

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 26, 2006

GSBCA 16696-RELO

In the Matter of SUZANNE S. LOWE

Suzanne S. Lowe, Newington, CT, Claimant.

Randy Keuton, Chief, Travel Section, Department of Veterans Affairs Finance Center, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Suzanne S. Lowe, an employee of the Department of Veterans Affairs (VA), effected a permanent change of station from Roanoke, Virginia, to Hartford, Connecticut, in May 2005. The VA assigned a relocation counselor to assist Ms. Lowe and provided her a copy of the agency's "Quick Reference Guide to a Permanent Change of Station (PCS)," a pamphlet summarizing relocation benefits available to employees who are relocated in the interest of the Government.

The relocation benefits authorized in connection with the transfer included real estate transaction expenses. Ms. Lowe made it a point to confer with the relocation counselor about the reimbursements available to her and, in particular, inquired about what benefits would be available with respect to the sale of her residence in Roanoke, Virginia, which she owned jointly with her significant other. She informed the VA that she held title with an individual who was not her spouse nor a member of her immediate family. Her assigned counselor was unable to address this issue and referred her to someone else in the VA. This individual advised Ms. Lowe that the relocation services contractor program, which she had been considering, would be costly under those circumstances. When she inquired about the

benefits available if she sold the house on her own, he told her that, because her house was jointly owned with an individual who did not qualify as immediate family, her maximum reimbursement for allowable costs associated with sale of the residence would be limited to five percent of the total sales price, rather than the usual ten percent. Relying on this advice, Ms. Lowe evaluated the situation, determined that this would permit her to recover most of the relevant costs, and went ahead and sold the house.

After Ms. Lowe sold the residence, submitted a voucher, and was paid, the VA recalculated her allowable reimbursements, based on the fact that the proper reimbursement in these circumstances is limited to fifty percent of the allowable costs, and not to five percent of the total sales price. The VA issued a bill of collection in the amount of \$5790. Ms. Lowe has challenged the bill of collection, stating that although she diligently attempted to determine what her relocation entitlements with respect to the sale of this residence would be, she was not properly informed of the effect the ownership status of her property would have on her eligibility for reimbursement, and that she made a bad financial decision because of this.

Discussion

Under the applicable statute and implementing regulations that apply to Ms. Lowe, the VA is authorized to reimburse the residence sales transaction expenses that Ms. Lowe was required to pay if the title to her residence was held by her alone, jointly with a member of her immediate family, or by an immediate family member alone. 5 U.S.C. 5724a(d)(1), (6) (2000); 41 CFR 302-11.101 (2004). The Federal Travel Regulation's (FTR's) definition of "immediate family" does not extend to significant others or fiances. 41 CFR 300-3.1; *Fred Borakove*, GSBCA 15379-RELO, 01-1 BCA ¶ 31,409; *Daniel J. Cushine*, GSBCA 15357, 00-2 BCA ¶ 31,130.

The VA's determination that it does not have the authority to reimburse Ms. Lowe for more than fifty percent of the allowable costs incurred in connection with the sale of the residence in Roanoke is correct based on the information available to it. The applicable rule states that if the employee or an immediate family member does not hold full title to the property for which reimbursement is requested, reimbursement will be on a pro rata basis to the extent of the actual title plus any equitable title interest in the property. 41 CFR 302-11.103. The information provided to the VA showed that title was held jointly by Ms. Lowe and her significant other with right of survivorship; the VA determined that each owner held a fifty percent share of the title and calculated Ms. Lowe's proper reimbursement accordingly.

Although the VA did not have any basis for evaluating whether Ms. Lowe might claim a further equitable title interest in the Roanoke residence, we note that in her claim Ms. Lowe has stated that she made the mortgage payments and that the utilities were in her name. The FTR provides for various circumstances in which an “equitable title interest” may exist. 41 CFR 302-11.105. The provision that appears most relevant to this situation is as follows:

Another equitable title situation exists where title is held in your name only or jointly with you and one or more members of your immediate family or with you and an individual who is not an immediate family member, and the following conditions are met:

- (1) The property is your residence.
- (2) You and/or a member(s) of your immediate family has the right to use the property and to direct conveyance of the property.
- (3) Only you and/or a member(s) of your immediate family has made payments on the property.
- (4) You and/or a member(s) of your immediate family received all proceeds from the sale of the property.
- (5) You must provide suitable documentation to your agency that all conditions in paragraphs (e)(1) through (e)(4) of this section are met.

41 CFR 302-11.105(e). To the extent Ms. Lowe can meet the conditions of this provision, or one of the other exceptions set forth in FTR 302-1.105, she may be entitled to reimbursement of a larger pro rata share of the expenses incurred in selling the Roanoke property. If this is the case, she should provide appropriate documentation to the agency for its evaluation. The Board has recently applied this provision to permit another claimant in somewhat similar circumstances to receive full reimbursement of real estate transaction expenses. *See Andreas Frank*, GSBCA 16706-RELO (Nov. 8, 2005).¹

¹The Board’s decisions are available on its web site: <http://www.gsbcg.gov>, and in the Board of Contract Appeals Decisions reporter published by CCH Incorporated.

We note that Ms. Lowe has challenged the bill of collection as unjustified because she diligently attempted to determine her eligibility for reimbursement of these expenses and was provided inaccurate advice from the VA employees assigned to counsel her with respect to her relocation entitlements. She points out that had she known the true consequences of selling the home in Roanoke she would have proceeded in a different manner to avoid the financial hardship she is now facing. Unfortunately, although Ms. Lowe may have been misadvised as to the degree of her eligibility for reimbursement of the expenses of selling her residence, it is well settled that reliance on such erroneous advice cannot enlarge a claimant's entitlements as defined by statute and regulation nor can it obligate the Government to pay monies that are otherwise not authorized by statute and regulation. *E.g. Domenicangelo D'Angella*, GSBCA 16704-RELO (Nov. 22, 2005); *Jason D. Rohloff*, GSBCA 16576-TRAV, 05-2 BCA ¶ 33,009; *Charles J. Smollen*, GSBCA 16532-RELO, 05-1 BCA ¶ 32,962; *Edward J. Nanartowich*, GSBCA 15327-RELO, 01-1 BCA ¶ 31,290. Unless Ms. Lowe can show that she had an equitable title interest entitling her to reimbursement of a larger pro rata share of the real estate transaction expenses associated with the sale of her home, her claim must be denied.

CATHERINE B. HYATT
Board Judge