Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 28, 2002

GSBCA 15720-RELO

In the Matter of HEIDI C. HIRSH

Heidi C. Hirsh, Arlington, VA, Claimant.

Edward G. Sherrill, Head, Manpower Policy Branch, Manpower Plan and Policy Division, Headquarters, United States Marine Corps, Quantico, VA, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant, Heidi C. Hirsh, is a civilian employee of the Department of the Navy. She has requested that this Board review the agency's determination denying her request for waiver of payment of certain fees arising from the sale of her residence at her old duty station as the result of a permanent change of station (PCS). Specifically, she has asked this Board to review the agency's denial of an exemption for the pro-rata fee for the sale of her home, and a reimbursement of $20,745 of the fee which she has paid.

In November 2000, claimant was hired by the United States Marine Corps. She used the Guaranteed Home Sale Program to sell her home and relocate to Washington, D.C.

During the sale negotiations, the claimant was informed that when the residence being sold is a multiple occupancy dwelling, the employee is to be reimbursed for expenses of sale for only the portion of a residence he or she occupied and not that portion of a multi-unit apartment or condominium building that he or she owned and operated an investment property.

Pursuant to the contract claimant signed with the contractor in the Guaranteed Home Sale Program, she agreed to pay a fee of 21.47% of the appraised value of the residence. As the appraised value was $193,250, this resulted in a fee of $41,490.78. Under the terms of the contract, the contractor's fee was to be paid 50% by claimant and 50% by the agency. Thus the agency paid $20,745 and the claimant paid an equal amount.

Claimant's claim has several issues. First, she states that the amount of the fee was exorbitant. She then asserts that her residence should not be categorized as a multiple

occupancy dwelling because of its size and the fact that the rentable portion was not rented to a tenant for many months. She states:

> [M]y financial rate of return was limited. Also, there were many months when a tenant did not occupy the unit, so it was not like I was making a fortune on a multiple occupancy dwelling as described in the Joint Travel Regulation[s].

Claimant also asserts that the pro-rata 50%-50% split of the fee as the result of her residence being classified as a multi-occupancy dwelling was not equitable, and requests exemption from this proration. In short, she requests that this Board find that the agency should reimburse her either for the entire $20,745 fee, or some portion of the fee, that she paid.

Discussion

We discuss the claim's several issues in turn. First, claimant believes that the fee charged by the relocation company was not reasonable. The contract that she entered into with a home relocation contractor specified the formula for determining the fee. The agency advises that the contractor uses a formula based on the consumer price index to calculate its fee, which is a function of the appraised value. As indicated above, the appraised value in the contract was also the actual sales price of claimant's residence. We cannot revise or annul a contract that the claimant voluntarily entered into with a third party.

Claimant also challenges the characterization of her residence as a multiple-occupancy dwelling. According to the Joint Travel Regulations (JTR), an employee shall pay a fee based on a pro-rata basis if his residence is a multiple occupancy dwelling. JTR C14000-F.2 (Apr. 1, 2000). Claimant owned a duplex on a half-acre lot, thus the pro-rata fee was applied to the transaction. Claimant states her belief that the sale of her residence, a two-bedroom, one-bath per unit duplex, does not fully qualify and meet the criteria of the pro-rata reimbursement as intended and set forth in the JTR. According to her own statements, her residence was a multiple-occupancy dwelling, as it was configured to rent a separate unit to a tenant, and this unit was rented from time to time. While claimant characterizes her financial return from the rental unit as "limited," this does not negate the fact that it was a multiple-occupancy dwelling. Financial success is not listed in the JTR as a determinative factor. Accordingly, the fact that the agency applied this provision of the JTR was appropriate, and the agency therefore was only obligated to reimburse claimant's expenses pro-rata.

Claimant also asserts that even if a pro-rata reimbursement is proper, the proper ratio should have been one that was more beneficial to her. Where a determination has been made that the employee fully occupies the residence, or a greater proportion than fifty per cent, there have been instances where a ratio more beneficial to the employee has been allowed. See, e.g., Stephen Vishnefsy, B-187884 (Feb. 22, 1977); In the Matter of Pro-Rata Reimbursement, 55 Comp. Gen. 747 (1976). However, the agency in the instant case has stated that independent appraisers made a determination, based upon the configuration of claimant's residence, that the 50-50 proration was appropriate. The agency has stated that the Government bases its proportional share of the fee on the square footage occupied by the employee divided by the total square footage. The appraiser's report determined that the gross

living space of the duplex was 1656 square feet and each unit contained 868 square feet, therefore justifying the pro-rata reimbursement which was applied. We see no reason to question this determination.

Decision

The claim is denied.

_____
ALLAN H. GOODMAN
Board Judge