



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 30, 2013

CBCA 3164-RELO

In the Matter of JUSTIN WINTER

Justin Winter, Peyton, CO, Claimant.

Sharon Rae Bowman, Chief, Affirmative Employment, Department of the Air Force, Peterson Air Force Base, CO, appearing for Department of the Air Force.

HYATT, Board Judge.

In July 2011, claimant, Justin Winter, a civilian employee of the Department of the Air Force, completed a permanent change of station from Randolph Air Force Base (AFB) in Texas to Peterson AFB in Colorado. Reimbursement of eligible real estate expenses was authorized on his travel orders. Incident to the relocation, Mr. Winter purchased a home in Peyton, Colorado in August 2012. He has requested the Board's review of the Air Force's decision to deny reimbursement of certain expenses he incurred in purchasing a home at his new duty station.

Background

Mr. Winter submitted a voucher for real estate expenses that he incurred in connection with the home purchase. Many of the expenses included on the voucher were deemed eligible for reimbursement under the Joint Travel Regulations (JTR) and were approved and paid by the Air Force. Mr. Winter maintains, however, that the charges that were rejected as ineligible for reimbursement should also have been paid. Specifically, he contends that he should be reimbursed the full amount of \$4342.54, which is the origination fee charged by the lender that issued his mortgage. The settlement sheet states that this amount includes a charge of \$3030.59, which is one percent of the loan amount, combined with additional charges in the amount of \$1311.95 which Mr. Winter paid at closing. Mr. Winter has identified these additional charges as the amounts of \$450 for the mortgagor's processing fee,

\$425 for the underwriting fee, \$425 for a document preparation fee, and \$11.95 representing a MERS (mortgage electronic registration system) fee paid to the lender.

The Air Force disallowed the additional fees charged by the mortgagor and limited Mr. Winter's reimbursement to the one percent loan origination fee.

Discussion

Under applicable regulations, real estate transaction charges which relate to the extension of credit are considered to be finance charges and are not recoverable relocation expenses. An exception to this rule is the loan origination fee and similar charges, which are paid by a borrower to compensate the lender for administrative-type expenses incurred in originating and processing a loan. *See, e.g., Mervin H. Kemp*, CBCA 889-RELO, 07-2 BCA ¶ 33,715. The Federal Travel Regulation and the JTR both authorize payment of the loan origination fees and similar charges in an amount not to exceed one percent of the loan amount unless the employee shows by clear and convincing evidence (a) that the higher rate does not include prepaid interest, points, or a mortgage discount; and (b) that the higher rate is customarily charged in the residence locality. 41 CFR 302-11.200(f)(2), -11.201 (2011); JTR C5756-A.4(2).

There is no exception available to permit payment of the underwriting fee. Such fees have expressly been held to be 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; *accord Mark Bodycombe*, CBCA 1389-RELO, 09-1 BCA ¶ 34,022 (2008).

The remaining fees claimed by Mr. Winter – the document preparation fee, the mortgagor's processing fee, and the MERS fee – exceed the one percent limit provided for by regulation and already paid to claimant. Although these particular expenses are the type of administrative charges that would come under the umbrella of loan origination fees, they are being sought in addition to the one percent fee that has already been paid. To recover these expenses, Mr. Winter would have to itemize the entire amount of the loan origination charges to meet the requirement to show that the full amount of the origination fee does not include prepaid interest, points, or a mortgage discount. He would also have to provide evidence that a total loan origination fee in excess of one percent of the loan amount is customarily charged in the residence locality. Mr. Winter has not proven either of these prerequisites to justify payment of the amounts he claims. *E.g., William S. Gregory*, CBCA 2724-RELO, 12-2 BCA ¶ 35,134; *William L. King, Jr.*, CBCA 457-RELO, 07-1 BCA ¶ 33,504.

Decision

Based on the information provided by claimant and the agency, there is no basis under applicable regulations to justify reimbursement of the additional costs that have been claimed. The claim is denied.

CATHERINE B. HYATT
Board Judge

