



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 31, 2014

CBCA 3572-RELO

In the Matter of MICHELLE D. THOMAS

Michelle D. Thomas, Manassas Park, VA, Claimant.

Roland D. Meisner, Assistant General Counsel, Office of General Counsel, Defense Security Service, Quantico, VA, appearing for Department of Defense.

VERGILIO, Board Judge.

An undesignated lender credit at closing does not offset allowable reimbursable expenses in the purchase of a home, when other closing expenses exceed the amount of lender credit. The claimant is entitled to recover only residence transaction expenses supported by the record.

Michelle D. Thomas, claimant, relocated within the continental United States in 2013 as a civilian employee of the Defense Security Service (agency). For the permanent change of station, the agency had authorized the claimant to recover relocation costs, including residence transaction expenses. The claimant seeks to be reimbursed a total of \$5967.41, said to have been incurred and paid for the purchase of the residence at the new duty station. The agency determined the claimant's reimbursable expenses to be \$4745.08. The agency concluded that some allowable costs are not reimbursable because the claimant did not pay the expenses, because a lender credit reduced settlement payments by the claimant. The agency also disallowed some claimed expenses. The claimant seeks \$5967.41 as actual expenses. The claimant bears the burden of proof.

The HUD-1 settlement statement and supporting documentation set forth the claimant's residence relocation costs involved in the purchase. The claimant has submitted a purported addendum to the settlement statement. The undated addendum is not referenced in the settlement-agency-certified copy of the settlement statement. The addendum is not consistent with the settlement charges on the settlement statement. The Board gives no weight to the addendum in resolving the dispute over the residence transaction expenses.

With this limitation of credible evidence, based upon the settlement statement and record, the Board concludes that, for each of the costs sought, the claimant was liable for the following amounts, and not more, referenced by line item number:

\$720.10	title services and lender's title insurance (1101)
99.00	Government recording charges (1201)
400.00	appraisal fee (804)
75.00	(final inspection (808)
2487.00	transfer taxes (1203)
1440.41	adjusted origination charges (803)
\$5221.51	total

The claimant has not demonstrated liability for the claimed costs relating to the following (referenced by line item number): lender's title insurance (1104), document preparation (1109), title search (1110), and deed preparation fee (1111).

Apart from these costs sought, the claimant was liable for other costs at settlement totaling in excess of \$16,000. The costs consist of items required by the lender to be paid in advance (interest charges, homeowner's insurance, a VA funding fee), an initial deposit for the escrow account, owner's title insurance, and home owner fees and a capital contribution charge. At closing, the lender provided the claimant with a \$5147 credit. The lender credit is not identified on the settlement statement or elsewhere in the record as being provided to the claimant to offset any particular cost(s).

The agency maintains that the claimant is entitled to be reimbursed less than all of its claimed expenses, because of the lender credit. The agency explains that from all of the settlement charges identified (on the HUD-1 statement for the closing, and other documentation) it subtracted what it deemed to be a non-allowable closing cost, and determined that the allowable costs total \$9892.08. From that figure it subtracts \$5147, the lender credit. The agency states that the claimant should recover this difference, \$4745.08.

Each of the \$5221.51 of costs sought by the claimant and supported by the record, as identified above, represents an allowable expense; the agency does not suggest that any cost represents other than a reasonably incurred cost. 41 CFR 302-11.200, -11.202 (2012) (Federal Travel Regulation (FTR), 302-11.302, -11.200, -11.202). Based upon the unrebutted statements by the claimant and the information in the record, the lender credit was not given to offset any specific closing or other cost of the claimant.

In the one instance that this Board and its predecessor addressed lender credit, the credit was identified as paying for a loan origination fee. Because that lender, not that

claimant, paid the expense, that claimant could not recover. *Judith C. Rothschild*, GSBCA 14787-RELO, 99-1 BCA ¶ 30,285. This case is distinguishable, because this lender credit is not identified to offset any particular cost.

Instead of adopting the position proposed by the agency, the Board determines that the undesignated lender credit to the claimant should be treated as first applying to non-allowable residence transaction costs. While the regulations are silent on this matter, this position is consistent with decisions regarding credit by a seller to a purchaser/claimant. *Neal R. Eckrich*, CBCA 813-RELO, 07-2 BCA ¶ 33,663; *Jacquelyn B. Parrish*, GSBCA 15085-RELO, 00-1 BCA ¶ 30,605 (1999).

The agency is correct that residence transaction expenses that are paid by someone other than an employee or member of the immediate family are not reimbursable. FTR 302-11.303. However, this claimant incurred residence transaction costs in excess of \$21,000. Thus, the lender credit does not diminish the actual expenses of the claimant that are to be recovered.

The Board concludes that the claimant is entitled to a total of \$5221.51 in residence transaction expenses. This represents \$476.43 in addition to the \$4745.08 found by the agency.

JOSEPH A. VERGILIO
Board Judge