

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

November 26, 2002

GSBCA 15889-RELO

In the Matter of JOSEPH B. WADE

Joseph B. Wade, Harrah, OK, Claimant.

Linda Basinger, Chief, Classification and Resources Section, Plans and Requirements Flight, Civilian Personnel Division, Department of the Air Force, Tinker Air Force Base, OK, appearing for Department of the Air Force.

PARKER, Board Judge.

Background

In connection with his March 2002 transfer from Barksdale Air Force Base, Louisiana, to Oklahoma City, Oklahoma, Joseph B. Wade incurred certain costs in selling his home in Bossier City, Louisiana. The Air Force reimbursed Mr. Wade for most of those costs but denied reimbursement for some of them. Specifically, the Air Force declined to reimburse Mr. Wade for the costs of title insurance, appraisal fee, recording fees, tax service fee, and courier/delivery fees. Reimbursement was denied on the basis that these costs are customarily paid by the buyer in a real estate transaction, rather than the seller.

Mr. Wade has asked the Board to review the agency's denial of his claim for the disputed costs. Included in the file is an undated letter from from a Bossier City realtor that says the following:

1. In the Shreveport/Bossier City area of Louisiana, where I've been a licensed Realtor since 1994, it is common practice for the seller to always pay appraisal fee and closing costs.
2. Closing costs are subject to good Sales Price. In this area, Title Insurance, Recording fee and Tax Service fee are considered among closing costs. Therefore, paid by Seller.
3. I'm not familiar with JTR, PAR C14002-(A)(3), but I'm extremely knowledgeable of Louisiana Real Estate, terms, customs, and laws.

Discussion

Under the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR), the Air Force may reimburse a transferred employee for certain miscellaneous expenses incurred in the sale of a residence at the old permanent duty station, provided they are customarily paid by the seller of a residence in that locality and to the extent the amount claimed is within the limits of the amounts customarily paid in the locality of the residence. 41 CFR 302-11.200, .202 (2002); JTR C14002-A.4 (Mar. 1, 2002). Where, as here, a seller has agreed to pay certain of the buyer's costs, it is the claimant's burden to establish through persuasive evidence that it is customary for the seller to assume these costs in the locality of the residence sold. E.g., Sandra L. Wilks, GSBCA 15669-RELO (July 2, 2002); Monika J. Dey, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744 (2001); Byron D. Cagle, GSBCA 15218-RELO, 00-1 BCA ¶ 30,903.

As we explained in Dey, there are a various ways in which to meet the burden of showing that it is "customary" for a seller to assume a particular cost. These include showing that a cost is allocated to a particular party in a preprinted sales form, submitting letters from local realtors and brokers confirming that a particular cost is invariably assumed by the seller for the buyer, providing data showing that over the years a commanding percentage of sellers have contributed to buyers' closing costs, and the like. In contrast, letters from realtors simply asserting that many sellers contribute to buyers' closing costs do not establish that a practice is customary. Dey, 02-1 BCA at 156,827-28. A common occurrence does not necessarily rise to the level of a custom, although over time a custom may be determined to have evolved. Wilks; Cagle.

In this case, Mr. Wade has submitted an undated letter from a realtor in the Bossier City area purporting to show that the disputed costs are customarily paid by the seller. In fact, the letter says that the costs in question are considered "closing costs," and that payment of closing costs is "subject to good Sales Price." Thus, contrary to Mr. Wade's assertion, the letter alludes to the give and take negotiations involved in arriving at a "net" selling price for the house. Although we do not doubt that payment of the disputed costs by the seller was common in the Bossier City area during the relevant time period, we agree with the Air Force that Mr. Wade has not established that these costs were "customarily" paid by the seller. Accordingly, the claim must be denied.¹

ROBERT W. PARKER

¹ One of the claimed costs, the tax service fee, is considered to be a non-reimbursable finance charge, regardless of which party customarily pays it. Pamela R. Harris, GSBCA 15645-RELO, 01-2 BCA ¶ 31,640. Some of the other claimed costs are reimbursable only under certain circumstances which we do not discuss here because Mr. Wade has not established that the claimed costs are customarily paid by the seller, a basic requirement for all seller reimbursements.

Board Judge