described by AmeriDream in its literature:

After a home sale closes, the Builder/Seller pays a service fee, which covers the administrative costs of the program and helps replenish the pool of funds so that even more people can become homeowners!

AmeriDream's literature describes the benefits of the program:

By providing down payment assistance, the AmeriDream program creates a larger pool of buyers by enabling more prospects to buy a home and start living the American Dream. For this service, we charge a fee.

According to AmeriDream's literature, by providing down payment assistance, AmeriDream's clients can take advantage of the flexible credit standards of the Federal Housing Administration (FHA), "which make it much easier for cash-strapped buyers with a few credit slips or high ratios to qualify for a loan."

Claimant decided to accept this last-minute demand to participate in the AmeriDream program and proceeded to closing. In the case of this sale, AmeriDream gave the purchaser 3 % of the purchase price as down payment and received 3.75 % from the claimant after the sale. The settlement sheet shows claimant's payment to AmeriDream of \$4256.25 as well as payment of a broker's commission of \$7647.08.

The FTR makes brokers' fees and real estate commissions, advertising, selling and appraisal expenses, and legal and related expenses reimbursable items in connection with real estate transactions. 41 CFR 302-6.2(a)-(c) (2000). The AmeriDream down payment program is none of these. AmeriDream does not act as a broker, a seller, an appraiser, or an attorney; rather, it makes gifts of down payments to purchasers. The FTR also lists certain miscellaneous expenses as reimbursable—FHA and Department of Veterans Affairs (VA) loan application fees, loan origination fees, cost of credit reports, mortgage and transfer taxes, state revenue stamps, similar charges to those above, mortgage prepayment charges for sale of the residence at the old station, and the costs of a mortgage title insurance policy. 41 CFR 302-6.2(d)(i)-(ix). The AmeriDream payment does not fit into this provision because it is not a charge for administrative costs of processing a loan or for mortgage prepayment charges, or for other listed items.

The FTR also provides that "incidental expenses made for required services in selling and purchasing residences may be reimbursed if they are customarily paid by the seller of the residence at the old official station." 41 CFR 302-6.2(f). The AmeriDream payment does not come within this provision, because it is not an expense for the sale of the residence. Rather, AmeriDream imposes the charge after the closing, according to AmeriDream's literature, to cover AmeriDream's administrative costs and to replenish the pool of funds so that more people can become homebuyers. See Dorothy Sutton, GSBCA 14825-RELO, 99-1

BCA ¶ 30,295 (return of equity under Government housing assistance program not expense in connection with sale of a residence). In any event, there is no proof in this record that a seller's payment to AmeriDream is customary in the Cleveland, Ohio, locality.

Claimant argues that she is entitled to reimbursement because she saved the Government money by selling the house herself instead of using a relocation services company. The argument is speculative and does not enlarge claimant's entitlement under the FTR.

The agency is not authorized under the FTR to reimburse claimant for the AmeriDream payment.

ANTHONY S. BORWICK
Board Judge