

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 28, 2004

GSBCA 16444-RELO

In the Matter of RAUL A. RODRIGUEZ

Raul A. Rodriguez, Sahuarita, AZ, Claimant.

Edgardo Aviles, Chief, Travel Section, National Finance Center, Bureau of Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

The Bureau of Customs and Border Protection has requested that this Board issue an advance decision to determine if claimant, Raul A. Rodriguez, is entitled to closing costs for the purchase of a new residence at a new duty station. The agency initially denied the claim, and claimant asked for the agency's reconsideration. The agency specifically requests a decision as to whether claimant actually incurred \$3261 in closing costs for which he claims reimbursement.

Factual Background

Claimant accomplished a permanent change of station from Brownsville, Texas, to Nogales, Arizona. On January 4, 2004, he entered into a contract to purchase a residence at his new duty station for the price of \$208,915. The seller and claimant agreed to a \$5000 discount on the purchase price of the home, with the condition that claimant obtain Department of Veterans Affairs (VA) financing through Pulte Mortgage Corporation. As a result, the initial sales price of the home was \$203,915.

Claimant states that he was unable to obtain the VA financing "due to time constraints and financing problems." Instead he obtained financing through a mortgage company. The final sales price was \$209,305, as reflected in the Housing and Urban Development (HUD) Settlement Statement.¹

¹ The agency states that "[t]here is an unaccounted difference of \$390 between the initial agreed-upon sales price of the residence (\$208,915) and the contract sales price reflected in line 1 of the HUD Settlement Statement (\$209,305).

Claimant filed a claim for reimbursement of real estate costs in the amount of \$3536. These costs included:

Appraisal Fee	\$ 275
Legal Costs	581
Endorsement Fee	150
Credit Report	90
Escrow Agent's Fee	300
Loan Origination Fee	1,988
Homeowners Association Transfer Fees	<u>152</u>
Total	\$3,536

Of the above expenses, the agency reimbursed claimant \$275 for the lender's appraisal fee. The agency states the reason for not reimbursing the remaining expenses as follows:

The remaining expenses for \$3,261 were not reimbursed because the seller paid the expenses. However, Mr. Rodriguez contends he incurred these expenses through the \$5,000 incentive he received from the builder.

We reviewed [the] claim and believe that his claim is invalid. The documentation presented by [claimant] clearly shows that the \$5,000 discount was applied to the price of the home as a condition for seeking financing through Pulte Mortgage. When [claimant] failed to obtain the financing, the seller added \$5,000 back to the contract without providing additional statements associated to the closing costs of the house.

Thus, according to the agency, the seller increased the purchase price and did not give the claimant the \$5000. Yet the seller paid the closing costs, so claimant was not entitled to reimbursement for those costs.

The claimant describes the situation differently. He asserts that he did not lose the \$5000 incentive, as a portion of it was used to pay the \$3536 in settlement costs that he has requested the agency to reimburse. He states:

The \$5,000.00 incentive had multiple uses for the buyer and was not exclusively or specifically intended to be used for closing costs. Rather this was very real money for the buyer that was chosen to be used to pay closing cost expenses as necessitated by need on my part to assist in the costs while awaiting the reimbursement process.

I concluded that it would be best to apply the \$5,000.00^[2] towards closing cost in an effort to keep expenses to a minimum. However, as previously

² Claimant only seeks reimbursement of \$3536 in closing costs. He does not indicate how the balance of the \$5000 credit was applied.

mentioned that money could have been used for anything, such as buying down the cost of the house or upgrades.

Discussion

Provided certain requirements are met, when an employee transfers in the interest of the Government, the employing agency is required to reimburse the employee for expenses of the purchase of a residence at the employee's new duty station. 5 U.S.C. § 5724a(d) (2000). One such requirement is the employee must actually incur and pay an expense in order to be reimbursed. 41 CFR 302-11.303 (2003). In order to determine whether an employee has incurred and paid an expense, we usually look to the settlement statement. Nicholas A. Mendaloff, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983. As we explained in Jacquelyn B. Parrish, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999), there are circumstances in which a purchaser incurs and pays closing costs as part of the purchase price, even though the costs are shown on the settlement statement as having been paid initially by the seller.

In the instant case, claimant asserts he received an incentive credit from the builder and applied a portion of that credit to closing costs for which he seeks reimbursement. The record supports claimant's explanation, as the documentation indicate that the builder did in fact pay the closing costs. However, claimant does not prevail under these circumstances.

Situations analogous to the instant case have previously been addressed by the Board. In Mendaloff, the employee and the seller agreed that the employee would pay more for the house and the seller would in return pay the employee's closing expenses. The Board agreed that the agency was not required to reimburse the employee for the closing costs because the employee had not actually paid them. The Board's decision in Marion L. Ladd, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890, is particularly apposite. There the employee, like claimant in the instant case, purchased a house from a builder. The builder agreed to give a \$3000 credit to be applied by the purchasers in any manner they wished. Although the claimant and his spouse asked for the credit to be applied to various upgrades and options to be added to the house, the builder applied the credit at settlement to pay certain closing costs that would normally have been paid by the purchaser. Like claimant in the instant case, claimant in Ladd knew prior to settlement that the builder planned to apply the credit to closing costs, but he did not object because he did not anticipate that he could not be reimbursed for the closing costs paid by the builder. Because the settlement sheet accurately reflected that these costs were paid by the seller, the claimant was not eligible for reimbursement.

These cases are dispositive here. The settlement sheet and claimant's own statement indicate that the costs were paid by the seller. Although claimant might have structured the transaction differently had he realized that he would not be eligible for reimbursement of closing costs if they were paid by the builder rather than by him, neither the Board nor the agency is authorized to reimburse employees for expenses based on theoretical transactions that might have been made by the parties.

Decision

Claimant is not entitled to reimbursement of the settlement costs paid by the seller.

ALLAN H. GOODMAN
Board Judge