

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

July 2, 2003

GSBCA 15999-RELO

In the Matter of CHRIS S. NORTH

Chris S. North, Portland, OR, Claimant.

Vickie Smith, Travel Supervisor, National Business Center, Bureau of Land Management, Denver, CO, appearing for Department of the Interior.

WILLIAMS, Board Judge.

Reimbursement for brokerage fees may not exceed those customarily charged in the locality where the residence is located. Claimant's request for reimbursement in the amount of 8.34% on the sale of his home in Glendale, Arizona, must be denied where the agency determined that a 6% commission was the usual and customary rate in that area based upon information received from the Department of Housing and Urban Development (HUD).

Background

In conjunction with his transfer to Portland, Oregon, on April 12, 2002, claimant, Chris S. North, an employee of the Bureau of Land Management (BLM), sold his house in Glendale, Arizona, and paid a real estate commission of 8.34%. Before claimant agreed to pay the commission at this rate, he contacted the BLM permanent change of station (PCS) coordinators. First, he contacted the Phoenix coordinator, who advised him that the commission percentage of 8.34 was within agency guidelines and would be fully reimbursed at that level. Second, he called the Portland, Oregon, BLM PCS coordinator, and she reiterated what the Phoenix coordinator had stated. Both of these coordinators referenced the BLM handbook for PCS moves and specifically stated that he would be reimbursed for the real estate commission at the 8.34% rate. Claimant's closing on the sale of his Glendale residence occurred on May 24, 2002.

In reviewing claimant's travel voucher, the BLM reduced the reimbursement for the real estate commission by \$4376 based upon the advice of the HUD Phoenix field office that the commission rate of 8.34% exceeded the usual and customary rate in the Phoenix area of 6%.

Specifically, in response to an inquiry by BLM, a HUD representative wrote that HUD's single family representative for marketing and outreach for the Las Vegas area, who used to live and work in the Phoenix area, indicated that the usual and customary rate for real estate professionals in the Phoenix area is 6% for the selling of single family structures and between 8% and 10% for commercial properties.

Claimant contends that he attempted to contact HUD himself and stated that it would be difficult to establish a prevailing commission rate from HUD data because there is a range of real estate commission agreements. However, Mr. North did not obtain any other evidence to support his contention that the 8.34% commission was within the reasonable and customary range actually paid in Phoenix, Arizona, in the May 2002 time frame. Rather, he cited the BLM PCS handbook and stated that the 8.34% commission fell within a reasonable and customary range "within the 10% threshold." However, the handbook does not authorize reimbursement of commissions in this amount, and sets 10% as the maximum for any location. The handbook further states:

Broker's fees and real estate commissions you paid on the sale of your old residence are reimbursable but must not exceed rates generally charged in the locality of your former official station.

BLM Change of Station Handbook, H1382-1 (1998).

The Board contacted the HUD office which oversees residential sales in the Phoenix area, as well as the Arizona Association of Realtors, and received verification that the brokerage commission customarily paid in the Phoenix area in 2002 was 6%.¹

Discussion

Statute permits the Government to reimburse a transferred employee for expenses incurred in the sale of a residence at the old duty station. 5 U.S.C. § 5724a(d)(4) (2000); Dan A. Berkebile, GSBCA 14845-RELO, et al., 99-2 BCA ¶ 30,492. The Federal Travel Regulation (FTR), at 41 CFR 302-11.200(a) (2001) (FTR 302-11.200(a)), provides that a broker fee may not exceed the rate generally charged in the locality of the old official duty station. Agencies and employees may obtain assistance in determining the reasonableness of an expense incurred in a real estate transaction, including a broker's fee, by consulting the local real estate association or at least three different local realtors. FTR 301-11.306(a). Here, the parties consulted the local office of HUD serving the area in which the expense arose. Where HUD has been consulted to determine what charges are customary in the locality, the information supplied by HUD creates a rebuttable presumption as to the

¹ The HUD representative provided the Board with eight final settlement sheets from closings on residential sales in the Phoenix area in 2002. The commissions paid ranged from 3% to 7%. Specifically, the commission rates were: 3% (one sale), 3.73% (one sale), 4% (one sale), 5% (three sales), 6% (one sale), and 7% (one sale). The HUD representative explained the rates are typically negotiated downward, but stated that 6% is the customary rate for this area, and the rate at which the negotiation starts.

prevailing commission rate. Christopher L. Chretien, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996). In accordance with FTR 302-11.306(a), the Board also contacted the Arizona Association of Realtors, whose representative reiterated that 6% was the customary commission. Claimant provided no evidence that commissions typically exceeded that amount.

In the instant case, the evidence of record demonstrates that 6% was the customary commission paid in the Phoenix area on the sale of single-family homes in the May 2002 time frame. Consequently, claimant's reimbursement may not exceed this rate.

The fact that the agency's PCS coordinators mistakenly advised claimant that he was entitled to reimbursement at the 8.34% rate does not change this result. Erroneous advice does not create an entitlement where none exists. Craig W. Sherman, GSBCA 15715-RELO, 02-2 BCA ¶ 31,959; Aman B. Kay, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508; Barbara A. Caviness, GSBCA 15390-RELO, 01-2 BCA ¶ 31,498.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge