



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 18, 2009

CBCA 1674-RELO

In the Matter of STEVEN L. LANSER

Steven L. Lanser, Orchard Park, NY, Claimant.

Mark M. Clodfelter, Supervisory Budget Analyst, Human Resources Division, Federal Bureau of Investigation, Washington, DC, appearing for Department of Justice.

STEEL, Board Judge.

Background

Claimant, Steven L. Lanser, was reassigned by the Federal Bureau of Investigation (FBI) from Quantico, Virginia to his new duty location in Buffalo, New York, in June 2008. He purchased a home in the Buffalo area shortly thereafter. Throughout the relocation process, Mr. Lanser relied on the FBI's Employee Transfer Guide to determine which relocation expenses would be reimbursed. Relevant portions of the Guide, as it existed at the time of claimant's relocation, listed real estate transaction processing fees and certain tax charges as individually reimbursable expenses. The claimant confirmed via telephone with the agency's Transfer Unit that the expenses at issue would be reimbursed. Specifically, he obtained permission from a transfer unit employee to utilize the Guide's list of reimbursable real estate expenses to shop for real estate financing at his new duty station.

In January 2009, in response to the claimant's request for reimbursement of his relocation expenses, the agency suspended payment of certain costs incurred in the purchase of his residence. The suspended amount totaled \$4677.84. The claimant contacted the agency for clarification of the suspended expenses and was told that the published Employee

Transfer Guide represented incorrect information and that the agency would not reimburse the claimant for the suspended real estate costs. Since claimant's reliance on the faulty Guide has come to light, the agency has changed the published policy to prevent others from detrimentally relying on the outdated publication.

In August 2009, the agency informed Mr. Lanser that upon further review of his voucher, of the \$4677.84 it had suspended from payment, \$1599 was determined to be allowable. The document processing fee (\$3000) and tax service fee (\$78.84), totaling \$3078.84, remain at issue.

With regard to Mr. Lanser's claim for reimbursement of the remaining \$3078.84, the agency has denied the claim for two reasons. First, the agency argues that Federal Travel Regulation (FTR) 302-11.200(f)(2) (41 CFR 302-11.200(f)(2) (2007)) requires that loan origination and similar fees not exceed 1% of the loan. According to the settlement statement for Mr. Lanser's home purchases, the loan obtained by Mr. Lanser was for \$400,000. As such, the maximum reimbursable amount for this type of fee is \$4000. The agency has denied claimant's \$3000 processing fee, deeming it "a similar fee" to the \$4000 loan origination fee claimant has already been reimbursed. Second, although the FBI regrets that Mr. Lanser has relied to his detriment on the agency's Employee Transfer Guide, the agency relies on long-established precedent that a claimant is not entitled to reimbursement based on erroneous or misleading advice of government agents. The agency has not directly addressed its denial of the \$78.84 tax service fee.

Discussion

When an agency determines that to transfer an employee from one permanent duty station to another within the United States is in the agency's interest, federal law requires the agency to pay real estate purchase expenses. 5 U.S.C. § 5724a(d) (2006). The scope of the agency's obligation is established by the FTR, which applies to civilian employees of the Federal Government. FTR provisions pertaining to real estate transactions are found at 41 CFR part 302-11. Specifically, reimbursable real estate purchasing expenses are detailed in 41 CFR 302-11.200 and are characterized as "residence transaction expenses."

The FTR provides that an agency will pay certain residence transaction expenses "[p]rovided they are customarily paid by . . . the purchaser of a residence at the new official station." 41 CFR 302-11.200. Among the residence transaction expenses that may be reimbursed are loan origination fees and similar charges not to exceed 1% of the loan amount. 41 CFR 302-11.200(f). Reimbursement of such fees can exceed 1% of the loan amount only if the employee provides evidence that the higher rate (a) does not include prepaid interest, points, or a mortgage discount; and (b) is customarily charged in the locality

where the residence is located. 41 CFR 302-11.201; *see also Ginevra A. Hightower*, GSBCA 16512-RELO, 05-1 BCA ¶ 32,818 (2004).

The agency has determined that the document processing fee Mr. Lanser incurred is similar in nature to a loan origination fee and is to be included in calculating the 1% limitation. *E.g.*, *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722. It is unclear from the record why claimant incurred a \$3000 processing fee in addition to the \$4000 loan origination fee. Claimant has failed to provide an explanation from the lender concerning what the processing fee covered. He has not provided convincing evidence that additional reimbursement would not include prepaid interest, points, or a mortgage discount. Nor does he explain whether the amount is reasonable or whether this fee is customarily paid by the purchaser of a residence in Orchard Park, New York, the locality where the residence is located. Accordingly, no additional reimbursement is permissible for the loan origination-like document processing fee. *E.g.*, *David L. Malone*, GSBCA 15817-RELO, 02-2 BCA ¶ 31,991; *Waymon T. Saxon, Jr.*, GSBCA 15419-RELO, 01-1 BCA ¶ 31,209 (2000). The Board finds that Mr. Lanser's reimbursement was properly capped at 1% of the loan amount.

Claimant also seeks to be reimbursed the \$78.84 tax service fee. Whether this fee should be reimbursed depends on whether it is a "fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 C.F.R. part 226)." 41 CFR 302-11.202(g). If it falls within this category, it is not reimbursable. *Id.* Tax service fees have been held to be part of the finance charge and therefore may not be reimbursed. *See, e.g., John W. Bodford*, CBCA 1006-RELO, 08-1 BCA ¶ 33,862; *James L. Thomas*, CBCA 890-RELO, 08-1 BCA ¶ 33,837; *Craig A. Czuchna*, GSBCA 15799-RELO, 02-2 BCA ¶ 31,898 at 157,594. The Board finds that the agency properly denied Mr. Lanser's claim for the tax service fee.

Although it is regrettable that claimant was misled both verbally and in writing as to which relocation expenses would be reimbursable, this Board has long held that erroneous advice by government employees will not entitle a claimant to relief. Only the expenses that are authorized by statute and regulations may be reimbursed. *See, e.g., Bruce Bryant*, CBCA 901-RELO, 08-1 BCA ¶ 33,737; *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634.

Decision

Claimant is not entitled to a reimbursement of the processing fee or the tax service fee.

CANDIDA S. STEEL
Board Judge