

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 20, 2004

GSBCA 16336-RELO

In the Matter of JAN S. SCHNEIER

Jan S. Schneier, Canberra, Australia, Claimant.

Barbara J. Bahr, Associate General Counsel, National Geospatial Intelligence Agency, Arnold, MO, appearing for Department of Defense.

HYATT, Board Judge.

In November 2003, Jan S. Schneier, a civilian employee of the National Geospatial Intelligence Agency (NGA), a component of the Department of Defense, was transferred in the interest of the Government from his duty station in the Washington, D.C., area to a foreign duty station. In processing this transfer, the agency authorized reimbursement of property management services to be incurred in connection with the rental of Mr. Schneier's home in McLean, Virginia, for the period during which he will serve abroad. Mr. Schneier contracted with a realty company, Long and Foster, to find a tenant for his McLean residence and to manage the property and the lease during his absence from the country.

Under its "exclusive rental listing agreement," which enumerates the terms and conditions governing Long and Foster's obligations with regard to the rental and management of claimant's property, Long and Foster charges a monthly fee, consisting of a percentage of the rental payment, for such services as collecting rent and arranging for maintenance of the property while the owner is overseas. In addition, Long and Foster charges the property owner the amount of one month's rent, collected in advance, to compensate it for services in locating a tenant for the property.¹

¹ Mr. Schneier has provided a letter from Long and Foster explaining that firm's practice. The prospective tenant submits a check for the first month's rent with an application. Upon acceptance of the application, Long and Foster cashes the check and credits it to the tenant's first month's rent. Long and Foster keeps this payment, however. Subsequent rentals collected are paid to the owners. Long and Foster then separately bills the owners ten percent of the monthly rental for managing the property.

NGA has no concerns about reimbursing Mr. Schneier for the monthly management fees charged by Long and Foster. It has, however, questioned whether it is permitted under the regulations to pay the one-time fee charged by Long and Foster to obtain a tenant. After inquiring about this item within the Department of Defense, NGA was advised that "[t]he listing fee is not a reimbursable expense. Reimbursement for self-procured property management is up to 10% of the monthly rent. The listing up-front fee cannot be claimed under the miscellaneous expense portion of PCS."

Mr. Schneier disagrees with this ruling, arguing that the property management regulations, on their face, expressly include the cost of obtaining a tenant as a reimbursable expense. He does not contend that the fee is reimbursable as a miscellaneous expense.

Discussion

In 1996, Congress enacted legislation giving agencies the authority, under regulations promulgated by the General Services Administration (GSA), to "pay to or on behalf of an employee who transfers in the interest of the Government expenses of property management services, instead of expenses" associated with the sale of the residence at the old duty station. 5 U.S.C. § 5724a(d)(8) (2000); see Noreen Kinnavy, GSBCA 15513-RELO, 02-1 BCA ¶ 31,777. Thereafter, the Federal Travel Regulation (FTR) was revised to implement this authority. The purpose of the allowance for property management services when authorized in connection with an employee's transfer to a foreign post of duty is to relieve the employee of the costs of maintaining a home in the United States while stationed abroad. 41 CFR 302-15.2 (2003); Kenneth L. Woodworth, GSBCA 15378-RELO, 01-1 BCA ¶ 31,282.

"Property management services" are defined to be:

[P]rograms provided by private companies for a fee, which help an employee to manage his/her residence at the old official station as a rental property. These services typically include, but are not limited to, obtaining a tenant, negotiating the lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting the rent, paying the mortgage and other carrying expenses from rental proceeds and/or funds of the employee, and accounting for the transactions and providing periodic reports to the employee.

41 CFR 302-15.1. Each agency is to develop its own policies and procedures governing when property management services will be reimbursed. Id., 302-15.70. The Department of Defense has formulated its policy in the Joint Travel Regulation (JTR), Chapter 15, part B, paragraphs C15050-15053. The JTR definition of property management services closely tracks the language of the FTR. JTR C15050-C.1.²

² In particular, the JTR describe property management services to encompass the following:

PM [property management] services help an employee manage a residence at the old PDS [permanent duty station] as a rental property. The services typically include:

- a. obtaining a tenant;

Of particular relevance here is paragraph C15050-B, which provides that the employee may obtain property management services under the DoD National Relocation Program contract or, alternatively, may select his or her own agency to manage rental of the property ("self-procured rental agency services"). Under the latter option, self-procured rental agency services, reimbursement for property management services is limited to ten percent of the monthly rent.

Thus, the JTR cap the amount of reimbursement a Department of Defense agency may pay for property management services when the employee chooses his or her own agent to manage the property while he or she is overseas. As such, both Mr. Schneier and the agency are correct to some degree -- the listing fee is, in general, a reimbursable cost; the exception to the rule occurs where reimbursing this cost results in exceeding the ten percent cap on total payments. Here, Long and Foster is already charging ten percent of the monthly rental for its management services. The additional listing fee exceeds the maximum reimbursement for which Mr. Schneier is eligible and thus cannot be reimbursed by NGA.

CATHERINE B. HYATT
Board Judge

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- b. negotiating the lease;
 - c. inspecting the property regularly;
 - d. managing repairs and maintenance;
 - e. enforcing lease terms;
 - f. collecting the rent;
 - g. paying the mortgage and other carrying expenses from rental proceeds and/or the employee's escrow funds;
 - h. accounting for the transactions and providing periodic reports to the employee; and
 - I. similar services.