

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 2, 2002

GSBCA 15799-RELO

In the Matter of CRAIG A. CZUCHNA

Craig A. Czuchna, Paducah, KY, Claimant.

Patti Hildebrand, Travel Division, Department of Energy, Germantown, MD,
appearing for Department of Energy.

DANIELS, Board Judge (Chairman).

The Department of Energy transferred Craig A. Czuchna to Paducah, Kentucky, and shortly thereafter, Mr. Czuchna bought a house there. The agency reimbursed Mr. Czuchna for most of the transaction costs he incurred in making this purchase. Of the costs it did not repay, the employee asks us to decide whether two – a tax service fee and an underwriting fee – should have been the Government's responsibility. We comply with his request, but find that the agency acted consistent with applicable regulation in denying reimbursement.

The Department of Energy cites as authority for its action a decision of the Comptroller General, George J. Wehrstedt, B-192,851 (May 11, 1979). In that decision, the Comptroller General held as follows: Reimbursement of relocation expenses is governed by the Federal Travel Regulation (FTR). The FTR prohibits reimbursement of any expense which is found to be part of the finance charge imposed by the mortgage lender under Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR pt. 226), unless the expense in question is specifically authorized by the FTR. Whether a tax service fee or an underwriting fee is a finance charge must be determined with reference to Regulation Z. Because a tax service fee and an underwriting fee are both made incident to and as a condition of an extension of credit, they are finance charges under Regulation Z. They are consequently not reimbursable.

Mr. Czuchna understands that this decision justifies the agency's action, but he believes that the decision is wrong and requests that the Board reconsider the reasoning underlying its conclusion. He says that he moved to Paducah in the interest of the Government, bought a house there because he needed a place in which to live, could not have bought the house without a mortgage, and could not have obtained a mortgage without paying the tax service fee and underwriting fee. Thus, in his view, he incurred the cost of

these two fees in the interest of the Government, so the Government should reimburse him for the cost.

Wehrstedt is an old decision, so the agency's reliance on it is unusual. Nevertheless, the reasoning and conclusion of the decision remain valid, as the Board has stated on many occasions (though never referencing that case itself). *E.g.*, Daniel H. Coney, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610; Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339; Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281; Richard A. Poisel, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284 (2000); Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513 (1997).

The FTR lists expenses the Government will reimburse, and others which it will not reimburse, when they are incurred by a transferred employee in purchasing a residence at his new duty station. 41 CFR 302-6.2 (2001).¹ Among the nonreimbursable expenses are: "No 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 [elsewhere in the FTR]." 41 CFR 302-6.2(d)(2)(v). The Truth in Lending Act defines "finance charge" to be "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) (2000). Regulation Z defines the term similarly: "It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." 12 CFR 226.4(a).

Tax service fees are generally charged by a lender to monitor tax assessments on mortgaged property. Underwriting fees are generally charged by a lender to cover the cost of having a loan underwritten. These fees are not usually denominated as finance charges on real estate transaction settlement sheets. Nevertheless, they are paid by the consumer and imposed by the creditor as incident to the extension of a mortgage loan (a form of credit). Consequently, they are "finance charges," as that term is defined in the Truth in Lending Act and Regulation Z. Reimbursement of these fees is not specifically authorized in the FTR. The fees are therefore not reimbursable by the transferring Government agency. All of the Board decisions cited above enunciate this holding.

Having adopted the Comptroller General's reasoning and conclusion as to the reimbursability of tax service fees and underwriting fees associated with real estate transactions of transferred employees, and having reiterated our holding many times over the past several years, we decline to reject it now. As required by the FTR, Mr. Czuchna will have to absorb the cost of these fees as expenses of his relocation to Kentucky.

The claim is denied.

¹We cite to the regulation as in effect at the time Mr. Czuchna began his job in Kentucky. In the next edition of the Code of Federal Regulations, similar provisions, applicable to employees who begin their new jobs on or after February 19, 2002, will appear at 41 CFR 302-11.200 to -11.202. 66 Fed. Reg. 58,194, 58,235 (Nov. 20, 2001).

STEPHEN M. DANIELS
Board Judge