



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 1, 2012

CBCA 2945-RELO

In the Matter of JOHN J. NUNZIATO

John J. Nunziato, Newark, DE, Claimant.

Eric J. Feustel, Administrative Law Attorney, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, John J. Nunziato, sought reimbursement for two items of real estate purchase expenses incurred in conjunction with a permanent change of station from Fort Monmouth, New Jersey, to Aberdeen Proving Ground, Maryland. Claimant's agency, the Department of the Army, denied reimbursement of these items on the basis that the items were part of the finance charge paid by claimant to its mortgage lender. The items consisted of an application fee of \$595 and a loan commitment fee of \$695. These two fees were aggregated on form HUD-1 executed by all parties and listed as "origination charges" totaling \$1290.

As to the loan commitment fee of \$695, the agency, citing to case precedent, asserts that such a fee has historically been considered a finance charge. With regard to the application fee of \$595, the agency maintains that claimant has failed to furnish sufficient evidence to establish that it is not "an added finance charge or cost of obtaining credit and that it is customarily charged in the residence locality."

In response, claimant urges that the agency's own guide for expense reimbursement (the Aberdeen Proving Ground, Maryland Real Estate Reimbursement Processing Guide) states that loan origination fees are among the expenses "customarily paid by a purchaser in

the Aberdeen Proving Ground area” and are reimburseable in an amount of up to one percent of the loan amount (\$100,000), i.e., up to \$1000 in this case, if the lender certifies that the fees are for administrative costs. Claimant’s lender, West Town Savings Bank, has furnished a statement, taking the position that both charges are required for all loans, regardless of amount, and are “tied to . . . operational costs at the bank.” Claimant appears to have reduced the amount of his claim from \$1290 to \$1000.

Discussion

The Federal Travel Regulation (FTR) provides that reimbursement is not allowed for “[a]ny 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 [FTR] § 302.11.200 . . .” 41 CFR 302-11.202(g) (2011). Both our Board and our predecessor in considering these matters, the General Services Board of Contract Appeals (GSBCA), have held a “loan commitment fee” to be a finance charge, since such a fee serves to bind the lender to provide a mortgage. As such it is considered “incident to the extension of credit.” *Hwai-Tai Lam*, CBCA 703-RELO, 07-2 BCA ¶ 33,665; *Rodney D. Hartleib*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Jeffrey W. Rose, II*, GSBCA 16386-RELO, 04-2 BCA ¶ 32,723; *Jack E. Hudson*, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351; *David P. Brockelman*, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971. Even though, as claimant notes, “loan origination fees” may be reimbursed up to 1% of the mortgage loan, see *William S. Gregory*, CBCA 2724-RELO, 12-2 BCA ¶ 35,134, lumping the amount for a “commitment fee” into the total listed for “loan origination fees” will not render that amount reimbursable. What the bank may label a cost may not necessarily be determinative.

Here, when detailing what “operational costs” were to be covered by the “loan origination fees,” the bank stated that the fees are “to cover the processing, underwriting approving, closing and post closing activities covered at the bank.” While some of these items would qualify for reimbursement as strictly administrative costs of the nature generally reimburseable as “loan origination fees,” others may not qualify. For example, underwriting fees, like commitment fees, have been expressly held non-reimburseable as “incident to and as a prerequisite to the extension of credit.” *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296; *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722, and cases cited therein. By the same token, so-called “application fees” may be treated as the “equivalent” of “loan origination fees” and may be reimbursed up to the 1% cap permitted by regulation (1% of the mortgage loan amount). See *Charles W. Adams*, GSBCA 16485-RELO, 05-1 BCA ¶ 32,956, at 163,279.

In terms of loan origination fees, the Board recently indicated in *Gregory* that it is only when the 1% cap is exceeded that the claimant will have to furnish additional itemization and evidence with regard to its loan origination-type costs:

A loan origination fee is a fee paid by a borrower to compensate a lender for administrative-type expenses incurred in originating a loan. ***Without itemization of the fees***, an employee may be reimbursed for a loan origination fee and similar charges not to exceed 1% of the loan amount. 41 CFR 302-11.200(f)(2); JTR C5756-A.4a(2); *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296; *Terry L. Hood*, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314. . . . ***To be reimbursed for more than that 1% of the loan amount***, an employee must do three things: itemize the additional charges; provide evidence that the amount in excess of 1% does not include prepaid interest, points, or a mortgage discount; and provide evidence that the higher rate is customarily charged in the locality where the residence is located. 41 CFR 302-11.200(f)(2), -11.201.

William S. Gregory, 12-2 BCA at 172,486 (emphasis added). Here, the application fee was included on the HUD-1 form as part of the loan origination fees; the amount of that fee, \$595, would be well within the 1% cap; and claimant no longer is seeking anything beyond the cap. Under the circumstances of this case, while we would agree with the agency's denial of reimbursement for the \$695 commitment fee, claimant would not be required to provide further evidence or itemization of the application fee/loan origination fee and should be reimbursed for the \$595 incurred for that fee.

Decision

The claim is granted in the amount of \$595.

RICHARD C. WALTERS
Board Judge