



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 25, 2009

CBCA 1616-RELO

In the Matter of WILBUR W. BHAGAT

Wilbur W. Bhagat, Westminster, CA, Claimant.

Jacqueline F. Denton, Chief, Civilian Personnel Advisory Center, Department of the Army, Fort Irwin, CA, appearing for Department of Defense.

GILMORE, Board Judge.

Wilbur W. Bhagat (Mr. Bhagat or claimant) has asked the Board to review the denial of certain relocation expenses incurred incident to his permanent change of station (PCS). For reasons set forth below, we grant Mr. Bhagat's claim in part.

Background

Mr. Bhagat, a civilian employee of the Department of the Army, was authorized to incur certain relocation expenses in conjunction with his PCS from Wright-Patterson Air Force Base, Ohio, to Huntington Beach, California. His travel authorization was dated September 7, 2006, and he reported to his new duty station on December 4, 2006. Claimant was authorized to incur real estate transaction expenses and subsequently purchased a home in Tustin, California, in July of 2008. He submitted his real estate transaction expenses in August of 2008, in the amount of \$15,994.94.

The Army denied the following claimed real estate transaction expenses:

Loan Tie-In Fee	\$ 150.00
Overnight Courier Fees	\$ 85.00
Loan Discount Fee	\$ 3357.44
Tax Service Fee	\$ 85.00
Home Inspection Fee	\$ 395.00
Underwriting Fee	\$ 800.00
Charitable Endowment Fee	\$ 215.00
Archiving Fee	\$ 385.00

Claimant decided not to contest some of the expenses that were denied. In his claim to the Board, Mr. Bhagat asked the Board to review the agency's denial of the following expenses:

Charitable Endowment Fee	\$ 215.00
Loan Tie-In Fee	\$ 150.00
Underwriting Fee	\$ 800.00
Tax Service fee	\$ 85.00
Home Inspection Fee	\$ 395.00

Discussion

The Federal Travel Regulation (FTR) governing the payment of a Department of Defense civilian employee's real estate transaction costs is found at 41 CFR 302-11.200-.202 (2007), and the relevant Department of Defense Joint Travel Regulations (JTR) implementing the FTR are found at JTR 14002.

Charitable Endowment Fee

Claimant paid a charitable endowment fee of \$215 that is required to be paid by purchasers of a home in "Cantara," a planned development subdivision in which claimant purchased his home. Claimant contends that this expense is allowable under JTR C14002-A.4.a(6) as a miscellaneous expense, because it is an expense that is customarily paid by the purchaser of a home in the residence locality and is not specifically prohibited under JTR C14002-A.4.b.

The title company stated in its title report that "no transfer of title shall be made until provisions have been made for the payment of the charitable endowment fee." It cites a recorded document entitled "Charitable Housing Agreement Imposing Endowment Fee on Transfer and Lien," which imposes a charitable endowment fee payable to "Lennar

Charitable Housing Foundation” on the transfer of any property in the development. Claimant has represented that the charitable endowment agreement was entered into among the developer, the builder, and the State of California. The Government argues that taxpayer monies should not be used to reimburse a purchaser’s donation to a particular charity. However, because the fee is a fee that the developer has agreed to require purchasers to pay as a condition of developing the property in question, and because it is a fee that the lender would require claimant to pay as a condition of securing the loan, since it affects the proper transfer of title, we determine that this fee is allowable. Although this fee is not required for all properties in California, it is a fee customarily paid by purchasers of property in this particular subdivision.

Loan Tie-In Fee

Claimant seeks reimbursement of this fee as one that is customarily charged to the purchaser in the residence locality. This is a fee charged by the settlement/escrow agency to compensate the agency for services it provides in dealing with the lender (reviewing, preparing, and copying documents for the lender’s records). This is not a lender’s fee. The settlement agent has represented that \$150 is the fee charged in the locality for services involving one loan and an additional \$75 is charged if two loans are involved. She indicated that this charge has been imposed for the twenty years she has been working at the agency.

We determine that this fee is allowable as a miscellaneous expense under JTR C14002-A.4.a(6), and not prohibited under C14002-A.4.b. Claimant has shown that this fee is customarily paid by the purchaser in the residence locality in the amount charged. The Government’s contention that this is a part of the lender’s finance charge under the Truth in Lending Act, 15 U.S.C. § 1605(a)(2000), and, thus, not allowable, citing the Defense Finance and Accounting Service guidelines for real estate transaction expenses, has no merit. As we stated above, this is not a fee charged by the lender and, thus, is not a fee, charge, or expense subject to the Truth in Lending Act requirements. 12 CFR 226.4(c)(7)(ii) (fees for preparing loan-related documents are not finance charges).

Underwriting Fee and Tax Service Fee

JTR C14002-A.4.b(5) provides that “[n]o fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, [Pub. L. No.] 90-321, and Regulation Z [12 CFR pt. 226] issued in accordance with [Pub. L. No.] 90-321 by the Board of Governors of the Federal Reserve System” is reimbursable, unless specifically authorized in JTR C14002-A.4.a. This provision implements the FTR found at 41 CFR 302-11.202(g). This Board and its predecessor on relocation cases, the General Services Board of Contract Appeals (GSBCA), have uniformly held that reimbursement of underwriting fees

and tax service fees are part of the lender's "finance charge" as that term is defined in the Truth in Lending Act and Regulation Z. See *Daniel T. Mattson*, CBCA 654-RELO, 07-2 BCA ¶ 33,635; *Shane Douthitt*, GSBKA 16819-RELO, 06-1 BCA ¶ 33,262.

In *Craig A. Czuchna*, GSBKA 15799-RELO, 02-2 BCA ¶ 31,898, at 157,594, the Board explained:

Tax service fees are generally charged by a lender to monitor tax assessments on mortgaged property. Underwriting fees are generally charged by a lender to cover the cost of having a loan underwritten. These fees are not usually denominated as finance charges on real estate transaction settlement sheets. Nevertheless, they are paid by the consumer and imposed by the creditor as incident to the extension of a mortgage loan (a form of credit). Consequently, they are "finance charges," as that term is defined in the Truth in Lending Act and Regulation Z. Reimbursement of these fees is not specifically authorized in the FTR. The fees are therefore not reimbursable by the transferring Government agency. All of the Board decisions cited above [referring to citations in the decision] enunciate this holding.

We, thus, agree with the agency that these fees cannot be reimbursed.

Home Inspection Fees

The FTR provides that the agency will pay real estate transaction "[e]xpenses in connection with environmental testing and property inspection fees when required by federal, State, or local law; or by the lender as a precondition to sale or purchase." 41 CFR 302-11.200(f)(11). Claimant did not show that his inspection was required by law or by the lender as a condition of the extension of credit. A home inspection, although prudent under any circumstances in purchasing a home, is not reimbursable if performed merely for the benefit of the buyer. The disallowance of the fee was proper.

Decision

The following real estate transaction expenses are granted:

Charitable Endowment Fee	\$215
Loan Tie-In Fee	<u>\$150</u>
Total	\$365

The underwriting, tax service, and home inspection fees are denied.

BERYL S. GILMORE
Board Judge