

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

January 18, 2002

GSBCA 15672-RELO

In the Matter of MICHAEL J. SMITH

Michael J. Smith, Orlando, FL, Claimant.

Jennifer A. Aranda, Attorney-Advisor, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX, appearing for National Aeronautics and Space Administration.

BORWICK, Board Judge.

Claimant, Michael J. Smith, transferred in the interest of his agency, the National Aeronautics and Space Administration (NASA or agency). When claimant purchased his house pursuant to his permanent change of station, he incurred a \$5295 Department of Veterans' Affairs (VA) funding fee expense, which the agency refused to reimburse. Claimant seeks reimbursement of the \$5295 and also seeks \$53,812 for alleged pecuniary losses arising out of the agency's alleged misleading advice as to whether the VA funding fee was reimbursable. The agency's denial of reimbursement was in accordance with the Federal Travel Regulation (FTR) and the NASA Financial Management Manual (FMM). For the reasons below, we conclude that the agency did not mislead claimant regarding his entitlement to reimbursement of the VA funding fee. We dismiss the claim for pecuniary damages for lack of jurisdiction.

The facts indicated by the record are as follows. In May 2000, the agency authorized claimant's transfer from his duty station in Denver, Colorado, to the Kennedy Space Center (KSC), Florida. On May 4, 2000, the agency's relocation services contractor mailed a package of relocation information to claimant regarding his relocation benefits. Page twenty-one of the document entitled Permanent Change of Station, NASA's Guide to a Successful Move Within the Continental United States states that interest on loans, points, and mortgage discounts are non-reimbursable purchase expenses in connection with the purchase of a home at the new station.

The agency's employee website at KSC also contains guidance on relocation benefits. The website provided under the section "Reimbursable Expenses" that the "amount of reimbursement on real estate transactions is limited to 10% of actual sales price and 5% of

actual purchase price. The regulations are very specific as to what may and may not be reimbursed."

The website has a "real estate reference chart" which provides a brief "yes" or "no" guidance as to the reimbursable status of expenses that are typically incurred in the sale and purchase of a residence. For the expense "VA funding fee," the guidance is that the VA funding fee is not reimbursable either in the sale of the residence at the old station or the purchase of a residence at the new station.

Claimant reported for duty at KSC on July 19, 2000. On or about August 3, 2001, appellant closed on a home purchase near KSC. He financed his purchase with a VA mortgage, incurred a VA funding fee expense of \$5295, and sought reimbursement of the funding fee from the agency. The agency denied reimbursement and claimant appealed to this Board.

The FTR provides that expenses that are determined to be part of the finance charge under the Truth in Lending Act and Regulation Z are not reimbursable unless specifically authorized. 41 CFR 302-6.2(d)(2)(V) (2000). The NASA FMM is to the same effect. NASA FMM § 9762-16(d)(2)(e) (1997). It is settled that the VA funding fee is considered to be a finance charge under the Truth in Lending Act and Regulation Z and not reimbursable. Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339; Robert J. Szerszynski, GSBCA 14350-RELO, 98-2 BCA ¶ 29,984; see Peter C. Wagner, GSBCA 13907-RELO, 97-1 BCA ¶ 28,793 (VA funding fee comparable to points assessed in conventional mortgage, and thus considered to be a finance charge).

Claimant states that he was misled by the agency into believing that it would reimburse him the VA funding fee:

The agency provided ambiguous information, obtained from their website . . . which stated that Real Estate Expenses * Purchase Expenses - 5% of [the] purchase price.

The agency's information on the website merely stated that reimbursable expenses were limited to five percent of the actual purchase price. It is a misreading of the website to interpret the language as an agency promise to reimburse any and all expenses incurred as long as the expenses did not exceed five percent of the purchase price of the residence.

The FTR and the NASA FMM do not provide that all incurred expenses up to five percent of the purchase price of a house are reimbursable. 41 CFR 302-6.2(g)(2); NASA FMM § 9762-16(f). Furthermore, there was ample agency guidance available to claimant that finance charges such as mortgage points in general, and the VA funding fee in particular, were not reimbursable items.

Claimant says that he will pay \$53,812 over the life of his mortgage because, in financing the purchase of his residence, he chose a VA mortgage over a lower rate conventional mortgage. Claimant requests the Board order the agency to immediately compensate claimant for the \$53,812 for the "future pecuniary losses that [the agency's] false advertisement has and will cost the claimant." That claim sounds in tort, over which we have

no jurisdiction. Additionally, our jurisdiction in this matter is limited to settling claims by federal civilian employees for relocation expenses incident to transfers of official duty station. The claim for \$53,812 is cognizable, if at all, under the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721 (1944). Katherine Kruse, 14656-TRAV, 99-1 BCA ¶ 30,252; Charles A. Miller, GSBCA 13679-RELO, et. al., 97-1 BCA ¶ 28,865.

The agency acted correctly in denying reimbursement of the \$5295 VA funding fee. The claim for \$53,812 is dismissed for lack of jurisdiction

ANTHONY S. BORWICK
Board Judge