

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 19, 2006

GSBCA 16930-RELO

In the Matter of MARTIN WILD

Martin Wild, Anchorage, AK, Claimant.

Cathy Rios and Cindy Osif, National Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

PARKER, Board Judge.

When Martin Wild was transferred in 2005 from Juneau to Anchorage, Alaska, he was told by a relocation coordinator at the U.S. Department of the Interior's National Business Center that he was eligible for reimbursement of the cost of a relocation services company. Before Mr. Wild reported to his new duty station, the agency determined that it had given Mr. Wild incorrect information and informed him that because his transfer was from one location outside the continental United States (OCONUS) to another, by regulation, he would not be eligible for reimbursement for the services of a relocation company.

Mr. Wild maintains that, because of the short amount of time he had to report to his new duty station and his inability to utilize the services of a relocation company, he sold his home in Juneau at "liquidation value" for approximately \$20,000 less than its market value. He has asked the Board to review the agency's decision not to pay his claim for the economic loss.

Discussion

The agency was wrong in determining that Mr. Wild was ineligible for use of the services of a real estate relocation company in connection with his transfer within the State of Alaska, but correct in denying his claim for the economic loss incurred on the sale of his house.

By statute, an agency may pay to or on behalf of an employee who transfers in the interest of the Government expenses of the sale of a residence at the old official station and purchase of a residence at the new official station “when the old and new official stations are located within the United States.” 5 U.S.C. § 5724a(d)(1) (2000). The term “‘United States’ means the several States, the District of Columbia” *Id.* § 5721(6). To help carry out the purpose of the statute, agencies are authorized to enter into contracts for relocation services for the benefit of employees. *Id.* § 5724c. Thus, because Alaska is one of the several States, an employee who transfers from one official station to another within Alaska is eligible for residence transaction allowances -- including, when otherwise applicable, the services of a relocation services company. See *Janice F. Stuart*, GSBCA 16596-RELO, 05-1 BCA ¶ 32,960, *motion for reconsideration dismissed*, 05-2 BCA ¶ 33,024.

The Federal Travel Regulation (FTR), the regulation that implements the above-quoted statute, is to the same effect, although it is also misleading in one respect. The FTR correctly states that transferred employees are eligible for residence transaction expenses where, among other things, “[the employee’s] old and new official stations are within the United States.” 41 CFR 302-11.2(a) (2005). Similarly, an employee is eligible to use a relocation services company if “[he is] an employee who is authorized to transfer and such transfer includes residence transaction [allowances].” *Id.* 302-12.1.

The agency’s understandable confusion resulted from a set of tables contained in the FTR that list the relocation allowances applicable to various types of transfers. The agency consulted 41 CFR 302-3.101, Table D, which lists the relocation allowances that an agency must pay and those that the agency has discretionary authority to pay in connection with “Transfer between OCONUS Official Stations.” An OCONUS official station is one outside “the 48 contiguous States and the District of Columbia.” See *id.* 300-1. The agency reasoned that, because Alaska is considered to be OCONUS for relocation purposes, and the table of allowances for transfers from one OCONUS station to another did not authorize either reimbursement of residence transaction expenses or use of a relocation services company, Mr. Wild, who transferred from Juneau to Anchorage, Alaska, would not be eligible for these allowances. As we said, the agency’s conclusion is understandable but wrong, given the language of the controlling statute, the specific FTR sections discussing

these benefits, and Board precedent. The General Services Administration, which promulgates the FTR, may wish to clarify the table in 41 CFR 302-3.101 as it applies to this situation to maintain consistency with the statute and other sections of the FTR.

Unfortunately, although we are sympathetic to Mr. Wild's situation, his claim must be denied. Losses incurred due to market conditions or prices at the old duty station are not reimbursable when incurred due to "failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost." 41 CFR 302-11.304. Thus, regardless of the correctness of the agency's decision to disallow the use of a relocation services company, or the accuracy of the agency's advice to Mr. Wild, the alleged \$20,000 loss simply is not a cost made reimbursable by statute or regulation.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge