



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 19, 2008

CBCA 1246-RELO

In the Matter of NICHOLAS C. ROWELL

Nicholas C. Rowell, Crown Point, IN, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Alexandria, VA, appearing for Department of Justice.

POLLACK, Board Judge.

Mr. Nicholas Rowell received a permanent change in station (PCS) transferring him from Orange County, California, to Chicago, Illinois. On April 24, 2008, he purchased a home in the Chicago vicinity, the home being in Indiana. After closing, he submitted a claim to the Drug Enforcement Administration (DEA) in the amount of \$3901 for closing costs. DEA denied the claim in part and instead allowed him \$1240 of the claimed sum. DEA contended the amount denied was not payable because the costs were not paid by the employee as purchaser, but rather were shown on the settlement sheet to have been charged and paid by the seller.

In defending its denial, DEA also referenced a provision of the purchase agreement between Mr. Rowell and the seller. That provision provided in pertinent part:

Seller will contribute \$3500.00 dollars in closing costs and pre-pays. Seller will contribute \$3000.00 for said property to be painted to meet FHA financing requirements

Referencing the closing settlement sheet, DEA pointed out that the sums it disallowed were shown on the settlement sheet to be seller costs. DEA's statement is essentially correct;

however, we do note that part of what DEA disallowed was \$300 set out as appraisal costs. That sum was included in the body of the settlement sheet but did not show which party had paid it. As such, the appraisal fee was not carried over into either the seller or buyer pay columns.

In support of his claim for entitlement to reimbursement, Mr. Rowell has explained his position in a letter and has additionally provided a letter from his lender, Paramount Bank. According to Mr. Rowell his lender incorporated the disallowed closing costs into his loan and, therefore, he has paid the costs claimed. In his letter, Mr. Rowell stated, [E]ssentially, I paid the seller the money at close that the seller used to pay my closing costs.” As support to his position, the lender’s letter provides in part:

Mr. Rowell was “responsible to pay for all of his own closing costs. Attached you will find the Settlement Statement to verify all items. Seller concessions were added but they simply increased the amount that Nicholas financed.”

The lender’s letter then lists fourteen different lines (separate items) on the settlement sheet. Two of the listed items show charges solely in the purchaser column. Those items, however, have been paid and are not part of the dispute. Another item shows separate charges listed under both the purchaser and seller columns, the amount under the purchaser column being \$75. The remaining eleven items show charges only in the seller column. The items identified in the letter that show seller payment from the sheet totaled \$3789.27. Of that, DEA disallowed \$2601. All of the items that were disallowed were shown in the seller column, but for a \$300 appraisal charge, that was shown in the body of the settlement sheet and not in a particular column.

As to the \$300 appraisal item, Mr. Rowell has produced a receipt for \$300 from Capital Appraisal, which shows he paid the appraisal fee in full.

Discussion

Allowances for expenses incurred by transferred employees in connection with residence transactions are governed by 41CFR part 302-11(2007). One of the requirements for reimbursement is that the expense must have actually been paid by the employee or a member of the employee’s immediate family. 41 CFR 302-11.303.

This Board and its predecessor have historically looked to the settlement sheet in determining what settlement expenses an employee actually incurred and paid. *Roger L. Bankert*, CBCA 558-RELO, 07-2 BCA ¶ 33,601; *Nicholas A. Mendaloff*, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983; *Harlan C. Thiel*, GSBCA 13668-RELO, 97-1 BCA ¶ 28,710

(1996). That said, we have not viewed settlement sheets with blinders. Rather, we have allowed reimbursement in appropriate instances, even where the settlement sheet appears to show that the party seeking reimbursement for settlement costs has not paid for the disallowed items. In that regard we have followed a longstanding precedent from the Comptroller General that held that, in limited instances, an employee could be reimbursed for closing costs that were included in the purchase price of the house and paid for by the seller at closing, if: “(1) the closing costs were clearly discernible and separable from the price paid for the house, (2) both the seller and the purchaser regarded the costs as having been paid by the purchaser, and (3) documentation showed the amount of the closing costs and purchaser’s liability for them.” *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 at 151,114 (1999); *see also Bankert, id.*

Turning to the facts of this case, we do not find that Mr. Rowell has met the necessary conditions set out in *Parrish* and reiterated in *Bankert*. In particular Mr. Rowell has failed to meet the requirement that the evidence show that both the purchaser and seller regarded the costs for which reimbursement have been sought was paid by the purchaser. While Mr. Rowell makes that allegation and attempts to buttress it through the letter from Paramount Mortgage, we find his statement and the letter insufficient to establish that the parties had agreed that the disallowed costs were actually paid by Mr. Rowell or regarded the costs as being paid by the purchaser. Further, in this case, a finding that the payment of the costs was not made by the buyer is consistent with the contract language between the parties, which shows that the seller would be paying a portion of the closing costs. Nothing in the agreement between the parties or in other evidence shows that there was an agreement that in return for the seller paying the disputed closing costs, Mr. Rowell would or did increase the amount he paid the seller for the house.

The above being said, there is one item for which reimbursement should be provided. The Government denied the appraisal costs of \$300. Mr. Rowell has provided an invoice for that item which is marked by Capital Appraisal to be paid in full. Accordingly, that sum of \$300 is payable. The remainder of the claim is denied.

HOWARD A. POLLACK
Board Judge