

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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November 21, 2006

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GSBCA 16943-RELO

In the Matter of STEPHEN H. CLARK

Stephen H. Clark, Klamath Falls, OR, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

**GOODMAN**, Board Judge.

Claimant, Stephen H. Clark, is an employee of the Department of the Interior's National Park Service (NPS). He has requested that this Board review the agency's denial of reimbursement of real estate expenses incurred during a permanent change of station (PCS) move.

## Factual Background

Claimant was issued orders for a PCS move from La Junta, Colorado, to report to his new duty station of Klamath Falls, Oregon, on May 23, 2006. The agency did not list dependents or other family members in his travel authorization. On April 28, 2006, settlement was held for the sale of his residence in Colorado. The Seller Closing Statement included in the settlement papers indicated that the sellers of the property were claimant and another individual -- Loren T. Johnson. Claimant and Mr. Johnson signed the Seller Closing Statement, and the agency states that proceeds of the sale were disbursed to both. Claimant's submission to this Board indicates that he and Mr. Johnson held title to the property as joint tenants with rights of survivorship. On June 7, 2006, claimant submitted a request for reimbursement of \$12,551 in real estate expenses incurred in connection with the sale of his

residence. Included with the request was a statement dated April 28, 2006, signed by claimant and Mr. Johnson, which stated that “[a]lthough we each have survivorship rights in the property, Stephen H. Clark retains full equitable interest in the property.”

Despite the written statement that claimant held equitable title to the property, the agency concluded that because claimant and another individual held title to the property as joint tenants with rights of survivorship and both received the proceeds of the sale, claimant had only a half interest in the residence. The agency made a determination, pursuant to Federal Travel Regulation (FTR) 302-11.303, that because claimant had only a half interest in the residence, he was entitled to reimbursement of only his pro-rata share of the sales expenses. The agency therefore reimbursed claimant half the amount he requested. Claimant has asked this Board to review the agency’s determination.

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#### Discussion

Claimant’s entitlement to reimbursement of real estate transaction expenses is governed by statute and regulation. The applicable statute provides that to receive reimbursement of real estate expenses, title to a residence must be in the name of the employee, in the joint names of the employee and a member of his or her immediate family, or solely in the name of a member of the employee’s immediate family. 5 U.S.C. § 5724a(d)(6) (2000). The FTR is to the same effect. If title is held jointly with a person not a member of the immediate family, the employee’s reimbursement will be on a pro-rata basis to the extent of the employee’s actual title interest. 41 CFR 302-11.101, -11.103 (2005). The FTR defines “immediate family” to include a spouse, unmarried children of the employee or spouse under twenty-one years of age or adult children who are physically or mentally unable to care for themselves, dependent parents, and dependent brothers and sisters. 41 CFR 300-3.1.

Claimant seeks full reimbursement on two bases. He contends that his relationship with Mr. Johnson is such that they should be treated as a married couple, i.e., that Mr. Johnson should be considered a member of claimant’s “immediate family,” which would then entitle claimant to be reimbursed fully for real estate expenses.<sup>1</sup> Alternatively, if

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<sup>1</sup> Claimant is proceeding concurrently with an Equal Employment Opportunity (EEO) complaint within the agency. In his submission to this Board, claimant alleges that the agency discriminated against him, stating that “it is none of [the agency’s] business whether I am married, single, or have a partner.” As discussed herein, if someone other than the employee holds an interest in real estate for which the employee requests reimbursement of expenses upon relocation, the determination of entitlement to such expenses depends upon

Mr. Johnson is not an immediate family member, claimant believes he is nonetheless entitled to full reimbursement, as he held equitable title to the property.

With regard to claimant's contention that he and Mr. Johnson should be treated as a married couple, claimant does not allege that he and Mr. Johnson are married. Rather, claimant states that he and Mr. Johnson arranged the ownership of the property at his old and new duty stations as joint tenants with rights of survivorship "almost as if we were married" and that he is "not asking for anything more than I believe any married couple would." In *Rebecca J. Allee*, GSBCA 16906-RELO, 06-2 BCA ¶ 33,398, an employee who had only been reimbursed fifty percent of her real estate expenses made the same contention that, while not married, she and her same-sex partner should be considered to be a married couple and "an immediate family" for purposes of reimbursement of relocation expenses. In *Allee* we relied upon our previous decision in *Charles Lister*, GSBCA 14673-RELO, 99-1 BCA ¶ 30,167, which held that in the absence of contrary state or federal law, a same-sex relationship does not qualify as a marriage and does not make each member of that relationship the "spouse" of the other member. Furthermore, we noted that statute requires us in interpreting the FTR to construe the term "spouse" to mean a person of the opposite sex who is a husband or wife. 1 U.S.C. §7. We held that claimant was only entitled to her pro-rata share of the ownership of the property, as her partner was neither her spouse nor an immediate family member.<sup>2</sup>

Following our reasoning in *Allee*, in the instant case Mr. Johnson is neither the spouse nor an immediate family member of claimant, and claimant is not entitled to full reimbursement of his real estate expenses based upon his contention that he and Mr. Johnson should be treated as a married couple.

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whether the other individual is an immediate family member, and therefore the relationship between the employee and the other individual is appropriately examined.

<sup>2</sup> Claimant also refers to to an agency memorandum dated March 22, 1994, entitled "Dual Career Assistance Program," to assist dual career couples to find employment within the NPS when one spouse is already employed by the NPS. The memorandum states that it recognizes "non-traditional relationships where an individual related by blood or affinity whose close relationship with the individual is the equivalent of a spousal relationship." Claimant contends that his relationship with Mr. Johnson would be considered a spousal relationship within this agency policy, and states further that "if the [NPS] has a Dual Career Assistant Policy then it would only be fair and reasonable that if a couple were to . . . relocate, they would be reimbursed fully for real estate expenses they had to incur in order for the one employee to accept a new job." This policy can not amend federal statute or the FTR, however.

Claimant also contends that he is entitled to full reimbursement for real estate expenses as he held equitable title to the residence, even though Mr. Johnson held the residence as a joint tenant with rights of survivorship. He provided a statement signed by himself and Mr. Johnson, executed after the sale of the property, stating that he had full equitable title. Claimant also refers us to our decision in *Andreas Frank*, GSBCA 16706-RELO, 06-1 BCA ¶ 33,149, stating that his situation is similar. In that case, an employee and another individual, not a member of his immediate family, owned a residence as joint tenants with rights of survivorship that was sold when the employee relocated. Before purchasing the residence, they entered into a memorandum of understanding which stated that the other individual had no legal or equitable interest in the property prior to the death of the employee, that the employee was the sole decision maker and could dispose of the property at will or retitle the property in his own name, and that the only purpose of holding title as they did was for estate planning purposes, in the event that the employee died before the other individual.

In *Frank*, we explained:

“Title,” as the term is used in the FTR, encompasses not only actual title but also equitable title. An employee is considered to hold an “equitable title interest” in a residence if any one of five combinations of factors is present. 41 CFR 302-11.105.

06-1 BCA at 164,269.

The issue in the *Frank* case was whether claimant met the following regulatory requirements:

[an] 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). In *Frank*, claimant satisfied the agency that he met the first, third, and fourth requirements, and we determined that the memorandum of understanding was sufficient to establish that claimant had sole right to direct conveyance of the property.

In the instant case, claimant submitted with his voucher a document signed by himself and Mr. Johnson after the sale of the property which stated that claimant had full equitable interest. No other terms and conditions were included in the document. After the agency reimbursed claimant half of the expenses incurred, claimant submitted additional information to the agency -- checks to the mortgage company from a joint account held by him and Mr. Johnson bearing only his signature; bills from the gas and telephone company bearing only the name of the claimant; and bills for water, sanitation, and sewer that bear the address only, with no individual named.

On the record as submitted, claimant has only satisfied the first regulatory requirement, that the property was his residence. As to the second requirement, the document executed after the sale of the property stating that claimant had "full equitable title" is not sufficient evidence that the claimant and Mr. Johnson had a prior understanding that claimant had the sole right to direct the conveyance of the property. In fact, the settlement sheet indicates both claimant and Mr. Johnson as sellers, not claimant alone. As to the third requirement, the fact that the mortgage checks were signed by claimant does not indicate that he alone made the payments, as the checks were from a joint bank account that included Mr. Johnson. This does not establish that the mortgage was paid solely with claimant's funds. As to the fourth requirement, while claimant's initial submission to the agency states that he received all proceeds from the sale of the property, the agency's response to the claimant's submission to this Board states that the proceeds from the sale of the property were issued to both claimant and Mr. Johnson. Claimant has not submitted suitable documentation to the agency or this Board to support his allegation that he received all proceeds.

Claimant has not established that he had equitable title to the property, as he has not fulfilled the regulatory requirements of paragraph (2) through (5) above. The agency correctly determined his reimbursement on a pro-rata basis to the extent of his actual title interest.

Decision

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The claim is denied.

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ALLAN H. GOODMAN  
Board Judge