

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 14, 2005

GSBCA 16509-RELO

In the Matter of DORIS L. STARKES

Doris L. Starkes, Dumphries, VA, Claimant.

Belinda S. Estabrook, United States Army Corps of Engineers, Savannah, GA,
appearing for Department of the Army.

BORWICK, Board Judge.

In this case, the National Science Foundation (NSF or agency), acted correctly in refusing to reimburse claimant Doris L. Starkes for real estate transaction expenses claimant paid for the buyer in the sale of her house. Claimant did not establish that her payment of those expenses was "customary" in the locality, as required by the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR).

Background

Claimant was transferred in the interest of the Government from the United States Army Corps of Engineers (USACE), Savannah, Georgia, to the NSF in Arlington, Virginia. The NSF granted claimant reimbursement of relocation expenses, including reimbursement of real estate transaction expenses.

On March 30, 2004, claimant sold her house in Thunderbolt, Georgia¹, and incurred \$10,147.03 of transaction expenses, including \$1280.03 of expenses that claimant paid for the buyer. The disallowed expenses were for the appraisal fee, title examination and insurance fees, recording fees for the deed and mortgage, and credit report fee. The NSF disallowed the expenses that claimant paid for the buyer because claimant's previous employer, the USACE, refused to approve the claimant's application for reimbursement of those expenses.

In this case, the NSF was required to follow the determinations of the USACE as to whether the disallowed expenses were reimbursable. Under the FTR, when an employee

¹ Thunderbolt, Georgia, is approximately six miles southeast of Savannah, Georgia.

transfers between agencies, the hiring agency at the employee's old station must approve the employee's application for real estate transaction expenses. 41 CFR 302-11.405 (2003). When, however, the hiring agency does not have an installation at the old station, then the losing agency at the old station must approve the application for real estate transaction expenses. Id. The NSF does not have an installation at Savannah, Georgia, so the USACE is the appropriate approving agency for the expenses.

The USACE determined that the costs that claimant had paid for the buyer were not customarily paid on behalf of the buyer, but were negotiable items. The USACE, therefore, denied reimbursement of those expenses.

Claimant subsequently sought the opinion of real estate professionals in the Savannah, Georgia, area as to whether it was customary for sellers to pay closing costs for the buyers. The attorney handling the closing stated in a letter to claimant:

As you know, closing costs are aspects of the sales contract that are negotiated between the seller and the buyer [on a] case by case basis. Generally speaking, most closing costs can be paid by either the seller or buyer or apportioned between the seller and buyer as agreed between the parties. However, to assert that the above mentioned closing costs are customarily paid by the purchaser in this location is not an accurate statement, by far.

I have specialized in real estate closings here in Savannah, Georgia, for the last [twenty-nine] years. I have closed thousands of sales. I would say that on an average, the seller pays the above closing costs more often than the purchaser.

The listing agent for the property stated in an e-mail message:

Closing costs are very often negotiated and the decision to contribute any amount toward the buyer's closing cost would be that of the seller. This situation is not unique to the Savannah area.

Claimant also communicated with an employee at the closing office and another real estate agent. According to claimant, those individuals told claimant that it was reasonable and customary for a seller to pay a buyer's closing costs in the Savannah area. Those individuals, however, did not confirm in writing claimant's recitation of those conversations.

Discussion

Both the FTR and JTR, which supplements the FTR, allow reimbursement of the disallowed real estate transaction expense items if customarily paid by a seller of a residence at the old permanent duty station. 41 CFR 302-11.200 (f); C14002-A.4(a). It is claimant's burden, through persuasive evidence, to establish what is local custom regarding a seller paying part of a buyer's closing costs. Ginevra A. Hightower, GSBICA 16512-RELO (Nov. 18, 2004); William J. Bond, GSBICA 15706-RELO, 02-2 BCA ¶ 31,985. If a large percentage of sellers pay some of buyers' closing costs in an area, the practice may be said to be "customary." Bond. However, evidence that a seller agreeing to pay some of a buyer's closing costs is merely normal or a matter for negotiation between a buyer and a seller does not establish that the practice is customary. Paula K. Fowler, GSBICA 16281-RELO, 04-1 BCA ¶ 32,525 (2003); Albert L. Van Tuinin, GSBICA 14492-RELO, 98-2 BCA ¶ 30,091.

Claimant's statements, and the evidence in support of those statements, fall short of the persuasive evidence that we require for claimant to establish claimant's entitlement to reimbursement of the disallowed items. Two of claimant's correspondents confirmed only that a seller paying part of a buyer's closing costs was negotiable in the Savannah, Georgia, area. One, the real estate closing attorney, opined that after negotiations, sellers pay certain of the buyers' costs "more often" than the buyer, but he did not say that the practice was customary as the Board has defined the term.

Two other correspondents did not confirm claimant's understanding of alleged conversations with claimant that a seller's paying some of a buyer's closing costs was reasonable and customary.

Finally, claimant argues that the existence of Government programs to provide grants for home buyers to pay closing and down payment costs show that it is normal and customary for a seller to pay a buyer's closing costs. We do not regard the existence of such grant programs as proof of what is customary between buyers and sellers in local real estate markets.

The claim fails for want of proof; the Board denies the claim.

ANTHONY S. BORWICK
Board Judge