

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 15, 2001

GSBCA 15506-RELO

In the Matter of DANIEL H. CONEY

Daniel H. Coney, Lee's Summit, MO, Claimant.

Mary C. Lanham, Chief, Travel Payments Section, Program Support Center, Department of Health and Human Services, Rockville, MD, appearing for Department of Health and Human Services.

NEILL, Board Judge.

Claimant, Mr. Daniel H. Coney, is an employee of the Department of Health and Human Services. He asks that we review a determination of his agency that he is not entitled to reimbursement for certain costs incurred in conjunction with the purchase of a residence at his new permanent duty station (PDS). We affirm the agency's denial of Mr. Coney's claims.

Background

In September 2000, Mr. Coney was issued orders transferring him from Denver, Colorado, to Kansas City, Missouri. Among the various provisions contained in these orders was an authorization to receive reimbursement for certain real estate transactions. Mr. Coney states that he and his agency remain in disagreement regarding reimbursement of the following costs, which are all associated with his purchase of a residence near his new PDS:

Tax Service Contract Fee:	\$ 82
Reinspection Fee (Line 808 of Settlement Statement):	\$150
Processing Fee:	\$350
Underwriting Fee to Fleet National Bank:	\$385
Wire Fee:	\$ 30
Overnight Fee:	\$ 45
Flood Certification Fee:	<u>\$ 16</u>
Total	\$1058

Discussion

We discuss these costs in the order presented.

Tax Service Contract Fee

In a letter to Mr. Coney, his mortgage company has explained that the tax service contract fee is not a tax, but rather a fee paid to cover the cost of setting up an ongoing computer search for special assessments which may be levied on the mortgaged property by the local jurisdiction. Mr. Coney is of the opinion that this charge is very much like an abstract or title search, which is reimbursable under the regulations. In any event, he believes that it qualifies as a reimbursable expense under section 302-6.2(f) of the Federal Travel Regulation (FTR), as an incidental charge for required services in purchasing a residence.

We disagree. The lender's description of the service purchased through the tax service contract fee appears to be substantially the same as the tax service fee typically charged by other lenders to monitor tax assessments on mortgaged property. We have addressed the issue of whether this fee is reimbursable countless times. The Board has consistently looked upon this fee as one paid incident to and as a prerequisite to the extension of credit. As such, it is deemed to be a finance charge, as that term is defined in the Truth in Lending Act and by Regulation Z issued by the Federal Reserve Board (12 CFR 226). By regulation, unless specifically authorized, such charges are not recoverable. FTR 302-6.2(d)(2)(v) (2000); see e.g., Richard Poisel, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284; Jeffrey P. Zippin, GSBCA 15115-RELO, 00-1 BCA ¶ 30,744; Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513.

Reinspection Fee (Line 808 of Settlement Statement)

Mr. Coney states that the \$300 charge on line 808 of the settlement sheet represented three charges. The first was \$150 for a "commitment" to lock in the mortgage rate. For this charge he makes no claim. The remaining \$150 is said to cover the cost of document preparation and reinspection for the loan. The agency notes that, pursuant to FTR 302-6.2(d)(1)(ii), Mr. Coney has already been reimbursed the maximum allowable amount (one percent of the loan amount) for the lender's loan origination fee. Since this includes the costs of document preparation, the agency has declined to provide further reimbursement for the cost of this service. It is, of course, true that, under the same regulation, an agency can exceed the one percent limit if the claimant demonstrates that a higher rate of reimbursement for such expenses is customarily charged in the locality where the residence is located. No such showing has been made here, however. Accordingly, the agency has acted correctly in refusing to pay the additional claim for document preparation. Jeffrey P. Zippin; Joseph Thompson, GSBCA 15077-RELO, 00-1 BCA ¶ 30,615; John P. Kemp, GSBCA 14335-RELO, 98-2 BCA ¶ 29,751.

As for the reinspection portion of the \$150 charge on line 808 of the settlement agreement, Mr. Coney contends that all of the disputed costs in his claim are for items required by the lender. The agency does not challenge this contention. We conclude, therefore, that this reinspection was imposed by the lender as a precondition to purchase and could consequently be reimbursed under FTR 302-6.2(d)(1)(xi). Unfortunately, however, the claimant has not indicated what part of the \$150 claim represents the cost associated with the inspection and what part represents the additional cost associated with

document preparation. If Mr. Coney can provide reasonable documentation in support of this portion of his claim, he may be paid. In the absence of evidence on this issue, however, we agree that the agency has acted properly in declining to pay it.

Processing Fee

Presumably, the \$350 Mr. Coney seeks for the loan processing fee, like the separate claim for document preparation, covers the cost of administrative work for which he was charged by the mortgagee in the loan origination fee -- at least so the agency contends. Mr. Coney has provided us with nothing to refute this contention. Indeed, the above-mentioned letter to Mr. Coney from his mortgage company explains that the processing fee is paid to an independent contractor who prepares documents required of the lender. As we have already noted, the agency has reimbursed Mr. Coney the maximum allowable for the loan origination fee absent a showing that, in the locality where the residence is located, this fee is customarily in excess of one percent of the loan amount. The agency's refusal to pay the \$350 in the absence of such a showing is correct.

Underwriting Fee

Mr. Coney also seeks to be reimbursed \$385 for the underwriting fee. He sees it as an incidental charge made for required services in purchasing a residence and reimbursable under FTR 302-6.2(f). The agency has acted correctly in denying this portion of his claim. The Board, following the decisions of the General Accounting Office (GAO), our predecessor in deciding travel and relocation claims by civilian employees of the Government, has consistently recognized that the underwriting fee paid by the borrower, while not itself a finance charge, is, nonetheless, a charge paid incident to and as a prerequisite to the extension of credit. As in the case of the tax service fee, unless specifically authorized, such charges are not recoverable. FTR 302-6.2(d)(2)(v), see, e.g., Aman B. Kay, GSBCA 15543-RELO (June 21, 2001); Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281; Stanley H. Levine, GSBCA 15065-RELO, 00-1 BCA ¶ 30,809; James A. Fairley, GSBCA 15133-RELO, 00-1 BCA ¶ 30,713 (1999); Gerald Fediw; Charles A. Peters, GSBCA 13643-RELO, 97-1 BCA ¶ 28,689 (1996). The FTR provision to which Mr. Coney refers, namely, FTR 302-6.2(f), is of a general nature and obviously does not constitute a specific authorization to recovery of an underwriting fee.

Wire Fee and Overnight Fees

Mr. Coney contends that both the wire fee of \$30 and the fees of \$45 for overnight postage were required by the lender for purposes of consummating the real estate transaction in a timely fashion. He points out that he and his mortgage company were both located in Colorado while the house he was planning to purchase and its sellers were in Missouri. In addition, the settlement sheet shows that the Fleet National Bank of Phoenix, Arizona, was also involved in the transaction -- thus further complicating the picture. In its letter to Mr. Coney, his mortgage company confirms the need for efficient communications and points out it is simply impractical for lenders to rely on regular mail in order to meet the deadlines associated with real estate transactions.

The agency, in opposing payment of these fees, cites to us a line of GAO decisions which holds that a lender's separate charge for courier and similar fees is part of the lender's normal cost of doing business and is, therefore, a non-reimbursable finance charge. See Louis H. Schwartz, B-231485 (Jan. 19, 1989); Anibal L. Toboas, B-217474 (July 19, 1985). The lender's breaking out the charges for such services as separate fees or its assurance that the fees are not finance charges is not dispositive of the issue. An agency must examine the fee carefully in light of the above-mentioned Regulation Z and our decisions on such charges. Stanley H. Levine, 00-1 BCA at 152,101 n.2; Gerald Fediw, 98-1 BCA at 146,396 n.1; John G. Barry, B-199944 (Apr. 16, 1981). In this case, we find the agency's reliance on earlier GAO decisions well placed. We agree that in this case the mortgage company's wire fee and overnight charges can be considered finance charges and, therefore, are not reimbursable.

Our conclusion here should not be confused with our previous award of courier fees and similar costs in other cases such as Larry D. Gatewood, GSBCA 15343-RELO, 01-1 BCA ¶ 31,211 (2000); and Ramiro Ramirez, GSBCA 14252-RELO, 98-1 BCA ¶ 29,702, reconsideration denied, 98-2 BCA ¶ 29,797. In those cases, the fees awarded were *not* ones incurred by the lender -- which should more properly have been included as part of the lender's loan origination fee. Rather, the fees of this nature were for services which the claimant, or someone working with the claimant, such as the employee's attorney, procured. When the claimant can demonstrate with credible evidence that the services in question were actually necessary for the sale or purchase of his or her residence and not purchased merely for personal convenience, the costs of these services, if reasonable and customarily paid in the locality, are and remain clearly reimbursable under FTR 302-6.2(f).

Flood Certification Fee

The agency advised us that Mr. Coney has been reimbursed for this fee. Mr. Coney has advised the Board that he has no comments to offer on the agency report. Consequently, we assume that he does not take issue with this statement and that this portion of his claim is, therefore, withdrawn.

We affirm the agency's denial of Mr. Coney's claims.

EDWIN B. NEILL
Board Judge