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

October 25, 2006

GSBCA 16938-RELO

In the Matter of WANDA S. MOHR

Wanda S. Mohr, Alexandria, VA, Claimant.

Burlynda Knight, Chief, Personnel Management Branch, Civilian Personnel Office, Air Force District of Washington, DC, appearing for Department of the Air Force.

BORWICK, Board Judge.

Ms. Wanda S. Mohr, claimant, a civilian employee of the Department of the Air Force, agency, contests the agency's pro-rata reimbursement of the real estate transaction expenses for the purchase of a residence in connection with claimant's permanent change of station (PCS). We deny the claim since the agency correctly applied the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) in calculating the amount of claimant's reimbursement.

Background

Claimant was transferred in the interest of the Government from Wright-Patterson Air Force Base, Ohio, to the Pentagon, Washington, D.C. As part of her PCS entitlements, the agency granted claimant reimbursement of real estate transaction expenses.

The agency did not list dependents or other family members in her travel authorization. Nonetheless, claimant relocated to the Washington, D.C. area with her fiancé. When claimant moved to the Washington, D.C. area in October 2005, she intended to purchase a house solely in her name with her funds. Claimant found a suitable home in the Virginia suburbs of Washington, D.C., and she independently qualified for a home loan. Claimant explains that for "credit rating purposes" claimant's fiancé wished to incur debt

along with claimant and the only way to do this was for the fiancé to be added to the title. Claimant states that a relocation specialist assured claimant that claimant's addition of her fiancé to the title would not adversely impact her reimbursement of real estate transaction expenses. Approximately ten days before closing, claimant's fiancé was added to the loan documents and the title for "purposes of incurring the debt."

At the closing of the real estate purchase, claimant incurred real estate transaction expenses of $15,164.14, which claimant states she paid herself. The settlement statement lists both claimant and her fiancé as the purchasers, the deed of trust states that both claimant and her fiancé are the borrowers, and the deed to the house lists claimant and her fiancé as the owners, as joint tenants with the common law right of survivorship.

Both the FTR and JTR provide that title to a residence must be in the name of the employee or in the name of the employee's immediate family or dependents, and that if an employee or his or her immediate family or dependents holds title with others, reimbursement is based upon a pro-rata share of expenses to the extent of the employee's and family's actual or deemed title interest. 41 CFR 302-11.101 (2005); JTR C14000-E.1,-F2. A pro-rata allocation is avoided, however, where the employee or a member of his immediate family holds an "equitable title interest" in the property, even where another individual or entity holds all or part of the actual title. 41 CFR 302-11.105; JTR C14000E.2.b.

Claimant submitted a reimbursement voucher to the agency seeking payment of $13,746.47. The agency reimbursed fifty percent of claimant's allowable closing costs on the reimbursement voucher, because it recognized claimant's fiancé--a non-family member--as holding joint title to the residence. The amount reimbursed was $6339.44.[1] The agency determined that claimant did not hold an equitable title interest in the part of the title which was in the name of her fiancé. Claimant contests the agency's fifty percent reduction, arguing that she paid the closing costs from her own funds and that she should be considered as holding an equitable title interest thus coming within the regulatory exception.

[1] The reimbursement of $6339.44 is less than half of $13,746.47; it is half of $12,678.88. The agency did not reimburse claimant $1067.59 for the expense of the owner's title insurance, considering that amount unallowable. The disallowance of that expense is not at issue here.

Discussion

The authority to reimburse federal government employees for real estate expenses incurred incident to a transfer is contained in 5 U.S.C. § 5724a(d)(6) (2000), which sets forth certain requirements relating to the title of property sold or purchased. These requirements are implemented in the FTR and the supplemental JTR, as discussed above.

It is settled that a fiancé of a transferred employee is not a "family member" or a dependent meeting the title requirements for full (as opposed to pro-rata) reimbursement of allowable real estate transaction expenses. *Suzanne S. Lowe*, GSBCA 16696-RELO, 06-1 BCA ¶ 33,202, *citing Fred Borakove*, GSBCA 15739-RELO, 01-1 BCA ¶ 31,409. The issue here, therefore, is whether claimant may be regarded as having held an equitable title interest in the portion of the title held by her fiancé, so that claimant may be reimbursed one hundred percent of the allowable real estate transaction expenses. The FTR defines three situations in which an employee may hold an equitable title interest: (1) title held by a trust, (2) title held by a financial institution, and (3) title held by an accommodation party. 41 CFR 302-11.105.

The equitable title interest situation relevant to claimant's case is that of title held by an accommodation party. 41 CFR 302-11.105(c); JTR C14000-E.2.b(3). An accommodation party is an individual who signs a financing agreement to lend his or her credit to the financing arrangement. JTR C14000-E.2.b(3). In addition to meeting other requirements, to satisfy the definition of an "accommodation party," the employee and or a dependent must have the right to use the property and to direct conveyance of the property, JTR C14000-E.2.b(3)(a); the lender must have required the purported accommodation party's signature on the finance document, JTR C14000-E.2.b(3)(c); and the accommodation party may not have a financial interest in the property unless the employee and or dependent defaults on the loan. JTR C14000-E.2.b(3)(f).

The record reflects that claimant's fiancé was not an accommodation party. First, claimant's fiancé did not sign the financing agreement to lend his credit to the financing arrangement; he signed the financing agreement to establish credit for himself. Second, the lender did not require claimant to sign the loan as a condition of approval; claimant herself was qualified for the loan.

Third, as a joint tenant, claimant's fiancé possessed a financial interest in the property and claimant did not have a right to direct conveyance of the property. This is so because a joint tenant possesses the right, independently of the other joint tenants, to sell his or her interest in the property and even to force partition of the property. *Jones v. Conwell*, 314 S.E. 2d 61, 65 (Va. 1984). Claimant's fiancé was not an accommodation party within the

meaning of regulation. Thus, in deciding the amount of reimbursement, the agency followed regulation and properly pro-rated the allowable real estate transaction expenses.

Finally, claimant maintains that she was misled by the advice of the relocation specialist. If so, that fact does not help claimant. It is settled that erroneous advice of agency personnel can not serve to enlarge claimant's entitlement beyond the limits established by law. *Richard C. Flegal*, GSBCA 16872-RELO, 06-2 BCA ¶ 33,308.

The Board denies the claim.

_____
ANTHONY S. BORWICK
Board Judge