

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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October 27, 2004

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GSBCA 16475-RELO

In the Matter of JUDY SCHUTZA

Judy Schutza, Norwood, CO, Claimant.

Orval E. Wieber, Chief Financial Officer, Forest Service, Department of Agriculture, Lakewood, CO, appearing for Department of Agriculture.

**DeGRAFF**, Board Judge.

Judy Schutza, an employee of the United States Department of Agriculture (USDA), transferred from one permanent duty station to another in mid-2003. In connection with her transfer, Ms. Schutza sold her house at her old duty station and submitted a claim to USDA for a home sale marketing incentive payment. Ms. Schutza says USDA did not provide her with the information she needed regarding the requirements for obtaining an incentive payment. She listed her house for sale and sold it without entering the house into the agency's home sale program and without transferring it to a relocation services company. USDA denied Ms. Schutza's claim for an incentive payment and she asked us to review USDA's decision.

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 the relocation services contractor of a transferred employee's residence at the employee's old duty station. 5 U.S.C. § 5724c (2000). In addition, an agency may implement a home marketing incentive payment program. Under this program an agency may make an incentive payment to an employee when (1) the employee enters the residence at the old duty station 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. 5 U.S.C. § 5756.

The home marketing incentive program is implemented in the Federal Travel Regulation, 41 CFR part 302-14. According to the regulation, the purpose of a home marketing incentive payment is:

to reduce the Government's relocation costs by encouraging transferred employees to participate in their employing agency's homesale program to independently and aggressively market, and find a bona fide buyer for their residence. This significantly reduces the fees/expenses their agencies must pay to relocation services companies and effectively lowers the cost of such programs.

41 CFR 302-14.2 (2003).

The regulation imposes several conditions which must be met in order for an employee to qualify for an incentive payment. The employee may receive a payment when (a) the employee enters the residence in the home sale program; (b) the employee independently and aggressively markets the property; (c) the employee finds a bona fide buyer as a result of independent marketing efforts; (d) the employee transfers the residence to the relocation services provider; (e) the agency pays a reduced fee or expenses to the relocation services company as a result of the employee's independent marketing efforts; and (f) any other conditions established by the agency are met. 41 CFR 302-14.5. We have consistently denied claims for home marketing incentive payments when any one of the requirements of either the statute or the regulation has not been met. See, e.g., Laura E. Kilpatrick, GSBCA 15814, 02-2 BCA ¶ 31,957; Mark R. Tayler, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816; Gregory R. Littin, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; Regina M. Rochefort, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879.

Ms. Schutza realizes she does not meet the requirements of the statute and the regulation for obtaining an incentive payment because she did not enter her house into the agency's relocation services program and did not transfer it to a relocation services company. She asks us to grant her claim for an incentive payment, however, because she feels USDA did not provide her with the information she needed in order to comply with the statutory and regulatory requirements. USDA believes the information it provided was sufficient to inform Ms. Schutza of these requirements.

Even if the information provided by USDA did not set out each of the steps Ms. Schutza needed to take in order to receive an incentive payment, inadequate advice provided by agency employees does not provide USDA with the authority to expend public funds and make an incentive payment contrary to the provisions of statutes and regulations. Clarence Hester, Jr., GSBCA 16253-RELO, 04-1 BCA ¶ 32,460 (2003). The purpose of the statute and the regulation is to reduce the Government's relocation costs and to allow the employee to share in the Government's savings. Here, because Ms. Schutza did not enter her house into the relocation services program and transfer it to the relocation services company, the agency achieved no savings. As we stated in Rochefort, "[i]t is now impossible to recreate history to enable claimant to properly invoke the home sale incentive program." 00-1 BCA at 152,445.

Because Ms. Schutza did not meet the requirements established by statute and regulation for receiving a home marketing incentive payment, USDA correctly decided to deny her claim.

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MARTHA H. DeGRAFF  
Board Judge