



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 10, 2019

CBCA 6447-RELO

In the Matter of MATTHEW W. FORSYTHE

Matthew W. Forsythe, Cibolo, TX, Claimant.

O. Scott Hewitt, Civil Law Attorney, 502d Security Forces Group, Department of the Air Force, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

KULLBERG, Board Judge.

Claimant, Matthew W. Forsythe, seeks reimbursement in the amount of \$995 for the underwriting fee that he paid as one of the expenses for the purchase of a home at his new duty station. The agency, the United States Air Force (USAF), contends that the underwriting fee is not reimbursable. For the reasons stated below, the Board denies the claim.

Background

On or about April 9, 2019, Mr. Forsythe purchased a home after transferring to his new duty station. The closing disclosure form for Mr. Forsythe's purchase showed that his real estate transaction expenses included an underwriting fee in the amount of \$995. Mr. Forsythe submitted a claim in the amount of \$4814.20 for reimbursement of various real estate transaction expenses. On April 19, 2019, the USAF approved reimbursement in the amount of \$3819, but denied reimbursement for the underwriting fee. Subsequently, Mr. Forsythe filed his claim with the Board. The record in this matter also includes the USAF's agency report and Mr. Forsythe's reply.

Discussion

At issue in this matter is whether the USAF properly denied Mr. Forsythe's claim for reimbursement of the underwriting fee that he paid when he purchased his home. The Federal Travel Regulation (FTR), which applies to Mr. Forsythe, states the following:

What residence transaction expenses will my agency not pay?

....

Any 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 CFR part 226), unless specifically authorized in § 302-11.200.

41 CFR 302-11.202(g) (2018) (FTR 302-11.202(g)). The Joint Travel Regulations (JTR), which also apply to Mr. Forsythe, use similar language to deny reimbursement for any "fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act . . . and Regulation Z . . . unless specifically authorized in par. 054504-D above." JTR 054505-A.5. This Board has interpreted FTR 302-11.202(g), as it relates to reimbursement of underwriting fees, as follows:

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.

Mark Bodycombe, CBCA 1389-RELO, 09-1 BCA ¶ 34,022, at 168,299 (2008) (quoting *Craig A. Czuchna*, GSBCA 15799-RELO, 02-2 BCA ¶ 31,898, at 157,594). "[U]nderwriting fees . . . have been expressly held non-reimbursable as 'incident to and as a prerequisite to the extension of credit.'" *John J. Nunziato*, CBCA 2945-RELO, 12-2 BCA ¶ 35,177, at 172,599 (quoting *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296). Mr. Forsythe, consequently, is not entitled to reimbursement of the underwriting fee that he paid when he purchased his home.

Mr. Forsythe contends that the “[u]nderwriting [f]ees, in the listed amount of \$995, are ‘fees for preparing loan-related documents.’” Nothing in the record supports such a contention. The closing disclosure statement for the purchase of Mr. Forsythe’s home showed loan-related costs for processing and document preparation, but those costs were listed separately from the underwriting fee. Although Mr. Forsythe may believe that the underwriting fee in his case had a meaning different from how it is defined in the applicable regulations and precedent, the Board has no basis in fact or law to accept his interpretation.

Decision

The claim is denied.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge