



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 8, 2015

CBCA 4434-RELO

In the Matter of JANET D. WINN

Janet D. Winn, Hampton, VA, Claimant.

Travis P. Brinton, Assistant Staff Judge Advocate, Department of the Air Force, Langley Air Force Base, VA, appearing for Department of the Air Force.

SOMERS, Board Judge.

Claimant, Janet D. Winn, a civilian employee of the Department of the Air Force, Air Combat Command, seeks reimbursement for relocation expenses associated with her purchase of a residence in Newport News, Virginia. The Air Force denied reimbursement of part or all of several expenses incident to the transaction. Ms. Winn challenges the agency's determination. For the reasons stated below, we grant Ms. Winn's claim in part.

Background

The Air Force relocated Ms. Winn from Robins Air Force Base, Georgia, to Joint Base Langley-Eustis, Virginia, on January 22, 2014, under permanent change of station orders. On September 3, 2014, Ms. Winn purchased a Housing and Urban Development (HUD) real estate owned (REO) condominium unit at her new station.

On September 22, 2014, Ms. Winn submitted a real estate reimbursement claim and voucher for the following amounts, totaling \$9954.56:

24. Legal and Related Fees:	\$225.00
25.b. Lender's Appraisal Fee:	\$450.00

25.d.	Certification Fee:	\$1198.48
25.e.	Credit Report Fee:	\$17.25
25.f.	Mortgage Title Policy Fee:	\$1501.80
25.g.	Escrow Agent's Fee:	\$375.00
25.h.	City/County State Tax Stamps:	\$598.00
26.	Other Incidental Expenses:	\$5589.03

The real estate claims worksheet that Ms. Winn submitted with her voucher detailed each relevant expense as follows, again totaling \$9954.56:

24	Abstract or Title Search	\$126.00
	Recording Fees, Deed of Trust	\$99.00
25a	Prepayment charge	\$762.48
25b	Lender's Appraisal Fee	\$450.00
25d	Flood	\$10.00
	Pest/Termite	\$426.00
25e	Credit Report	\$17.25
25f	Title Insurance or Mortgage Title Policy [Lender's]	\$1501.80
25g	Escrow Agent's Fee	\$375.00
25h	County/City Tax Stamp	\$149.50
	State Tax Stamps	\$448.50
26	Loan Origination Fee	\$995.00
	Processing Fee	\$1344.03
	Other Incidental	\$3250.00

The agency analyzed Ms. Winn's real estate reimbursement claim by looking to the HUD-1 settlement statement (HUD-1), which lists various settlement charges for Ms. Winn's purchase. In pertinent part, the HUD-1 provided:

901.	Daily interest charges . . .	\$201.43
903.	Homeowner's insurance for 1 years	\$654.00
1001.	Initial deposit for your escrow account	\$762.48
1004.	City property taxes	\$762.48
1101.	Title services and lender's title insurance	\$786.90
1103.	Owner's title insurance	\$295.10
1104.	Lender's title insurance	\$205.90

1302. Termite/Moisture Report	\$93.00 ¹
1306. HOA Buyer Setup Fee	\$54.50
1308. HOA Disclosure Package Update	\$109.00

Upon review, the agency recommended payment of \$3480.25 of Ms. Winn's expenses and denied the remaining \$6474.31, finding that the applicable regulations did not permit full reimbursement. On November 14, 2014, Ms. Winn appealed to the agency. Upon reconsideration of her claim, the agency reduced its recommended reimbursement from \$3480.25 to \$2669.10, noting previously undetected unallowable expenses. The agency determined that the prepayment charge fee (\$762.48), the processing fee (\$1344.03), and other incidental fees (\$3250) were not reimbursable; however, the agency recommended reimbursement of portions of the lender's appraisal fee (\$400 of \$450 claimed), the pest/termite and home inspection fee (\$93 of \$426 claimed), the lender's title insurance fee (\$205.90 of \$1501.80 claimed), and the loan origination fee (\$745 of \$995 claimed).

On January 7, 2015, Ms. Winn appealed to this Board, and we docketed the matter as CBCA 4434-RELO.²

Discussion

Statute provides that, pursuant to regulations prescribed by the Administrator of General Services, an agency shall pay real estate purchase expenses on behalf of an employee who transfers from one permanent duty station to another within the United States in the interest of the Government. 5 U.S.C. §§ 5724a(d)(1), 5738(a)(1) (2012). The Federal Travel Regulation (FTR), which establishes the agency's obligations, expressly lists those real estate transaction expenses that are reimbursable, and those that are not, when a transferred employee purchases a residence at a new duty station. 41 CFR 302-11.200 to 11.202 (2013). The Joint Travel Regulations (JTR) supplement the FTR for civilian employees of the Department of Defense.

¹ The agency determined that the value listed for the pest inspection in HUD-1 block 1302 is \$93, though on review, that number is not legible. Ms. Winn's invoice from A2Z Field Services shows that Ms. Winn paid \$60 for termite inspection services. Due to the discrepancy, the agency recommended reimbursement of the higher amount – \$93.

² Ms. Winn appears to seek only \$8729.31 in total real estate expenses before the Board.

The agency denied reimbursement for several real estate transactions expenses included in Ms. Winn's HUD-1.³ We discuss these in turn.

Prepayment Charge Fee

Ms. Winn asserts entitlement to \$762.48 as a prepayment charge fee. The agency denied reimbursement because the HUD-1 block 1001 lists \$762.48 as the initial deposit for the escrow account, which ultimately funded city property taxes, as denoted by HUD-1 block 1004. As property taxes are not payable under the FTR, the agency was correct to deny reimbursement. *See* 41 CFR 302-11.202(e). Ms. Winn is not entitled to receive \$762.48 as a prepayment charge fee.

Processing Fee

Ms. Winn asserts entitlement to \$1344.03 as a processing fee. The agency denied reimbursement, finding the fee's constituent parts included daily interest charges (block 901 – \$201.43), homeowner's insurance for one year (block 903 – \$684), owner's title insurance (block 1103 – \$295.10), a homeowner's association (HOA) buyer setup fee (block 1306 – \$54.50), and an HOA disclosure package update (block 1308 – \$109). The agency properly denied reimbursement. The FTR provides that interest charges are unallowable items of expense. 41 CFR 302-11.202(d). Similarly, the FTR precludes reimbursement for homeowner's insurance premiums, *id.* 302-11.202(c), and owner's title insurance, *id.* HOA fees are not reimbursable under the FTR, given the nature of HOA membership as an item of added value continuing to benefit the purchaser. *See Daniel T. Mattson, CBCA 654-RELO, 07-2 BCA ¶ 33,635 (citing Keith E. Mullnix, B-216973 (Apr. 22, 1985); Herbert W. Everett, 60 Comp. Gen. 451 (1981)).* Therefore, Ms. Winn is not entitled to receive \$1344.03 as a processing fee.

Incidental Fees

Ms. Winn asserts entitlement to \$3250 as other incidental fees. The agency denied reimbursement, determining that the fees, composed of extensions and a differential caused by a second appraisal, were non-reimbursable items under the JTR. Ms. Winn's incidental fees include \$750 for two extension requests, at \$375 apiece, submitted to HUD. Ms. Winn also requests reimbursement for \$2500 she incurred when a second appraisal (allegedly

³ The agency's reliance on Ms. Winn's HUD-1 to determine Ms. Winn's actual expenses is appropriate, as the HUD-1 most accurately records the expenses actually paid. *See David D. Battle, CBCA 4366-RELO, 15-1 BCA ¶ 35,891 (citing Barbara A. Maloney, CBCA 2023-RELO, 10-2 BCA ¶ 34,593).*

required by a change in HUD policy) valued the property below both the prior appraisal and her offer.

“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.’” *Vernon K. Register*, CBCA 871-RELO, 08-1 BCA ¶ 33,790 (citing *Glen P. Hamner*, GSBCA 15560-RELO, 01-2 BCA ¶ 31,509) (applying the principle to the delay of a home purchase where the seller required additional time to obtain permits and complete repairs prior to the purchase). As Ms. Winn is demanding payment from the Government, she has the burden of proving that she is entitled to reimbursement. Rule 401(c) (48 CFR 6104.401(c); *Shaun L. Blocker*, CBCA 1588-RELO, 09-2 BCA ¶ 34,296. Ms. Winn has not provided information as to what circumstances necessitated a second appraisal, nor has she explained why two extensions were required. Therefore, Ms. Winn is not entitled to receive \$3250 in incidental fees.

Lender’s Appraisal Fee

Ms. Winn asserts entitlement to \$450 as a lender’s appraisal fee. The agency limited reimbursement of the fee upon determining that the maximum customary reimbursable amount for the local area was \$400. The regulation provides that the customary cost for such an expense in the locality is the limit that may be properly reimbursed. 41 CFR 302-11.200(b). The burden is on Ms. Winn to prove that the \$450 she paid for the appraisal is the customary appraisal fee charged in the locality. See *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533; *Joseph H. Molton*, CBCA 2572-RELO, 12-1 BCA ¶ 34,930 (citing *Bryan Trout*, CBCA 2138-RELO, 11-1 BCA ¶ 34,727). The record does not contain any evidence to show that the \$450 Ms. Winn paid is the customary amount for an appraisal in the locality. Therefore, reimbursement beyond the agency’s recommended \$400 is denied.

Pest/Termite and Home Inspection Fees

Ms. Winn asserts entitlement to \$426 as home inspection fees. The agency limited reimbursement of the fees to those for pest/termite services, which the agency determined, per HUD-1 block 1302, cost \$93. As part of the claimed \$426, Ms. Winn submitted invoices that documented charges for a standard home inspection (\$273) and related de-winterization⁴

⁴ Winterization involves the removal of water from a property’s plumbing system to protect the property during winter months. See *Nu-Way Concrete Co. v. Department of Homeland Security*, CBCA 1411, 11-1 BCA ¶ 34,636 (2010); HUD Mortgagee Letter 2010-18. De-winterization is required to restore a home’s systems for a

(\$93), as well as an invoice for termite inspection (\$60). The agency has offered no explanation for why it recommended reimbursement of the termite inspection expenses, or why it valued termite inspection expenses at \$93 in contravention of the invoices on record. Home inspection expenses are reimbursable only to the extent that they are customarily paid by the purchaser at a new official station; are no greater than that which is customarily paid in the locality; and are required by federal, state, or local law, or by the lender as a precondition to the purchase. 41 CFR 302-11.200(f)(11). “A home inspection, although prudent under any circumstances in purchasing a home, is not reimbursable if performed merely for the benefit of the buyer.” *Wilbur W. Bhagat*, CBCA 1616-RELO, 09-2 BCA ¶ 34,280. Ms. Winn has not submitted any evidence justifying reimbursement for these expenses. Therefore, reimbursement of these expenses, other \$60 for the termite inspection, is not proper. This results in a credit to the agency of \$33 (= \$93 - \$60).

Lender’s Title Insurance Fee

Ms. Winn asserts entitlement to \$1501.80 as a lender’s title insurance fee. The agency limited reimbursement of the fee because HUD-1 block 1104 shows that Ms. Winn only paid \$205.90 for that fee. However, other information in the HUD-1 documents shows that she paid \$786.90 in title services and lender’s title insurance expenses. Title services and lender’s title insurance premiums required by the lender are reimbursable expenses. 41 CFR 302-11.200(e)(8); see *Robert C. Sales*, CBCA 2776-RELO, 12-2 BCA ¶ 35,168 (relying on HUD-1 block 1101 as the complete representation of reimbursable title services and lender’s title insurance expenses). The agency incorrectly determined that the HUD-1 block 1104 capped Ms. Winn’s reimbursement for the lender’s title insurance fee at \$205.90. Ms. Winn is entitled to a total of \$786.90 for the lender’s title insurance fee and associated title services – \$581 more than the agency paid.

Loan Origination Fee

Finally, Ms. Winn asserts entitlement to \$995 as a loan origination fee. The agency limited reimbursement of the fee because, pursuant to the FTR, generally, the maximum reimbursable amount for the fee is generally one percent of the loan. As Ms. Winn’s loan was \$74,500, the agency capped reimbursement at \$745.

The Board has explained the circumstances in which a transferred employee may be reimbursed for a loan origination fee in excess of one percent of the loan amount as follows:

home inspection, and, therefore, de-winterization expenses are integrally related to home inspection expenses. *See id.*

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, CBCA 2724-RELO, 12-2 BCA ¶ 35,134. “[A]n expense is ‘customarily’ paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community.” *Erwin Weston*, CBCA 1311-RELO, 09-1 BCA ¶ 34,055 (quoting *Christopher L. Chretien*, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996)). The burden is on Ms. Winn to prove that the expenses she paid in excess of the amount allowed under the FTR are customarily charged in the specific locality. *Weston* (citing *Monika J. Dey*, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744 (2001)). “General, conclusive statements of customary practice . . . are not persuasive.” *Sharon J. Walker* (citing *Molton*; *Theresa M. Grimm*, CBCA 2231-RELO, 11-1 BCA ¶ 34,729; *James E. Miller*, GSBCA 16123-RELO, 04-1 BCA ¶ 32,450 (2003)). Ms. Winn has presented a single email message from a Virginia-based mortgage consultant contesting the agency’s cost schedules. The email message is not accompanied by any data, nor does the message address loan origination fee rates customary for the locality. Rather, the email message simply states: “Our fee has been \$955 for years. . . .” We find this evidence insufficient to show that the higher rate, by virtue of tacit and common consent within the community, is customary in the locality. Therefore, reimbursement in excess of \$745 is denied.

Decision

The claim is granted in part. Based on the foregoing analysis, Ms. Winn is entitled to be reimbursed \$548 (= \$581 - \$33) in addition to what the agency approved (\$2669.10).

JERI KAYLENE SOMERS
Board Judge