

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 4, 2003

GSBCA 16246-RELO

In the Matter of TIMOTHY C. LINDQUIST

Timothy C. Lindquist, Cheyenne, WY, Claimant.

Terry Burton, Supervisor, Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

BORWICK, Board Judge.

In this matter, claimant sold his residence incident to his permanent change of station (PCS) transfer in the interest of the Government. In the process of selling his residence, claimant paid two fees, the reimbursement of which the Department of Veterans Affairs (agency) has denied: \$895 for professional assistance in an unsuccessful sale-by-owner attempt and \$1500 for an updated avalanche study demanded by the prospective purchasers. The agency denied claimant reimbursement because it concluded that the fees were not reimbursable under the Federal Travel Regulation (FTR). We deny the claim since the agency correctly applied the FTR.

In late March 2003, the agency authorized claimant's PCS move in the interest of the Government from Anchorage, Alaska, to Cheyenne, Wyoming. The agency authorized claimant relocation benefits, including reimbursement of real estate transaction expenses for sale of claimant's residence at his old duty station and purchase of a residence at his new duty station. Claimant's duty reporting date was April 8, 2003.

Claimant made an initial effort to sell his house at his old duty station without using a real estate broker, a sale method commonly known as "for sale-by-owner." In furtherance of that effort claimant hired an advisory service called "For Sale By Owner Assistance Program Inc." (FSBO) to assist claimant in navigating the complexities of a real estate sales transaction.

In its client agreement with claimant, FSBO provided that it would perform a variety of services including: (1) work with a specified title guarantee agency¹ for ownership,

¹ The same person owned FSBO and the title agency.

mortgage; and title issues; (2) advise claimant on state and federal property disclosure laws, common interest ownership laws, fair housing and zoning laws, covenants, environmental regulations, and other legal requirements; (3) provide information on owner financing, assumptions, wraps, tax implications, and other matters; (4) explain closing costs, who pays closing costs, and how to negotiate closing costs; (5) prepare claimant's earnest money agreement; (6) help claimant deal with contingencies, property inspection, and loan appraisal; (7) review the settlement statement and legal documents; (8) prepare claimant for the closing; and (9) attend the closing with the claimant and provide two other specified services not important in this matter. For these services, FSBO charged claimant a fee of \$895, which claimant paid.

Claimant's attempts to sell his house himself did not succeed; claimant then secured the services of a real estate broker to sell the house. The record before the Board does not demonstrate that FSBO was involved in any way in claimant's second undertaking to sell the house.

Using the broker, claimant sold the house and incurred \$23,376.75 in transaction expenses, including a broker's commission of \$18,825 and a charge of \$1500 for avalanche evaluation by the Alaska Mountain Safety Center. Claimant incurred the latter charge at the purchasers' insistence as a condition of purchasing the property. Before closing, the listing agent had informed claimant that, according to an avalanche study prepared for the municipality of Anchorage, claimant's house rested on the edge of an avalanche zone. The purchasers would not complete the sale without an updated study. The Alaska Mountain Safety Center performed an updated study and concluded that the report prepared for the municipality of Anchorage was in error since claimant's property was not subject to an avalanche hazard. The record does not establish that the purchasers' lender demanded the updated study as a condition of the purchase or that the updated study was required by federal, state or local law.

Claimant submitted a real estate expense voucher to the agency and included in his claimed expenses the \$895 fee for the sale-by-owner advisory service and \$1500 fee for the avalanche study.

The agency initially rejected the claim for \$895, pending clarification of what services the advisory service company had performed. The agency also rejected the claim for \$1500 for the avalanche study expense, because in the agency's opinion, the FTR did not provide for the reimbursement of that expense.

Claimant then submitted a claim to this Board. In its submission to the Board, the agency explains that it would not reimburse claimant the \$895 advisory service fee because under its reading of FTR section 302-11.200:

costs of newspaper, bulletin board, multiple listing services, and other advertising for sale of the residence at the old official station are reimbursable if the employee has not paid for such services in the form of a broker's fee or real estate agent's commission.

The agency maintains that since it has paid claimant the \$18,825 broker's commission, reimbursement of the \$895 would be an improper duplicate payment. As for the avalanche study, the agency concludes that the FTR does not provide for that expense.

We agree with the agency in its denial of the claims, although in the case of the avalanche study, for slightly different reasons than those advanced by the agency. We first address the \$895 charge for the sale-by-owner advisory service.

The FTR provides, in its question and answer format:

What is the purpose of an allowance for expenses incurred in connection with residence transactions?

The purpose of an allowance for expenses incurred in connection with residence transaction[s] is to reimburse you when you transfer from an old official station to a new official station for expenses that you incur due to:

- (a) The sale of one residence at your old official duty station, and/or the purchase of a residence at your new official duty station.

41 CFR 302-11.1 (2002).

Cases involving transferred employees seeking reimbursement of transaction costs for new construction are analogous here. In those cases, we have held that where an employee claims a number of expenses, the employee may be reimbursed only once for each type of expense that is allowable under the FTR. Ernest B. Fitzpatrick, III, GSBCA 15629-RELO, 02-1 BCA ¶ 31,679; David G. Winter, GSBCA 14229-RELO, 98-1 BCA ¶ 29,631; Brent T. Walquist, GSBCA 14163-RELO, 97-2 BCA ¶ 29,095. The General Accounting Office (GAO), our predecessor in settling federal employee claims under 31 U.S.C. § 3702 (2002), followed a similar rule with regard to reimbursement of real estate transaction expenses of federal employees. Douglas D. Walldorff, 57 Comp. Gen. 669 (1978). In short, these cases prohibit the payment of duplicate expenses associated with real estate transactions.

Here, claimant paid twice for essentially duplicate services performed by both FSBO and the broker. The agency has reimbursed claimant for the broker's commission. Claimant is not entitled to a reimbursement of FSBO's \$895 fee.

We next consider the claim for reimbursement of the avalanche study expense. That expense would be recoverable, if at all, under the miscellaneous expense provisions of 41 CFR 302-11.200, which provide in pertinent part:

What residence transaction expenses will my agency pay?

Provided that they are customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official station, your agency will pay the following expenses:

....

(f) The following other miscellaneous expenses in connection with the sale and/or purchase of your residence, provided they are normally paid by the seller or the purchaser in the locality of the residence, to the extent that they do not exceed specifically stated limitations, or if not specifically stated, the amounts customarily paid in the locality of the residence:

....

(11) Expenses in connection with environmental testing and property inspection fees when required by Federal, State, or local law; or by the lender as a precondition to sale or purchase; and

(12) Other expenses of sale and purchase made for required services that are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station.

41 CFR 302-11.200.

These provisions apply, however, only when incurred expenses are required by federal, state, or local law or by the lender as a precondition for sale. Kathleen M. Lewis, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616. The record reflects that the purchaser, not the purchasers' lender, demanded the updated avalanche study. Nothing in the record indicates it was required by federal, state, or local law. Even if the avalanche study were deemed to be "environmental testing" or "property inspections fees" under the 41 CFR 302-11.200(f)(11) (an issue which we do not decide), under the circumstances of this case, claimant is not entitled to reimbursement under that provision. Additionally, the record does not establish that the avalanche study was a "required service" or "customarily paid by the seller" under the next provision of FTR, 41 CFR 302-11.200(f)(12), cf. Lewis.

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge