

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

February 14, 2002

GSBCA 15621-RELO

In the Matter of MARK R. TAYLER

Mark R. Tayler, Washington, DC, Claimant.

Eliot Van Velzen, Chief, Travel Section, National Finance Center, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

HYATT, Board Judge.

Claimant, Mark R. Tayler, an employee of the United States Customs Service, accepted a transfer from Buffalo, New York, to Washington, D.C. His claim concerns entitlement to a home marketing incentive payment in connection with the sale of his residence in Buffalo. Because Mr. Tayler did not transfer his home to the relocation services contractor, as required by applicable regulations, we find that the agency has properly denied the claim.

Background

After accepting the transfer to Washington, D.C., Mr. Tayler listed his home in Buffalo on November 16, 1999. The house did not sell during its first sixty days on the market, so Mr. Tayler requested that the agency enroll him in the Guaranteed Homesale (GHS) program. His request was approved on February 3, 2000. Thereafter, Mr. Tayler continued to make aggressive efforts to sell his house, and found a buyer. The closing date for the sale of his house was March 17, 2000.

Subsequently, Mr. Tayler applied for payment of a home marketing incentive under the GHS program. The agency responded that he had not met one of the conditions for eligibility to receive the payment -- the transfer of the house to the relocation contractor, which in this case was Cendant Mobility. The record reflects that Mr. Tayler sold his house directly to the buyer, rather than transferring ownership to Cendant Mobility and in turn allowing Cendant to resell the house to the buyer under an amended sale.

Mr. Tayler has asked that the Board review this decision. He points out that he did not receive any information concerning the incentive payment program from Cendant Mobility, the relocation contractor. Claimant states that he aggressively marketed his home and found a bona fide buyer as a result of his efforts. He also states that he strived diligently to keep moving expenses to a minimum by foregoing a house hunting trip and limiting his temporary quarters subsistence expenses to the fixed amount option. If he had been informed of the incentive payment option he would have applied at the time he was accepted into the GHS program.

Discussion

Federal agencies are permitted to enter into relocation service contracts with private firms to provide a variety of relocation services to employees who are transferred. 5 U.S.C. § 5724c (2000). These services include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the old duty station under a home sales program. See Charles T. Loverdi, GSBCA 14232-RELO, 98-2 BCA ¶ 29,795; Dan R. Mayer, GSBCA 14347-RELO, 98-1 BCA ¶ 29,506 (1997); Paul E. Marshall, GSBCA 13811-RELO, 97-2 BCA ¶ 29,036. The relocation services program also includes a home marketing incentive program. 5 U.S.C. § 5756. Under this program an agency may pay an employee who is transferred in the interest of the Government an amount to encourage the employee to aggressively market his or her residence at the former official station when (1) the residence is entered into a relocation services program under which the private contractor will purchase the house; (2) the employee finds a buyer who completes the purchase of the residence through the program; and (3) the sale of the residence results in a reduced cost to the Government. Gregory R. Littin, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604; Donald L. Boyle, GSBCA 15080-RELO, 00-1 BCA ¶ 30,653.

The home marketing incentive program is implemented in the Federal Travel Regulation (FTR) under part 302-14. Subpart A establishes the circumstances under which an employee may qualify for an incentive payment; Subpart B describes the agency's responsibilities should it decide to offer an incentive. Under the FTR, it is within the discretion of each agency whether to choose to establish a home marketing incentive program. 41 CFR 302-14.4 (2000); see Boyle; Randolph S. Reynolds, GSBCA 14728-RELO, 99-1 BCA ¶ 30,366. The agency is not required to offer an incentive. If it does, however, the payment made may not exceed the savings realized in payments to the relocation services company. 41 CFR 302-14.100.

The FTR further delineates the circumstances under which a transferred employee may qualify for an incentive payment. The employee may receive a payment when (a) the residence is entered in the home sale program; (b) the employee has independently and aggressively marketed the property; (c) the employee has found a bona fide buyer as a result of independent marketing efforts; (d) the employee has transferred the residence to the relocation services provider; (e) the agency realizes reduced fee expenses as a result of the employee's independent marketing efforts; and (f) any other conditions established by the agency have been met. 41 CFR 302-14.5.

The Customs Service has implemented a home marketing incentive program in Customs Directive 5330-020A, dated October 6, 1999. This directive states that the home

marketing incentive program was available and summarizes the terms under which it would apply. To qualify for a home marketing incentive payment the transferring employee is:

Required to list his/her residence with a Real Estate Agent, and to actively market the residence while he/she is in the GHS Program. It is in the employee's best interest to actively market the home because he/she may be eligible to receive a home marketing incentive payment of 2 percent of the home's sale price, up to \$8,000, if he/she: (1) independently and aggressively markets the residence; (2) finds a bona fide buyer as a result of the marketing efforts; and (3) then transfers the residence to the relocation services company - a process known as an amended sale. This significantly reduces the fees/expenses Customs must pay to the relocation services company and the GHS Program.

Here, the claimant met only two of the three requirements for qualifying for the home marketing incentive program. It appears that the final requirement -- transfer of the house to the relocation contractor under an amended sale -- was not met only because Mr. Tayler was not timely advised either by Customs or Cendant Mobility that this was necessary to preserve his eligibility for an incentive payment. On these facts, however, we cannot find entitlement to an incentive payment. It is unfortunate that Mr. Tayler was not apprised of the steps he needed to take to ensure he would be eligible for the incentive payment. Nonetheless, to qualify for a payment, the residence must have been transferred to the relocation services company. That did not occur here and there is no way to determine what, if any, savings might have been realized by the agency. As we stated in Regina M. Rochefort, GSBCA 15127-RELO, 00-1 BCA ¶ 30,879, at 152, 445, "[i]t is now impossible to recreate history to enable claimant to properly invoke the home sale incentive program." This claim cannot be sustained. Accord Littin; Michael G. Rupert, GSBCA 15049-RELO (Mar. 16, 2000).

CATHERINE B. HYATT
Board Judge