

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

GRANTED IN PART: April 18, 2002

GSBCA 15746-RELO

In the Matter of JUANITA L. NASON

Juanita L. Nason, Lorton, VA, Claimant.

Karen S. Gillett, Office of the Staff Judge Advocate, Fort Belvoir, VA, appearing for the Department of the Army.

BORWICK, Board Judge.

Claimant, Juanita L. Nason, a civilian employee of the Department of the Army, sold her residence incident to her permanent change of station from Fort Sam Houston, Texas, to Alexandria, Virginia. She seeks reimbursement of \$1526 for the owner's title insurance policy she paid for the buyer and \$160 for an owner's warranty she paid for the buyer. We grant the claim in part. Claimant is entitled to be reimbursed for the owner's title insurance policy but not for the owner's warranty.

The agency rejected claimant's voucher for both expenses because it considered reimbursement of both items to be unallowable under the Joint Travel Regulations (JTR). Originally the agency denied claimant reimbursement of the owner's title insurance, concluding that in the San Antonio, Texas, area the buyer customarily assumed the cost of the owner's title insurance. The agency denied the request for reimbursement of the warranty as an unallowable inducement for the sale of the residence.

Claimant filed a claim at this Board contesting the agency's denial and submitted the statements of an employee of Lawyer's Title Company that the seller's reimbursement of owner's title insurance on behalf of the buyer is customary in the San Antonio, Texas, area. Claimant also recited what her listing agent told her: that unless a relocation agency sold the house, the seller always pays for the title insurance.

Before the Board, the agency concedes that in the San Antonio, Texas, area the seller does indeed customarily pay the owner's title insurance. However, the agency argues that claimant had not proven that such reimbursement was a prerequisite to either the financing or the transfer of the property as required by JTR C14002-A.4.a(9). In denying reimbursement for the owner's warranty, the agency argues that based upon the timing of the

warranty's purchase, the warranty was not incident to the sale of the property and therefore not reimbursable.

Under the JTR, owner's title insurance in connection with the sale of a residence may be reimbursed to the seller as a miscellaneous expense if it is customarily paid by the seller and if such payment is a prerequisite to the financing or transfer of the property. JTR C14002-A.4.a(9) The agency now concedes that in San Antonio, Texas, sellers customarily pay for the buyer's title insurance policy. Here, the seller's paying the owner's title insurance was a prerequisite for transfer of the property. According to the contract of sale for the residence, the seller's failure to deliver a commitment for title insurance would result in termination of the contract, unless the seller could deliver the commitment by an extended closing date. Cf. Willard T Mays, III, GSBCA 14275-RELO, 98-1 BCA ¶ 29,425 (1997). Claimant is entitled to the reimbursement of \$1526 for the owner's title insurance policy.

As to the owner's warranty, claimant explains that she purchased the warranty to ensure that all appliances were covered in case there was any appliance failure from the time claimant vacated the house until the purchasers moved in. According to claimant, the air-conditioning system ran continuously during hot weather when the residence was vacated. The warranty was intended to protect appliances and the air-conditioning system against failure. The warranty is insurance against failure of the appliances and the air-conditioning system in the residence. However, the JTR provide that "insurance against loss or damage of property" is not reimbursable. JTR C14002-A.4.b(1); Allan R. Fetter B-218,955 (Oct. 30, 1985).

The claim is granted in part.

ANTHONY S. BORWICK
Board Judge