



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 24, 2012

CBCA 2724-RELO

In the Matter of WILLIAM S. GREGORY

William S. Gregory, Huntsville, AL, Claimant.

Capt. Gabriel V. Tese, Office of the Command Counsel, Army Materiel Command, Department of the Army, Redstone Arsenal, AL, appearing for the Department of the Army.

DRUMMOND, Board Judge.

Claimant, William S. Gregory, a civilian employee of the Department of the Army, purchased a new residence incident to a transfer to Huntsville, Alabama, in 2011. He submitted a real estate reimbursement claim in the amount of \$5114.40 associated with his purchase. The agency reimbursed him \$3808.90. The agency denied reimbursement of a tax service fee of \$74, a home inspection fee of \$415, and origination fees exceeding one percent of the loan amount totaling \$675. Mr. Gregory challenges the agency's disallowance of these three fees.

Discussion

Employees who are transferred in the interest of the Government are reimbursed for the expenses they incur in purchasing a residence at a new duty station in the United States. 5 U.S.C. § 5724a(d) (2006); 41 CFR 302-11.6 (2011). Reimbursable expenses are discussed at 41 CFR 302-11.200. These transactional expenses are separate from the payment of the purchase price; they are fees and other charges paid to entities such as lenders, attorneys, mortgage companies, and taxing authorities that provide services or require tax payments incidental to the transfer of the title form seller to purchaser. Each of Mr. Gregory's claim items is discussed below.

Tax Service Fee

Mr. Gregory argues that he is entitled to reimbursement because tax service fees are customarily and ordinarily paid by buyers in his area. The agency denied reimbursement for the tax service fee because it determined that this fee is part of the finance charge and not specifically allowable under the applicable regulations.

Pursuant to 41 CFR 302-11.202(g), an agency may not pay “[a]ny fee, cost, charge, or expense determined to be part of the finance charge . . . under Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in § 302-11.200.” A tax service fee is generally charged by the lender to monitor tax assessments on mortgaged property. It is therefore considered to be part of the finance charge and unallowable. *See, e.g., William Duncan Baker*, CBCA 1145-RELO, 08-2 BCA ¶ 33,811, at 167,679; *Craig A. Czuchna*, GSBCA 15779-RELO, 02-2 BCA ¶ 31,898, at 157,594. Reimbursement of the tax service fees is not specifically authorized in 41 CFR 302-11.200.

In the absence of evidence to the contrary, we find that the tax service fee is a finance charge. We further find that the agency properly denied reimbursement.

Home Inspection Fee

An agency will pay for 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). “A home inspection, although prudent under any circumstances in purchasing a home, is not reimbursable if performed merely for the benefit of the buyer.” *Wilbur W. Bhagat*, CBCA 1616-RELO, 09-2 BCA ¶ 34,280, at 169,347.

The agency denied Mr. Gregory’s home inspection fee claim, stating that he had failed to provide sufficient evidence to demonstrate that the fee is required by law or the lender as a precondition of financing.

Mr. Gregory asserts that because the real estate contract made the final sale of his home contingent upon a home inspection, the fee should be reimbursable. Unfortunately, Mr. Gregory misapprehends the nature of the regulation’s requirements: for the fee to be reimbursable, either the law or the lender—not the terms of a real estate contract—must require property inspection as a precondition to purchase. The record contains no persuasive evidence that the law or the lender required the home inspection as a precondition to purchasing the home. Accordingly, we find that the agency properly denied reimbursement.

Additional Loan Origination Fees

Mr. Gregory argues that he is entitled to be reimbursed for additional fees he paid—\$375 for underwriting, \$275 for document processing, and \$25 for document handling. As support, he has provided letters from his closing agent and an attorney representing the local real estate association. These letters state that loan origination fees in Mr. Gregory's community are customarily 1% of the loan amount, but add that lender fees for underwriting, document processing, and document handling are also customarily paid.

A loan original fee is a fee paid by a borrower to compensate a lender for administrative-type expenses incurred in originating a loan. Without itemization of the fees, an employee may be reimbursed for a loan origination fee and similar charges not to exceed 1% of the loan amount. 41 CFR 302-11.200(f)(2); JTR C5756-A.4a(2); *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296; *Terry L. Hood*, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314. The agency has already compensated him for loan origination fees in the amount of 1% of the loan. The agency maintains that Mr. Gregory is not entitled to additional costs.

The fees in question are species of a loan origination fee and therefore to be included in calculating the 1% limitation. *Steven L. Lanser*, CBCA 1674-RELO, 10-1 BCA ¶ 34,322 (2009); *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722. To be reimbursed for more than that 1% of the loan amount, an employee must do three things: itemize the additional charges; provide evidence that the amount in excess of 1% does not include prepaid interest, points, or a mortgage discount; and provide evidence that the higher rate is customarily charged in the locality where the residence is located. 41 CFR 302-11.200(f)(2), -11.201. Mr. Gregory has failed to provide convincing evidence that the additional reimbursement would not include prepaid interest, points, or a mortgage discount. Accordingly, no additional reimbursement is permitted for these expenses. *David L. Malone*, GSBCA 15817-RELO, 02-2 BCA ¶ 31,991. The Board finds that Mr. Gregory's reimbursement was properly capped at one percent of of the loan amount.

Decision

Mr. Gregory is not entitled to any additional reimbursement.

JEROME M. DRUMMOND
Board Judge