



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 11, 2016

CBCA 5108-RELO

In the Matter of MATTHEW A. STARNER

Matthew A. Starner, Meridianville, AL, Claimant.

Stephanie L. Fletcher, Paralegal Specialist, Office of Command Counsel, Headquarters, United States Army Materiel Command, Redstone Arsenal, AL, appearing for Department of the Army.

SULLIVAN, Board Judge.

Claimant, Matthew A. Starner, appeals the denial of his request for reimbursement of three expenses that he incurred when he purchased a home near his new permanent duty station: a loan guarantee fee, owner's title insurance premiums, and lender's title insurance premiums. In its initial determination, the Department of the Army denied reimbursement for the loan guarantee fee in its entirety and reimbursed Mr. Starner only half of the premiums he paid for owner's and lender's title insurance. In response to Mr. Starner's appeal, the agency now seeks to reimburse Mr. Starner the entire amount for the lender's title insurance premiums, but believes that Mr. Starner can receive neither the guarantee fee nor the owner's title insurance premiums. Because the agency's current determination is correct, we deny Mr. Starner's claim.

Background

By orders dated July 28, 2014, Mr. Starner was authorized a permanent change of duty station from New Cumberland, Pennsylvania, to Redstone Arsenal, Alabama, with a reporting date in September 2014. His orders authorized, among other expenses, reimbursement for real estate transaction expenses. The estimated amount of real estate expenses was \$10,000. Mr. Starner signed a service agreement.

According to the settlement statement (HUD-1 form), Mr. Starner closed on the purchase of a new house on March 20, 2015. Mr. Starner sought reimbursement for the following costs: appraisal fee, credit report, settlement or closing fee, lender's title insurance, credit protection letter, title binder fee, title exam fee, government recording charge, transfer taxes, Department of Agriculture (USDA) rural guarantee fee, and owner's title insurance. Mr. Starner's claim for reimbursement totaled \$6555.86.

On September 21, 2015, the agency approved reimbursement in the amount of \$2125.94. The agency denied reimbursement for the rural guarantee fee (\$4071.42) and half of the owner's title insurance and lender's title insurance premiums (\$301.50). The agency also found that Mr. Starner had sought reimbursement of the lender's title insurance premium twice (\$57).

Mr. Starner filed his appeal on December 14, 2015, and the agency filed its response on January 28, 2016. On February 29, 2016, Mr. Starner informed the Board that he would not be submitting a reply to the agency's response.

Discussion

USDA Rural Guarantee Fee

The Federal Travel Regulation (FTR) prohibits agencies from reimbursing finance fees or charges:

Your agency will not pay:

(g) Any 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 § 302-11.200.

41 CFR 302.11-202. The FTR does permit agencies to pay certain loan application or loan origination fees, including:

- (1) FHA or VA fees for the loan application;
- (2) Loan origination fees and similar charges such as loan assumption fees, loan transfer fees or other similar charges not to exceed 1 percent of the loan amount without itemization of the lender's administrative charges (unless requirements in § 302-11.201 are met), if the charges are

assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee.

41 CFR 302-11.200(f).

As a civilian employee of the Department of Defense, Mr. Starner is also subject to the requirements and limitations set forth in the Joint Travel Regulations (JTR). The JTR provides the same prohibitions on the payment of fees or charges incident to obtaining financing. JTR C5696-A.4.a(1-2), .b(5).¹

The Truth in Lending Act defines a finance charge as “the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.” 15 U.S.C. § 1605(a); 12 CFR 226.4 (a) (Regulation Z - same definition). Examples of finance charges include a “[p]remium or other charge for any guarantee or insurance protecting the creditor against the obligor’s default or other credit loss.” 15 U.S.C. § 1605(a)(5); 12 CFR 226.4(b)(5) (same).

According to regulations issued by the Department of Agriculture, the rural guarantee fee is required to be paid by lenders for loans the Department is asked to guarantee. 7 CFR 3555.107(g), 4279.107(a). The lender may pass the fee on to the borrowers. *Id.* The manual for the loan guarantee program describes the fee as a “non-refundable financing fee a lender must pay to [USDA] for the loan guarantee.” Guaranteed Rural Rental Housing Program Origination and Servicing Handbook, 6.2 (1999).

Although the Board previously has not been asked to decide whether the USDA rural guarantee fee falls within 41 CFR 302-11.202(g), the Board has determined that fees and charges that are “paid by the consumer and imposed by the creditor as incident to the extension of the mortgage loan” are finance charges as defined by the Truth in Lending Act and Regulation Z. *Mark Bodycombe*, CBCA 1389-RELO, 09-1 BCA ¶ 34,022 (2008), at 168,299 (quoting *Craig A. Czuchna*, GSBCA 15799-RELO, 02-2 BCA ¶ 31,898, at 157,594). Such non-reimbursable fees include funding fees imposed by the Department of Veterans Affairs as a condition of obtaining a VA-guaranteed mortgage loan. *Jeffrey B. Hicks*, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002), at 158,607.

¹ The provisions of the JTR to which we refer in this opinion were located in section C5696 in September 2014, when Mr. Starner transferred to Alabama. They are currently located in section 5912.

The rural guarantee fee paid by Mr. Starner is a finance charge as defined by the Truth in Lending Act and Regulation Z promulgated by the Treasury Department. It is a fee imposed upon Mr. Starner incident to his obtaining the mortgage loan. Because it is a finance charge and does not fall within one of the exceptions set forth in 41 CFR § 302-11.200, the agency properly denied Mr. Starner's claim for reimbursement of this fee.

Mr. Starner asserts that he was led to believe that the fee was not a finance charge, but he provides no further details as to the basis for this belief. Even if an agency employee incorrectly advised Mr. Starner regarding whether this fee was a finance charge or that he would be reimbursed for this charge, that incorrect advice does not alter the regulatory prohibition on reimbursing Mr. Starner the amount of this fee. *Linda E. Mohan*, CBCA 827-RELO, 07-2 BCA ¶ 33,694, at 166,787. Mr. Starner also asserts that he could not have obtained a loan for a residence near his new duty station with his single family income without the USDA guarantee. While the Board understands the constraints that Mr. Starner faced in obtaining the mortgage for his new property, these constraints do not change the limitations set forth in regulations regarding the types of real estate expenses for which a Federal employee may be reimbursed.

Owner's Title Insurance

The FTR also provides that an employee may be reimbursed owner's title insurance costs if one of two possible conditions are met:

Owner's title insurance policy provided it is a prerequisite to financing or the transfer of the property; or if the cost of the owners title insurance is inseparable from the cost of other insurance which is a prerequisite.

41 CFR 302-11.200(f)(9); JTR C5696-A.4.a(9) (same). If the employee is able to make this showing, the employee must also show that the buyer customarily pays these costs in the locality where the residence was purchased. 41 CFR 302-11.200(f); JTR C5696-A.4(a). It is the claimant's burden to provide proof of the financing requirements and evidence of local custom. *Jeffrey B. Hicks*, 03-1 BCA at 158,607.

Mr. Starner has made no representation that he was required to obtain owner's title insurance as part of the financing arrangement or that the lender's title insurance was inseparable from the owner's title insurance. The costs are separate line items on the HUD-1 form. Mr. Starner only asserts that he was not advised as to what was local practice regarding these costs. Because Mr. Starner has provided no evidence that the owner's title insurance was a prerequisite of financing or inseparable from the other insurance that may

have been required, the agency was not required to reimburse Mr. Starner the costs of the owner's title insurance. *Id.* 03-1 BCA at 158,607.

The agency originally reimbursed Mr. Starner half of the cost of the owner's title insurance costs, but in reviewing the claim in response to Mr. Starner's appeal, found that the original contract for the purchase of the property provided that the seller would pay the costs of the owner's title insurance. Then, the agency notes, Mr. Starner executed an addendum to the sales contract which provided that he would pay these costs in exchange for alterations to the house by the seller. On the basis of this discovery, the agency asserts that it erred when it reimbursed Mr. Starner for half of the costs of this title insurance. The agency suggests, but does not explicitly state, that it will seek reimbursement of this amount (\$330) from Mr. Starner.

Lender's Title Insurance

The FTR also provides for the reimbursement of lender's title insurance, provided that the premiums for such insurance are paid by the buyer in the locality of the new duty station. 41 CFR 302-11.200(d).²

The agency originally reimbursed Mr. Starner only half of the lender's title insurance premium he paid, asserting that in the local area it was common for the buyer and the seller to each pay half. In response to Mr. Starner's appeal, the agency said that it erred in only reimbursing Mr. Starner half of the lender's title insurance premium and that should have reimbursed Mr. Starner the entire amount. Although not specifically stated, the Board construes the agency's acknowledgment of this error to be a concession that the buyer usually pays all of the lender's title insurance premium in the local area. As the agency acknowledges, since Mr. Starner paid the entire amount, he should be reimbursed for this entire amount (\$57). Since the agency has reimbursed Mr. Starner half of this amount, it owes him \$28.50.

Double Payment

Mr. Starner also challenges the agency's denial of reimbursement for \$57, which the agency construed as a second claim for the lender's title insurance premium. Mr. Starner,

² The JTR adds a requirement that the employee show that the lender's title insurance policy was required by the lender. JTR C5696-A.4.a(8). This requirement would seem to be self-fulfilling as purchasers will only purchase title insurance for the benefit of the lender if required to do so by the lender.

in his appeal, asserts that the agency's contention is not correct and asks the Board to review the documents. The agency, in its response to Mr. Starner's appeal, explains that it believes that Mr. Starner requested reimbursement twice and points to items 1101 and 1104 on the settlement statement.

Mr. Starner is correct. The \$57 lender's title insurance fee is included only once in the settlement statement in line 1104. Adding up the items on the settlement statement and subtracting the items for which Mr. Starner did not request reimbursement, the amount totals his claim. But, Mr. Starner will not receive additional money. As the agency highlights in its response, Mr. Starner made an error when he claimed \$603, instead of \$660, for the owner's title insurance policy. The difference in these two amounts is the amount that the agency thought Mr. Starner had claimed twice.

In sum, Mr. Starner is entitled to be reimbursed the following amounts:

Expense	Amount
Appraisal Fee	\$475.00
Credit Report	\$17.54
Settlement or Closing Fee	\$700.00
Lender's Title Insurance	\$57.00
Closing Protection Letter	\$25.00
Title Binder Fee	\$50.00
Title Exam Fee	\$85.00
Government Recording Charges	\$109.00
Transfer Taxes	\$305.90
Total	\$1824.44

Mr. Starner may not recover the rural guarantee fee (\$4071.42) or the owner's title insurance premiums (\$660).

Decision

Mr. Starner's appeal is denied.

MARIAN E. SULLIVAN
Board Judge