



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2014

CBCA 3594-RELO

In the Matter of THERESA A. ALMADA

Theresa A. Almada, Washington, DC, Claimant.

Lani Gordon, Associate Counsel, Space and Naval Warfare Systems Command Office of Counsel, Department of the Navy, San Diego, CA, appearing for Department of the Navy.

ZISCHKAU, Board Judge.

Theresa A. Almada, the claimant, appeals the denial of her claim for reimbursement of \$8260.44 in closing costs incurred in the purchase of a home at her new duty station. The agency asserts that Ms. Almada received a two-year extension to September 8, 2013, a Sunday, to close on the purchase of her home. Because the closing occurred on Monday, September 9, 2013, the agency found that she was not entitled to any reimbursement. We conclude that because the extension period ended on a Sunday, Ms. Almada's closing on the next business day was timely. Based on a review of the closing costs, we find that Ms. Almada is entitled to reimbursement of \$5938.84.

Ms. Almada's PCS travel orders authorized real estate expenses and a report date at her new duty station of September 8, 2009. The Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR) required at the time that settlement occur not later than two years after the employee's report date at the new duty station. 41 CFR 302-11.21 (2009); JTR C5750-C. The travel regulations also provided that the initial two-year period may be extended for an additional two years. 41 CFR 302-11.22 (2009); JTR C5750-C. Ms. Almada requested and was granted a two-year extension to her original authorization for real estate expenses, which extended the date for settlement for a total of four years from the report date of September 8, 2009. Four years from September 8, 2009, is Sunday, September 8, 2013.

Ms. Almada was unable to close on that day because it was a Sunday. The closing took place on Monday, September 9, 2013.

Ms. Almada submitted a travel voucher worksheet with attached form DD-1705 identifying \$8260.45 in closing costs, consisting of: loan origination fee (\$2147.01), appraisal fee (\$475), credit report (\$87), title services and lender's title insurance (\$1695.08), owner's title insurance (\$181.61), government recording charges (\$60), transfer taxes (\$3254.75), home inspection (\$300), and a charge that had no description (\$60). Ms. Almada has abandoned her claim for this last charge of \$60 as it is seemingly a duplicate of the government recording charge being claimed.

The agency denied all reimbursement on the ground that Ms. Almada, by closing on Monday, September 9, 2013, had failed to complete the closing within four years of September 8, 2009. The agency agrees that if the employee's closing was timely, then it would allow the appraisal fee, credit report fee, title services and lender's title insurance expense, and government recording charges, which total \$2317.08.

The first issue to determine is whether the closing on Ms. Almada's home on September 9, 2013, complied with the requirements of the FTR and JTR that closing occur within four years, i.e., the initial two-year period plus the two-year extension. The agency cites *Richard O. Dickson*, CBCA 2793-RELO, 12-2 BCA ¶ 35,133, for the principle that neither the employee's agency nor this Board has the authority to extend the prescribed maximum four-year period in which a purchase must occur. The principle is sound, but that case did not involve the situation where the four-year period ended on a Sunday. The General Accounting Office, one of our predecessors in resolving government employee relocation claims, followed the federal common law rule that when a power may be exercised or an act performed up to and including a given day, and that day happens to fall on a Sunday, the power may be exercised or the act performed on the next business day. 50 Comp. Gen. 108 (1970) (citing *Street v. United States*, 133 U.S. 299, 306 (1890); *Monroe Cattle Co. v. Becker*, 147 U.S. 47, 55, 56 (1893); *Sherwood Brothers, Inc. v. District of Columbia*, 113 F.2d 162, 163 (D.C. Cir. 1940); *Simon v. Commissioner of Internal Revenue*, 176 F.2d 230, 232 (2d Cir. 1949)); see also 20 Comp. Gen. 310 (1940); *J. Aron & Co. v. Jacob*, 527 F.2d 416 (5th Cir. 1976). We follow this rule and conclude that Ms. Almada's closing on the next business day after Sunday complied with the requirement of the FTR and JTR.

Because the agency agrees with the reimbursement of the appraisal fee, credit report fee, title services and lender's title insurance expense, and government recording charges, totaling \$2317.08, we address the remaining disputed expenses, namely the loan origination charge, the transfer taxes, and the home inspection charge.

Regarding the loan origination charge, the agency contends that Ms. Almada did not pay for the charge of \$2147.01 because there was a credit of \$1482.50 for the interest rate chosen by Ms. Almada and another seller credit of \$2900 applied specifically to line 803 (the adjusted origination charges) by a “Seller/Lender Credit Itemization” addendum of the Housing and Urban Development (HUD) settlement form. Regarding the \$1482.50 amount, the agency is mistaken, as that figure is an additional charge on line 802 (a finance charge paid by the buyer presumably to obtain a lower mortgage rate), not a credit, and thus the adjusted origination charge of \$3629.51 found on line 803 is the sum of \$2147.01 on line 801 and \$1482.50 on line 802. The seller credit of \$2900 is to be applied first to the non-reimbursable portion (\$1482.50) of the adjusted origination charges of \$3629.51, *Cheryl A. Paulin*, CBCA 3818-RELO (Aug. 25, 2014) (citing *James C. Dalton*, CBCA 896-RELO, 08-1 BCA ¶ 33,743 (2007)), Ms. Almada is entitled to reimbursement of \$729.51 for loan origination charges. 41 CFR 302-11.200(f)(2) (2009).

Regarding the transfer taxes totaling \$3254.75, the agency initially rejected the request to reimburse the transfer taxes on the ground that a Maryland Code provision reduces that state transfer tax from .50% to .25% for a first-time home buyer like Ms. Almada and requires the seller to pay that entire tax. In responding to an agency filing, Ms. Almada submitted a letter from the title company that handled the real estate settlement. In this letter, the title company states that the Maryland state transfer tax amounted to \$362.50, which was waived in its entirety because Ms. Almada was a first-time Maryland home buyer and the seller was a government agency, HUD, which is exempt from paying the transfer tax. The title company indicates that Ms. Almada had paid the state transfer tax but would be getting a refund from the title company. Because Ms. Almada is being refunded the state transfer tax amount she paid at closing, the amount is not reimbursable by the agency. The title company also stated in the same letter that the transfer tax amount on the HUD form which Ms. Almada had paid at closing also included a recordation charge of \$862.25 and a Prince Georges County transfer tax of \$2030. The county did not waive those charges and those were paid by Ms. Almada because HUD, the seller, is exempt. Accordingly, the agency shall reimburse Ms. Almada \$2892.25 for the recordation and county transfer tax charges. 41 CFR 302-11.200(f)(4).

Regarding the home inspection fee of \$300, the agency stated that 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), but the agency here denied reimbursement on the ground that Ms. Almada did not show that the inspection fees were so required. In this proceeding, Ms. Almada has not contended that the inspection fees were required by law or by the lender as a precondition to purchase. Accordingly, the agency properly disallowed this amount.

In sum, the record demonstrates that the claimant is entitled to be reimbursed a total of \$5938.84, consisting of \$2317.08 for the fees previously agreed to by the agency, plus \$729.51 for the loan origination charges and \$2892.25 for the recordation and county transfer tax charges.

JONATHAN D. ZISCHKAU
Board Judge