

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

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July 11, 2002

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GSBCA 15867-RELO

In the Matter of DEVON SCOTT SHELLEY

Devon Scott Shelley, Walla Walla, WA, Claimant.

Major David J. Berczek, Deputy District Engineer, Real Estate Division, United States Army Corps of Engineers, Department of the Army, Walla Walla, WA, appearing for Department of the Army.

**DeGRAFF**, Board Judge.

A relocated employee who purchases a house may not be reimbursed for excise taxes that are customarily paid by the seller or for a buyer brokerage fee.

Background

Devon Scott Shelley is an employee of the United States Army Corps of Engineers. In November 2000, the Corps issued a travel authorization in connection with Mr. Shelley's transfer to a new permanent duty station in Walla Walla, Washington. The authorization provided that the Corps would reimburse Mr. Shelley for real estate transaction expenses.

Mr. Shelley decided to build a house near his new duty station and entered into a buyer brokerage agreement with a real estate broker who represented his interests in connection with that transaction. Mr. Shelley and his broker say that such agreements are common in the Walla Walla area. Although the Corps reimbursed Mr. Shelley for some of his real estate transaction expenses, it did not reimburse him for either a \$4830 buyer brokerage fee or \$612 of excise taxes. Mr. Shelley asks us whether the Corps correctly denied his claim for reimbursement.

Discussion

In order for an employee to be reimbursed for real estate transaction expenses, the employee must have actually incurred the expenses. 41 CFR 302-6.1 (2001); Joint Travel Regulations (JTR) C14000-F (Apr. 1, 2000). Although the Corps did not reject Mr. Shelley's claim for lack of proof that he paid the amounts he claims, there is nothing in our file to show that he paid either \$4830 to his real estate broker or \$612 in excise taxes. The buyer

brokerage agreement provides that Mr. Shelley would pay his broker a maximum fee of \$4830, but there is nothing to show what he actually paid. Regarding the excise taxes, the sales contract provides that the seller would pay the seller's excise taxes and the settlement statement shows that excise taxes of \$612 were paid by the seller, not by Mr. Shelley. We assume that the agency has information to show that Mr. Shelley actually paid the real estate brokerage fee and the excise taxes for which he claims reimbursement, and we evaluate the claim based upon that assumption.

The Corps correctly decided to deny Mr. Shelley's claim for reimbursement of the amount that he paid to his real estate broker. According to the regulations in effect when Mr. Shelley reported for duty in Walla Walla, a transferred employee who built a house could be reimbursed for real estate transaction expenses to the same extent as if he had purchased an existing house, and a broker's fee paid in connection with the purchase of a house at a new permanent duty station was not a reimbursable expense. 41 CFR 302-6.2, -6.2(d)(1)(x); JTR C14002-A.1 (Apr. 1, 2000), -A.4.a(10) (Dec. 1, 2000); Richard A. Poisel, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284 (2000). Even if buyer brokerage agreements are common in the Walla Walla area, the amount Mr. Shelley paid to his broker is not reimbursable due to the clear provisions of the regulations. Richard G. Britner, GSBCA 15542-RELO, 02-1 BCA ¶ 31,774 (citing cases).

The Corps also correctly decided to deny Mr. Shelley's request for reimbursement of the amount that he paid in excise taxes. An excise tax paid in connection with a real estate transaction is reimbursable in some circumstances. Matthew D. Freeman, GSBCA 14416-RELO, 98-1 BCA ¶ 29,606. One requirement for reimbursement is that the tax must be "customarily paid" by the purchaser. 41 CFR 302-6.2(d)(1). According to the Corps, the excise tax is usually paid by sellers, not buyers. This is consistent with a Washington state law that makes paying the tax the seller's obligation. Wash. Rev. Code § 82.45.080 (2000). In the absence of any facts to show that it is customary for buyers to pay the excise tax that is levied on real estate sales transactions in Washington, the Corps properly denied Mr. Shelley's claim for reimbursement.

Mr. Shelley says that he received incorrect advice from a Corps employee regarding his real estate transaction expenses. Incorrect or incomplete advice provided by an agency employee does not provide the Corps with the authority to expend public funds contrary to the provisions of published regulations. Masood Badizadegan, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789. Thus, even if Mr. Shelley received incorrect advice, the Corps properly denied his claim for reimbursement.

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MARTHA H. DeGRAFF  
Board Judge