

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 8, 2002

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GSBCA 15762-RELO

In the Matter of JOSEPH A. HOFFMAN

Joseph A. Hoffman, Quincy, CA, Claimant.

Mary S. Matiella, Deputy Chief, Office of Finance, Forest Service, Washington, DC;  
and Melinda C. Rollo, Director, Financial Management, Pacific Southwest Region, Forest  
Service, Vallejo, CA, appearing for Department of Agriculture.

**HYATT**, Board Judge.

Claimant, Joseph A. Hoffman, an engineer employed by the United States Forest Service, accepted a permanent change of station from the Lolo National Forest in Missoula, Montana, to the Plumas National Forest in Quincy, California. His claim concerns entitlement to a home marketing incentive payment arising from the sale of his home in Missoula. For the reasons stated, we find that the agency has properly denied the claim.

## Background

In connection with his transfer, Mr. Hoffman received the assistance of a relocation services contractor, Cendant Mobility. Claimant states that when he received notice of the impending transfer, he promptly had a realtor in Missoula come to the house and initiate arrangements to get the property listed for sale. The property was on the market the next day. Claimant and his wife thoroughly cleaned the house and arranged for minor repairs to make the house more marketable. They also rearranged their schedules to make the house readily available for showing to prospective buyers. An offer was forthcoming within a few days. Less than three weeks after the offer was accepted by claimant and his spouse, Cendant Mobility had processed the necessary contracts and the house was sold. It is claimant's understanding that Cendant Mobility's fee was reduced from 21.75% of the property sale price to 13.25% of the sale price, a considerable savings to the Forest Service.

When claimant requested a home marketing incentive payment, he was advised that his claim could not be paid because, at the time his house was sold, the agency did not have in place a rule implementing the provision of the Federal Travel Regulation that authorizes

agencies to make such payments at their discretion. The sale of claimant's home occurred less than two weeks prior to the effective date of the agency rule implementing this program.

### Discussion

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. 5 U.S.C. § 5724c (2000). These services include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the old duty station under a home sales program. See Mark R. Tayler, GSBCA 15621-RELO, 02-1 BCA ¶ 31,816; Charles T. Loverdi, GSBCA 14232-RELO, 98-2 BCA ¶ 29,795; Dan R. Mayer, GSBCA 14347-RELO, 98-1 BCA ¶ 29,506 (1997). The relocation services program also includes a home marketing incentive program. 5 U.S.C. § 5756. Under this program an agency may pay an employee who is transferred in the interest of the Government an amount to encourage the employee to aggressively market his or her residence at the former official station when (1) the residence is entered 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. Laura E. Kilpatrick, GSBCA 15814-RELO (June 19, 2002); Gregory R. Littin, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; Donald L. Boyle, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653.

In March 1997, the home marketing incentive program was implemented in the Federal Travel Regulation (FTR) in part 302-14. Subpart A establishes the circumstances under which an employee may qualify for an incentive payment; Subpart B describes the agency's responsibilities should it decide to offer an incentive. Under the FTR, it is left to the discretion of individual agencies whether to establish a home marketing incentive program. 41 CFR 302-14.4 (2000); see Boyle; Randolph S. Reynolds, GSBCA 14728-RELO, 99-1 BCA ¶ 30,366. The agency is not required to offer an incentive. If it does, however, the payment made may not exceed the savings realized in payments to the relocation services company. 41 CFR 302-14.100.

Here, the Forest Service has declined to make a home marketing incentive payment, primarily because the program established by the United States Department of Agriculture (USDA) -- of which the Forest Service is a part -- was not implemented until February 22, 2001. Mr. Hoffman sold his house in Missoula earlier that same month. Mr. Hoffman asserts that he in fact met all of the conditions in the FTR for eligibility for a home marketing incentive payment.<sup>1</sup> He further criticizes the "inordinate time lag" between enactment of the

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<sup>1</sup> The FTR delineates the circumstances under which a transferred employee may qualify for an incentive payment. The employee may receive a payment when (a) the residence is entered in the home sale program; (b) the employee has independently and aggressively marketed the property; (c) the employee has found a bona fide buyer as a result of independent marketing efforts; (d) the employee has transferred the residence to the relocation services provider; (e) the agency realizes reduced fee expenses as a result of the employee's independent marketing efforts; and (f) any other conditions established by the agency have been met. 41 CFR 302-14.5; Kilpatrick; Tayler.

statute authorizing such payments and the implementation of the program under the FTR, and the time when USDA finally implemented a program. Claimant's main point is that since his home was sold so close in time to the date when USDA finally implemented the program, he should be considered qualified for a home incentive payment, particularly since the agency actually approved the rule several days before the closing on his house.<sup>2</sup>

Although Mr. Hoffman's frustration with this situation is understandable, the Board cannot provide relief. Indeed, we have recently addressed a similar situation occurring within this same agency. Edward C. Cole, GSBCA 15760-RELO, 02-2 BCA ¶ 31,862. There, Mr. Cole, another Forest Service employee, sold his house pursuant to a transfer about a year before the program was implemented by USDA. He too thought he should be considered for an incentive payment once the program was implemented at USDA. The Board, in denying the claim, explained that this program is entirely discretionary and agencies do not have to offer this benefit. Since the program was not yet implemented at USDA when Mr. Cole transferred, he was not entitled to a payment.

The reasoning in Cole is equally applicable here, despite the fact that Mr. Hoffman's transfer occurred so close in time to the implementation date of the program. At the time Mr. Hoffman's transfer was authorized, and his house was sold, USDA did not have a home marketing incentive program in place. Despite the fact that Mr. Hoffman may well have met all the requirements of the relevant FTR provisions, under these circumstances he was not eligible to receive such a payment.

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CATHERINE B. HYATT  
Board Judge

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<sup>2</sup> According to Mr. Hoffman, the proposed rule was approved by USDA on February 6, and took effect on February 22, 2001. He notes that had he been told of the impending effective date of the rule, he could easily have delayed the closing on his house until the rule was in effect.