

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

January 22, 2001

GSBCA 15384-RELO

In the Matter of PAULA K. FOWLER

Paula K. Fowler, Lake Havasu City, AZ, Claimant.

Gene Virden, Chief, Division of Accounting Management, Bureau of Indian Affairs, Department of the Interior, Reston, VA, appearing for Department of the Interior.

GOODMAN, Board Judge.

Claimant, Paula K. Fowler, is an employee of the Department of the Interior, Bureau of Indian Affairs. She has requested that this Board review the agency's denial of reimbursement of various real estate expenses incurred in the sale and purchase of residences at her old and new duty stations arising from a permanent change of station (PCS) from Newberg, Oregon, to Parker, Arizona, in September 1999.

Factual Background and Discussion

Loan Origination Fee in Sale of Residence

Claimant seeks reimbursement of the loan origination fee in the amount of \$1905.50. The agency denied reimbursement because it determined a fee of this nature is not reimbursable in conjunction with the sale of a residence.

Federal Travel Regulation (FTR) 302-6.2(d)(1)(ii) states:

The following items are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station . . . to the extent they do not exceed amounts customarily paid in the locality of the residence: . . . (ii) loan origination fees.

41 CFR 302-6.2(d)(1) (1997) (FTR 302-6.2(d)(1)).

The settlement statement for the sale of the residence clearly shows that \$1905.50 was paid by the claimant for a loan origination fee. Also, the Employee Application for

Reimbursement of Expenses Incurred shows that a loan origination fee was paid by the seller. A loan origination fee, paid by the seller during the sale of a residence, is reimbursable if customarily paid by the seller. David H. Moore, GSBCA 15091-RELO, 00-1 BCA ¶ 30,748. While the record indicates that claimant paid the loan origination fee, there is no indication in the record that the seller customarily does pay this fee in the locality of the residence. If claimant is able to supply such information to the agency, claimant would be entitled to reimbursement.

Underwriting Fee and Tax Service Fee

Claimant seeks reimbursement of underwriting fees in the amount of \$150 and \$275 and tax service fees in the amount of \$77 and \$105 for the sale of her prior residence and purchase of her current residence. The agency denied reimbursement because it considered these fees to be finance charges under the Truth in Lending Act, which are not reimbursable.

The agency is correct. Neither is recoverable under FTR 302-6.2(d)(2)(v), which provides that unless specifically authorized elsewhere in the regulation, no fees, charges, costs, or expenses determined to be part of the finance charge under the Truth in Lending Act, 15 U.S.C. § 1605 (1994), may be reimbursed. The Truth in Lending Act provides that the finance charge shall be determined as the sum of all charges imposed directly or indirectly by the creditor as incident to the extension of credit. The Board, following decisions of the General Accounting Office (GAO), has consistently recognized that the underwriting fee paid by the borrower, while not itself a finance charge, is a charge paid incident to and as a prerequisite to the extension of credit. Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513; Charles A. Peters, GSBCA 13643-RELO, 97-1 BCA ¶ 28,689 (1996); Kenneth R. Pedde, B-223797 (Apr. 20, 1987); George J. Wehrstedt, B-192851 (May 11, 1979); see also S. K. Datta, GSBCA 13888-RELO, 97-1 BCA ¶ 28,929. Similarly, the tax service fee has been deemed to be a prerequisite to the extension of credit and thus not reimbursable. Laura A. Cushler, GSBCA 14210-RELO, 98-2 BCA ¶ 29,792; Richard A. Santillo, GSBCA 14230-RELO, 98-1 BCA ¶ 29,526; Fediw; Floyd L. Craft, GSBCA 13698-RELO, 97-2 BCA ¶ 29,092; Pamela Swires, B-260724 (Sept. 21, 1995); Sue Wolohan, B-219546 (Jan. 30, 1989); Richard P. Johnson, B-281754 (Sept. 17, 1985). The fact that the lending institution does not consider these cost items to be part of the finance charge is not dispositive. Fediw, 98-1 BCA at 146,396 n.1; John G. Barry, B-199944 (Apr. 16, 1981).

Process Fee, Administrative Fee, Wire Transfer Fee, Government Service Fee, and Federal Express Charges

Claimant seeks reimbursement of the process fee (\$300), administrative fee (\$245), wire transfer fee (\$35), government service fee (\$25), and Federal Express charges (\$65). The agency has denied reimbursement. There is no specific entitlement to such fees by statute or regulation. However, in Ramiro Ramirez, GSBCA 14252, 98-1 BCA ¶ 29,702, reconsideration denied, 98-2 BCA ¶ 29,797, we found that claimant was entitled to reimbursement of courier fees as incidental expenses (in the instant case, pursuant to FTR 302-6.2(f)) because the incurrence of the fees was necessary and not merely a convenience to claimant. In the instant case, if claimant were living at her new duty station at the time the settlement on her prior residence was accomplished, the courier fees may well

have been necessary as incidental charges made for required services. If claimant can show that they were, she would be entitled to the Federal Express charges. So likewise, with regard to these other services if demonstrated to be required, and customarily paid by persons in claimant's position, and not otherwise precluded by regulation, she would also be entitled to these service charges as well.

Hazard Insurance

Claimant seeks reimbursement of hazard insurance in the amount of \$570. The agency has denied reimbursement for hazard insurance.

FTR 302-6.2 (d)(2)(i) states:

(2) Nonreimbursable items. Except as otherwise provided in paragraph (d)(1) of this section, the following items of expense are not reimbursable: . . .

(i) Owner's title insurance policy, "record title" insurance policy, mortgage insurance or insurance against loss or damage of property, and optional insurance paid for by the employee in connection with the purchase of a residence for the protection of the employee.

Hazard insurance is "insurance against loss or damage." Manuel Rubio, Jr., B-232729 (Mar. 1, 1989). Accordingly, hazard insurance is not reimbursable. The agency correctly denied reimbursement.

Title Insurance

The agency denied reimbursement of title insurance on the purchase of her new residence in the amount of \$260 because it could not determine if the title insurance was lender's or owner's coverage. The agency's submission indicates it has repeatedly requested additional information as to the type of coverage from claimant. The record contains no indication as to the type of coverage. All or part of these costs may be reimbursable depending on the type of coverage. Francis B. Biggar, GSBCA 13981-RELO, 97-2 BCA ¶ 29,053.

FTR 302-6.2(d)(2)(i) states that owner's title insurance is not reimbursable except as provided in FTR 302-6.2(d)(1). The exception as stated in FTR 302-6.2(d)(1)(ix) allows reimbursement of owner's title insurance, "provided it is a prerequisite to financing or the transfer of the property; or if the cost . . . is inseparable from the cost of other insurance which is a prerequisite to financing." There is no indication in the record that the cost of owner's title insurance was a prerequisite to financing or the transfer of the property, rather than for the protection of the buyer. The cost is separable from the cost of the lender's coverage. See, e.g., Dawn S. Daugherty, GSBCA 14065-RELO, 97-2 BCA ¶ 29,050. Based upon the information in the record, we cannot determine if such costs are reimbursable. Since it is the claimant's burden to show that costs are reimbursable, we conclude that on the information provided the agency properly disallowed these costs.

Title Insurance - Lender's Coverage

Claimant seeks reimbursement of \$306.25 for lender's coverage on the sale of her prior residence. FTR 302-6.2(c) provides for reimbursement of the cost of a title insurance policy where customarily furnished by the seller. Lender's title insurance is reimbursable. Patricia S. Snyder, GSBCA 13797-RELO, 97-1 BCA ¶ 28,709. The amount claimed may be paid unless the agency has information indicating that it is not within the range customarily charged in the locality.

Loan Discount

The agency initially erroneously paid \$280 for a loan discount when this voucher was first submitted. FTR 302.6.2(d)(2)(ii) clearly states that "mortgage discounts" are not reimbursable. This is true regardless of who customarily pays. "Loan discounts" and "mortgage discounts" are synonymous. Brent T. Wahlquist, GSBCA 13721-RELO, 97-2 BCA ¶ 29,094. The agency properly disallowed reimbursement of the loan discount fee.

Appraisal Fee and Credit Report

Claimant seeks reimbursement of the appraisal fee (\$350) and credit report (\$22) incurred in the purchase of her current residence. The record is not clear as to the status of payment. The agency's response indicates that these amounts were paid previously. However, there is correspondence in the record which indicates that the agency was seeking information from claimant to confirm the payment of these charges. If such charges have been paid, then claimant's request for reimbursement has been satisfied. If not, it appears that the agency is willing to reimburse claimant for such costs, as the appraisal fee and credit report are reimbursable pursuant to FTR 302-6.2(b) and (d)(iii).

Decision

Claimant would be entitled to reimbursement for the loan origination fee in the amount of \$1905.50 if she can supply information to the agency proving that sellers in the locality customarily pay such fees. She is not entitled to reimbursement of the underwriting fee, tax service fee, hazard insurance premium, and loan discount. It is possible, if claimant submits sufficient information supporting entitlement to her agency, that she may be entitled to the title insurance incurred in the purchase of her new residence, title insurance for the lender's coverage incurred in the sale of her previous residence, the appraisal fee and credit report (if not previously paid), process fee, administrative fee, wire transfer fee, and Federal Express charges.

ALLAN H. GOODMAN
Board Judge