

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 23, 2004

GSBCA 16424-RELO

In the Matter of NICK V. COLUCCI

Nick V. Colucci, Washington, DC, Claimant.

Richard L. Trent, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC, appearing for Department of Justice.

DeGRAFF, Board Judge.

The Department of Justice (DoJ) asks us for an advance decision, pursuant to 31 U.S.C. § 3529 (2000), regarding a real estate transaction expense incurred by one of its employees, Nick V. Colucci.

Background

DoJ transferred Mr. Colucci from Boston, Massachusetts, where he owned a condominium unit in the Flagship Wharf development, to a new permanent duty station. When Mr. Colucci sold his condominium unit, he paid two percent of the gross sales price to the Boston Redevelopment Authority (BRA). DoJ asks whether it can reimburse Mr. Colucci for the amount he paid to the BRA.

The land upon which the Flagship Wharf development sits was purchased by the developer from the BRA. The BRA is a public body established by the Boston City Council and the Massachusetts legislature. The BRA's responsibilities include reviewing proposed development projects that require zoning relief, are subject to development review, are proposed to be located on publicly owned land or in urban renewal areas, or receive public subsidy; making recommendations on major construction and redevelopment activity to the city's zoning board; drafting and recommending new zoning measures; drafting master plans that address the city's need for infrastructure, downtown, and community economic development; acquiring, selling, and leasing real estate to achieve economic redevelopment and to promote public policy objectives; issuing revenue bonds and notes; owning and operating industrial parks; providing financing and loan programs for businesses; and providing job training, placement and support services.

When the BRA sold the land for Flagship Wharf to the developer, the BRA imposed an obligation upon the developer to remit to the BRA a fixed percentage of the sales price of each unit sold in the development. This obligation, which applied to initial sales and resales, was passed along to the purchasers of the condominium units, whose deeds require them to pay a fixed percentage of the gross sales price to the BRA when they sell their units. For resales that occur more than six months after the original sale of a unit, the amount to be remitted to the BRA is two percent of the gross sales price of the unit.

At settlement, Mr. Colucci paid the BRA two percent of the gross sales price of his condominium unit, and the BRA issued a certificate of compliance to be recorded in the local records office. The absence of such a certificate would have created a defect in the title of the condominium unit. Without exception, every seller of a Flagship Wharf condominium unit pays the charge imposed by the BRA.

Discussion

By statute, when an agency transfers a civilian employee from one permanent duty station to another within the United States and the transfer is in the interest of the Government, the agency must pay the expenses required to be paid by the employee in connection with selling the employee's residence at the old duty station. 5 U.S.C. § 5742a(d)(1) (2000). The regulations that implement this statutory provision list expenses that are reimbursable. Among the reimbursable expenses are transfer taxes and other fees and charges similar to transfer taxes, so long as they are customarily paid by a seller at the old duty station and do not exceed amounts customarily paid. 41 CFR 302-11.200(f)(4), (6) (2003).

The amount Mr. Colucci paid to the BRA is a fee or charge similar to a transfer tax. Generally speaking, a transfer tax is a levy imposed upon the conveyance of real estate. Such a cost is a mandatory charge imposed in order to complete a sale and, as such, it is a cost of the transaction. Ernest B. Fitzpatrick, III, GSBCA 15629-RELO, 02-1 BCA ¶ 31,679 (2001); Richard J. Brenner, GSBCA 15309-RELO, 00-2 BCA ¶ 31,014. The amount Mr. Colucci paid to the BRA was imposed upon the conveyance of his condominium unit and was a mandatory charge of conveying good title and completing the sale. Although the charge is not a tax, it is similar to a tax in that it is imposed by a public body charged with promoting public policy objectives. Thus, we conclude the amount paid by Mr. Colucci is a fee or charge similar to a transfer tax.

In addition, the charge paid by Mr. Colucci is customarily paid by sellers in the Flagship Wharf development. Although not all sellers of real property in Boston will pay a charge to the BRA, the charge paid by Mr. Colucci is invariably paid by sellers of units in the Flagship Wharf development. As we explained in Brenner, we assess whether an expense is customary based upon transactions similar to the one at issue. Here, in all transactions similar to this one, sellers paid a charge to the BRA. Therefore, the charge paid by Mr. Colucci is customarily paid by sellers at his old duty station. Finally, the amount paid by Mr. Colucci does not exceed the amount customarily paid, which is a fixed percentage of the sales price.

Assuming Mr. Colucci meets the other requirements imposed by the regulations, DoJ may reimburse him for the amount he paid to the BRA.

MARTHA H. DeGRAFF
Board Judge