



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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January 16, 2014

CBCA 3401-RELO, CBCA 3405-RELO

In the Matter of CHARLES W. WORSHAM

Charles W. Worsham, St. Augustine, FL, Claimant.

Melissa C. Gonzalez, Realty Specialist, United States Army Corps of Engineers, Jacksonville, FL; Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**ZISCHKAU**, Board Judge.

In CBCA 3401-RELO, Charles W. Worsham, the claimant, appealed a May 2, 2013 debt collection notice regarding a determination by the Army Corps of Engineers that he had been overpaid for a withholding tax allowance (WTA) in the amount of \$904.58. After briefing on the issue, and a review of the facts during a telephonic status conference, Mr. Worsham no longer disputes his obligation to repay \$904.58. In CBCA 3405-RELO, Mr. Worsham claims he is entitled to reimbursement of a loan origination fee of \$800 and state tax stamps relating to deed recording fees amounting to \$1435. The record shows that loan origination and tax stamp fees were properly reimbursable and that the agency should have reimbursed Mr. Worsham those amounts. Accordingly, the agency shall reimburse Mr. Worsham for those fees that he incurred pursuant to the provisions of the Federal Travel Regulation (FTR) dealing with reimbursable expenses in residence transactions, 41 CFR 302-11.200 (2012).

Background

In July 2012, the Army Corps of Engineers issued permanent change of station orders to Mr. Worsham changing his duty station to Jacksonville, Florida. Mr. Worsham reported to his new duty station on August 27, 2012, and closed on his home in Jacksonville on October 4, 2012. Mr. Worsham claimed \$800 for adjusted origination charges on a \$209,183

mortgage for the purchase of his home at the new duty station. While noting that reimbursement of a loan origination fee is limited to one percent of the loan amount (satisfied here) and that the employee must show that the fee amount does not exceed the amount customarily charged in the locality of the residence, the agency denied the claim because “the lender did not provide an itemization of the \$800.00.” Mr. Worsham also claimed \$2585.57 for transfer taxes paid to the St. Johns County Clerk of Court, consisting of \$1435 for state tax stamps on the deed, \$732 for state tax stamps on the mortgage, and \$418.37 for the intangible tax on the mortgage. The agency reimbursed Mr. Worsham for the state tax stamps and intangible tax on the mortgage, but denied reimbursement for the state tax stamps on the deed, stating that the state tax stamps on the deed are customarily paid by the seller, not the buyer, in Florida.

The DD Form 1705 (entitled “Reimbursement for Real Estate Sale and/or Purchase Closing Cost Expenses”), in block 26 for “Other Incidental Expenses,” states that the expenses listed there are for other expenses that are reasonable and customary charges or fees paid as may be authorized and not properly included in the other enumerated items listed elsewhere on the form, and further, the incidental expenses must be itemized and explained. The HUD-1 attachment states that the \$800 fee is an origination charge paid to DHI, the mortgage company, and this same information appears in block 803 of the HUD settlement sheet.

### Discussion

The FTR states that the agency will reimburse an employee for certain residence transaction expenses provided the expenses are customarily paid by the employee purchaser at the new official station, as shown by appropriate supporting documentation. 41 CFR 302-11.200. This FTR section specifically mentions loan origination fees, mortgage and transfer taxes, and state revenue stamps as types of reimbursable expenses.

From the record described above, we conclude that the \$800 origination fee was properly reimbursable to Mr. Worsham. We do not understand the agency’s complaint that this amount was not properly itemized in view of FTR 302-11.200(f)(2), which provides for reimbursement of loan origination fees not to exceed one percent of the loan amount “without itemization of the lender’s administrative charges.” Clearly the loan origination fee is identified as such in the supporting documentation.

Regarding the state tax stamps for the deed, we also conclude that this expense was properly reimbursable. The HUD-1 settlement statement shows this expense as paid by the buyer, Mr. Worsham, and he has amply demonstrated, through letters from real estate agents in Florida, that it was customary for the buyer to pay this expense when a builder is the seller.

The agency has abandoned its original argument for denying the expense and now advances a new argument, namely, that the expense should be denied because it stems from new construction. We do not find this argument persuasive. This is the type of expense that would be reimbursable under FTR 302-11.200(f)(4)-(5) and Joint Travel Regulations 5756-A4a(4)-(5) regardless of the identity of the seller, and Mr. Worsham has shown that, in the locality of the new residence, it is customary for the buyer to pay the state tax stamps fee. The agency has submitted no evidence to the contrary. This is not the type of expense “resulting from construction of a residence” excluded by FTR 302-11.202(h), but rather is an expense in connection with the conveyance of the property. *Cf. Terry L. Patrick*, CBCA 1200-RELO, 08-2 BCA ¶ 33,978 (sales tax on materials used in construction was an expense that resulted from the construction of the residence); *Ernest B. Fitzpatrick, III*, GSBICA 15629-RELO, 02-1 BCA ¶ 31,679 (2001) (sales tax is nonreimbursable cost of construction as a levy on selling personal property, while a transfer tax is a levy on the conveyance of real estate).

#### Decision

CBCA 3401-RELO is dismissed. We grant Mr. Worsham’s claim in CBCA 3405-RELO for reimbursement of the \$800 loan origination fee and the \$1435 state tax stamps expense.

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JONATHAN D. ZISCHKAU  
Board Judge