



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 15, 2009

CBCA 1316-RELO

In the Matter of DEBORAH A. WOMACK

Deborah A. Womack, Sheridan, WY, Claimant.

Cheryl Holman, Chief, PCS Travel Accounting, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for the Department of Veterans Affairs.

POLLACK, Board Judge.

This claim presents a very narrow issue. The Department of Veterans Affairs (VA) states that Ms. Deborah Womack, the claimant, is not entitled to reimbursement for \$2849 which the VA classifies as unallowable interest on a mortgage. It is undisputed that the original sheet for settlement of the claimant's purchase of a new residence showed that claimant was paying \$2849 as one point on the mortgage. A point on a mortgage is additional interest and as such is not payable under the applicable travel regulations. The claimant disputes the denial of the \$2849, asserting that the settlement sheet was in error and that she did not pay one point, but rather paid a 1% origination fee. According to the claimant, the original settlement sheet should have reflected that fact. The VA does not dispute that the \$2849 would have been reimbursed had it been listed as an origination fee.

In relocating from one duty station to another, Ms. Womack was not only selling her residence at her old duty station, but also purchasing another at the new duty station. She dealt through Cartus Relocation (Cartus), a relocation firm that had a contract with the VA to handle the guaranteed buyout for sales of homes of relocated employees. The guarantee program carried some requirements which related to the purchase of a new home, and to ensure qualification under the guarantee program (if needed), the claimant chose to use Cartus for securing a mortgage for the purchase of her new residence. Cartus provided Ms.

Womack with a mortgage rate and ultimately put the mortgage financing into the hands of PHH (the settlement sheet shows Cartus Mortgage, which has the same address and apparently is a subunit of PHH). PHH, as the mortgage lender, was responsible for providing the various mortgage-associated pricing numbers for the settlement sheet. The sheet itself was prepared by the title company, Wilcox Abstract and Title. The mortgage information shown on the sheet, however, came from PHH. The issue in this claim involves whether there was an error on the settlement sheet, in showing \$2849 as one point, rather than as a 1% origination fee.

When faced with the contention by the claimant that the settlement sheet was in error and that Ms. Womack had paid the lender a 1% origination fee and not one point, the VA appropriately sought clarification. The VA contacted a PHH mortgage corporation representative, seeking verification of Ms. Womack's claim. He looked into the matter and reported back to the VA that, as Ms. Womack had contended, the original settlement sheet was in error and should have shown a 1% origination fee and not one point. He provided a new corrected settlement sheet, which the VA provided to the Board. The corrected sheet undisputedly shows a 1% origination fee and no longer the 1% discount fee or point.

PHH was brought into the process by the VA's relocation contractor. PHH acknowledged that it made an error and corrected it. One would think that such would close the matter and allow for the claimed reimbursement. However, the VA has refused to accept the correction by PHH. According to the VA Chief of the PCS Section in Austin, Texas, "all real estate packages are sent to Houston Regional Loan Center for review and to determine whether the listed costs are 'reasonable and customary.'" She continued that the revised HUD 1 statement was reviewed by the Houston Center. She then said that since the revised statement had not been signed by Wilcox Abstract and Title Company, the VA requested a copy of the Truth-in-Lending Disclosure, Good Faith Estimate of Settlement Costs for Your Purchase, and Form 1098. According to the VA, those documents showed that a 1% discount fee was utilized, versus the 1% origination fee claimed by Ms. Womack. Accordingly, the VA has refused to pay, because the 1% discount fee would be interest and as such not payable under the regulations.

The problem with the VA relying on the above-noted documents to negate the claim is that the documents cited by the VA all pre-date the correction and pre-date the acknowledgment of the error by PHH. Moreover, for us to conclude that no error was made would require us to find that the PHH representative was being untruthful, and there is simply no basis or reason to reach that conclusion. As to the VA relying on the good faith estimate as a controlling contradiction of the PHH representative's statements and corrected sheet, we note that by definition, the good faith estimate is a preliminary sheet, prepared well before settlement. As such, it cannot reasonably be taken to contradict the corrected

settlement sheet provided by PHH that now shows otherwise. As to Form 1098, that document would have logically been prepared some time at the end of 2008 by the mortgage holder, PHH. As such, it would have reflected what was on the settlement sheet. Since the sheet was not corrected until March 2009, the 2008 IRS form reflects the initial error. As to the document titled “Initial Truth in Lending Disclosures,” that document contains nothing which contradicts or supports either position.

The VA refuses to connect the fact that if the original documents and settlement sheet were in error, then the estimate and clearly the IRS statement (based upon the settlement sheet) would be in error. Moreover, while the VA cites as a basis for rejecting PHH’s correction the absence of a signature from the title company on the corrected settlement sheet, we know of no statutory requirement for that, or why in this case that is necessary. Wilcox had no independent knowledge as to the mortgage arrangement. That was between the claimant and PHH. PHH’s representative has unequivocally stated that an error was made and that the claimant paid an origination fee and not discount points. He provided a corrected sheet to the VA. On balance, the evidence establishes that Ms. Womack paid an origination fee and that the initial entry on the settlement sheet, that led to the VA denying reimbursement, was in error. The VA does not dispute that if Ms. Womack paid an origination fee, that is reimbursable.

Decision

Given what the parties have provided, we find that the claimant paid an origination fee and not points. Such a fee is payable. Ms. Womack is entitled to \$2849.

HOWARD A. POLLACK
Board Judge