



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 6, 2008

CBCA 871-RELO

In the Matter of VERNON K. REGISTER

Vernon K. Register, Purcellville, VA, Claimant.

Mary Jo Murphy, Chief of Financial Policy, Office of the Comptroller, National Security Agency, Fort George G. Meade, MD, appearing for Department of Defense.

HYATT, Board Judge.

In November 2006, claimant, Vernon K. Register, a civilian employee of the Department of Defense, was assigned by the National Security Agency (NSA) at Fort George G. Meade, Maryland, to the National Reconnaissance Office (NRO) in Chantilly, Virginia. In connection with this transfer he was authorized reimbursement of allowable real estate expenses incurred in buying a home closer to his new duty station. Mr. Register purchased a home in Purcellville, Virginia, in January 2007. He challenges the agency's disallowance of certain fees he claimed in connection with the purchase of his new residence.

Background

To finance the purchase of the residence in Purcellville, claimant initially obtained a sixty-day mortgage commitment from the Navy Federal Credit Union (Navy FCU). In accordance with requirements imposed by the Navy FCU, Mr. Register arranged for a home inspection, radon test, and home appraisal. The home inspection identified several deficiencies in the finished basement. The home inspector also determined that the seller had not obtained the necessary permits to finish the basement. Thereafter, the seller obtained the requisite permits and undertook to correct the deficiencies. This process, however, could not be completed in time to allow the parties to close on the original settlement date. Claimant

agreed to postpone the settlement date to provide the seller with enough time to correct deficiencies and deliver the property as contractually required. The rescheduled settlement date was outside of the sixty-day mortgage rate commitment made by the Navy FCU. The new terms and rates that were offered by the Navy FCU were less favorable, and claimant elected instead to finance his purchase through the Tower Federal Credit Union (Tower FCU), which offered him a more satisfactory rate and terms.

After closing on the home in Purcellville, Mr. Register submitted a voucher to NSA itemizing the expenses for which he sought reimbursement. Mr. Register appended an addendum to his voucher seeking certain additional expenses, including costs he incurred under the original mortgage arrangement with the Navy FCU. After reviewing the voucher and addendum, NSA determined that certain of the expenses itemized by claimant were not reimbursable. Specifically, NSA disallowed all expenses incurred in connection with the original Navy FCU loan, stating as its reason that the Navy FCU was ultimately not the lender. In addition, NSA disallowed certain charges incurred in connection with the loan from Tower FCU and closing. These included the title insurance binder; title servicing fees for Federal Express delivery, copying expenses, and wire fees; the Tower FCU rate lock fee; and the tax service fee.

Claimant has asked for our review of NSA's decision disallowing these expenses. He explains that, in the case of the Navy FCU expenses, he included these expenses because they were incurred in the normal course of purchasing a residence and the loan was discontinued because of issues that were beyond his control and he was not at fault. The expenses attributable to his dealings with the Navy FCU were as follows:

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|----|--|------------|
| 1. | Navy FCU loan origination/rate lock fee | \$ 1500.00 |
| 2. | Appraisal fee | \$ 350.00 |
| 3. | Home inspection charge | \$ 550.00 |
| 4. | Radon test charge | \$ 140.00 |
| 5. | Bank check stop payment fee (per legal advice) | \$ 7.50 |

Claimant also contends that the remaining disallowed expenses, incurred in connection with the Tower FCU mortgage and at closing, should also be reimbursed because they are customary charges with respect to the purchase of a home.

Discussion

When an agency transfers an employee from one permanent duty station to another within the United States and the transfer is in the agency's interest, federal law requires the agency to pay the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d)

(2000). The extent of the agency's obligation is set out in the Federal Travel Regulation (FTR), which applies to civilian employees of the Federal Government. The FTR is published in the Code of Federal Regulations (CFR) and the provisions pertinent to real estate transactions are found at 41 CFR pt. 302-11 (2006). For civilian employees of the Department of Defense, chapter 14 of the Joint Travel Regulations (JTR), which supplement and implement the FTR's provisions, is also applicable. JTR C14002.

The FTR provides that an agency will pay residence transactions expenses “[p]rovided they are customarily paid by the seller of a residence at the old duty station or by the purchaser of a residence at the new official station” Among the enumerated residence transactions expenses that may be reimbursed are brokers' fees for the sale of a residence at the last official duty station, appraisal costs, the cost of title insurance, the costs of preparing conveyances and other contracts, related notary fees, recording fees, the cost of title searches and legal fees for a title opinion, and other miscellaneous expenses. 41 CFR 302-11.200 (a)-(f); *accord* JTR C14002-A. Other miscellaneous expenses include loan origination fees; the cost of preparing credit reports; mortgage and transfer taxes; the cost of state revenue stamps; fees and charges similar to the foregoing; mortgage title insurance for the benefit of the lender; expenses in connection with environmental testing and property inspection fees when they are required by federal, state, or local law, or by the lender as a precondition to the sale or purchase; and “[o]ther expenses of . . . purchase made for required services that are customarily . . . paid by the purchaser of a residence at the new official station.” 41 CFR 302-11.200(f)(12); JTR C14002-A.a. With the exception of the loan origination fee or its equivalent, however, the Government will not reimburse expenses associated with the extension of credit to the employee. 41 CFR 302-11.202(g); JTR 14002-A.b.5; *see, e.g., William L. King, Jr.*, CBCA 457-RELO, 07-1 BCA ¶ 33,504.

Thus, many of the expenses for which the FTR and JTR permit reimbursement are payable on the condition that the claimant shows that the cost incurred is customarily incurred by the purchaser of property in the locality of the new residence, or that it was required as a condition of financing. It is the purchaser's burden to demonstrate that the fee charged was reimbursable, reasonable, and not in excess of the amount generally assessed in that locality. *E.g., Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304; *Timothy R. Defoggi*, GSBCA 16496-RELO, 05-1 BCA ¶ 32,907. When a charge has been questioned by the agency, this burden is usually met by furnishing statements from knowledgeable real estate and mortgage company professionals who are familiar with the prevailing customs in the locality of the new residence, and able to explain the nature of a particular fee. *Ioan V. Sere*, GSBCA 16815-RELO, 06-2 BCA ¶ 33,412.

NSA divided Mr. Register's claim for reimbursement of his expenses into two parts. It categorically rejected all of the costs attributable to claimant's dealings with the Navy FCU

because that lender was not the source of financing for the residence. NSA also deemed several enumerated costs associated with Tower FCU's loan and the closing to be nonreimbursable as well.

Navy FCU Loan

We first address the expenses attributable to Mr. Register's efforts to secure financing from the Navy FCU. Claimant forfeited the loan origination/lock-in fee of \$1500 when he declined to renew the loan with the Navy FCU on less favorable terms than had been originally offered. In addition, he obtained and paid for an appraisal, a home inspection, and a radon test, which he states were required by the Navy FCU as a condition of the loan.

NSA has properly determined that the loan origination/rate lock fee paid to the Navy FCU is not reimbursable. This expense was incurred because Mr. Register delayed the closing to permit the seller to correct problems noted in the house inspection. Although this may not have been Mr. Register's fault, given the unexpected need for repairs, nonetheless, the Government had no involvement whatever in the delay claimant experienced with closing. The delay occurred because Mr. Register wanted the seller to complete repairs to the house before he bought it. The Government is not authorized to reimburse an employee for "fees and costs associated with an unconsummated purchase transaction unless the actions of the Government preclude the employee from completing the transaction." *Glen P. Hamner*, GSBCA 15560-RELO, 01-2 BCA ¶ 31,509, at 155,578. This principle applies here as well, where the home purchase was delayed, resulting in claimant's failure to proceed with the original mortgage loan.

With respect to the cost of the appraisal obtained while Mr. Register was seeking a mortgage through the Navy FCU, the regulations allow reimbursement of the customary cost of an appraisal if the appraisal is customarily paid by the purchaser in the locality of the new official station. 41 CFR 302-11.200(b). It is not clear from the record whether this is a duplicate expense or not. The settlement sheet does not include a charge for an appraisal. If an appraisal was required by Tower FCU and it accepted the appraisal earlier obtained for Navy FCU in lieu of requiring a second appraisal, then claimant would be entitled to be compensated for this appraisal to the extent the amount charged is normal and reasonable in the locality. *See Roxanna E. Zamora*, GSBCA 16562-RELO, 05-1 BCA ¶ 32,914. If this is the case, Mr. Register should produce documentation from the lender or his realtor to establish his entitlement to the payment.

With respect to the home inspection and radon test, these costs may also be reimbursed as miscellaneous expenses if customarily paid by the purchaser, but only if these expenses are required by federal, state, or local law, or by the lender as a precondition to

purchase. 41 CFR 302-11.200(f)(8); JTR C14002-A.4.a.11. The record does not reflect whether Tower FCU required these tests as a precondition to making the loan, or whether these are items that are required by law. Unless claimant can provide documentation showing that Tower FCU imposes these requirements as a condition of making a loan, and confirming that the tests already performed were acceptable to it, the agency's denial of these costs must stand. *See, e.g., Jack E. Hudson*, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351.

Tower FCU Mortgage and Closing Expenses

Turning to the remaining expenses disqualified by the agency, the settlement statement reflects that title insurance was purchased for both the buyer and the lender. The title insurance binder fee of \$75 is not explained, but, in general, a title insurance binder is a separate charge reflecting the title company's commitment to issue insurance. NSA declined to pay the fee because the title examination had been paid. In general, however, a title insurance binder fee may be paid if required by the lender. Thus, if Mr. Register can provide evidence that this fee was required by Tower FCU as a prerequisite to obtaining the mortgage, it may be recoverable in full or in part. *See Marshall L. Dantzler*, 64 Comp. Gen. 568 (1985); *see also DeFoggi*.

NSA has properly declined to reimburse the Tower FCU rate lock fee. The rate lock, or lock-in, fee is imposed by the lender to set aside funds for the borrower and binds the lender to provide the mortgage. This fee, associated with the extension of credit, is considered part of the finance charge and thus not reimbursable. *Charles W. Adams*, GSBCA 16485-RELO, 05-1 BCA ¶ 32,956; *Rodney D. Hartleib*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Jeffrey W. Rose, II*, GSBCA 16386-RELO, 04-2 BCA ¶ 32,723; *David P. Brockelman*, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971.

For similar reasons, the tax service fee was also correctly disallowed by NSA. “[T]ax service fees have . . . been held many times to be charges paid incident to and as a prerequisite to the extension of credit, and they are consequently not reimbursable.” *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722, at 161,881 (citations omitted); *accord Sere; Martha V. Hooks*, GSBCA 16754-RELO, 06-1 BCA ¶ 33,198.

Finally, the various fees for shipping documents overnight, as well as wire fees, essentially represent costs of delivering the requisite paperwork needed for closing to the various entities involved in the process. These charges, if reasonable, may be reimbursed if claimant can demonstrate that they were prompted by more than considerations of personal convenience and if it is clear that the charges were incurred either by claimant or someone working on his behalf, and not by the creditor. *Ellis; accord Hooks; Monika Mayr*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106; *Douglas Tastad*, GSBCA 16543-RELO, 05-1 BCA ¶

32,957. When such fees are incurred by the lender, they are regarded as part of the finance charge and are not reimbursable. *Hartleib; Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003); *Larry W. Poole*, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776.

There is insufficient information in the record to determine whether these fees may be reimbursed. Claimant needs to provide more detail to justify recovery. For example, the charges incurred by the title company may be reimbursable if required by the lender and necessary to meet time deadlines and not simply for considerations of personal convenience. Similarly, if the \$35 wire fee was necessary to satisfy a requirement that funds be dispersed at settlement it should be reimbursed, but we have no information in the record showing that this was the case. *Hartleib*; accord *Andrew Perez*, GSBCA 16764-RELO, 06-1 BCA ¶ 33,206. Additionally, even assuming these charges are eligible for reimbursement, claimant must also provide documentation to show that the charges were customary and reasonable in the area.

Decision

NSA properly disallowed the loan origination fee charged by Navy FCU, as well as the lock-in fee and tax service fee charged in connection with the extension of credit by Tower FCU. NSA has also appropriately disallowed the other items claimed by Mr. Register given the record as it stands. If claimant provides the agency with additional documentation in accordance with this decision, NSA should consider whether he is entitled to additional amounts.

CATHERINE B. HYATT
Board Judge