

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

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October 3, 2002

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GSBCA 15860-RELO

In the Matter of JEFFREY B. HICKS

Jeffrey B. Hicks, Arlington, VA, Claimant.

Charles N. Stowell, Certifying Officer, Department of State, Washington, DC,  
appearing for Department of State.

**HYATT**, Board Judge.

Claimant, Jeffrey B. Hicks, challenges the Department of State's disallowances of certain expenses incurred in connection with real estate transactions incident to two permanent changes of station (PCSs). The first PCS was from Pensacola, Florida, to Miami, Florida, in November 1999. The second transfer was from Miami, Florida, to Washington, D.C., in August 2001. His claim concerns costs incurred in purchasing residences at the new duty stations.

Pensacola - Miami

The first transaction at issue was the purchase of a house in Miami, Florida. Claimant submitted a voucher for reimbursement of real estate transaction expenses. The agency disallowed two claimed expense items -- owner's coverage for title insurance and the Department of Veterans Affairs (VA) funding fee in the amount of \$1704. Claimant argues that both are recoverable under the Federal Travel Regulation (FTR).

VA Funding Fee

With respect to the VA funding fee, Mr. Hicks points us to FTR section 302-6.2(d)(1)(i), which states that specified miscellaneous expenses are reimbursable in connection with the purchase of a residence provided they are customarily paid by the purchaser of a residence and to the extent they do not exceed amounts customarily paid in the locality of the residence. 41 CFR 302-6.2(d)(1)(i) (2000). One of the items expressly permitted to be reimbursed is an "FHA [Federal Housing Authority] or VA fee for the loan

application." Mr. Hicks provides, in support of his claim, a written statement from his mortgage company asserting that the VA funding fee is the "fee that all applicants for a VA loan must pay in order to participate in the VA loan program" and that "there is no other fee that exists that must be paid to VA by the applicants prior to their participation." From this, Mr. Hicks argues that he should be reimbursed for the VA funding fee.

Regardless of the statement made by claimant's mortgage company, there is indeed a distinction between a VA application fee and the VA funding fee. This distinction has been addressed by the Board in Peter C. Wagner, GSBCA 13907-RELO, 97-1 BCA ¶ 28,793, which explains that the VA funding fee is comparable to points assessed in connection with a conventional mortgage, and thus is considered to be a finance charge. Accord Anders E. Flodin, 64 Comp. Gen. 674 (1985). In contrast, loan application fees are reimbursable because they are charged to all applicants who seek a mortgage loan, regardless of whether credit is actually extended or not. William T. Bigby, B-221,162 (June 10, 1986). Once credit has been extended, expenses that are determined to be part of the finance charge under the Truth in Lending Act and Regulation Z (of the Federal Reserve System Board of Governors) are not reimbursable under the FTR unless specifically authorized. The VA funding fee, or "loan fee," is required to be collected under 38 U.S.C. § 3729 (2000), as a condition to the making, guaranteeing or insuring of a loan through the VA. By its nature, then, the funding fee is an element of the cost of obtaining credit, and thus is part of the finance charge. Since this is not a charge that is specifically authorized to be reimbursable, it is not recoverable under the FTR. 41 CFR 302-6.2(d)(2)(v); Alfred A. Davis, GSBCA 15888-RELO (Sept. 11, 2002); Michael J. Smith, GSBCA 15672-RELO, 02-1 BCA ¶ 31,771; Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31339; Robert J. Szerszynski, GSBCA 14350-RELO, 98-2 BCA ¶ 29,984. The State Department properly disallowed this expense.

#### Owner's Title Insurance

Claimant also asserts that his mortgage company required him to purchase an owner's title insurance policy for the residence he purchased in Miami. As such, he contends this expense item should also have been reimbursed.

Although the cost of lender's title insurance is reimbursable as a miscellaneous expense, an owner's title insurance policy paid for by the employee in connection with the purchase of a residence is generally considered to be for the employee's protection and is not a reimbursable item of expense under FTR 302-6.2(d)(2)(i). There is an exception to this rule, however: owner's title insurance coverage may be reimbursable if it is a prerequisite to financing or if it is inseparable from the cost of other insurance required for financing or the transfer of the property. When the coverage is required, it may be reimbursed if it is an expense that is customarily paid by the purchaser of the residence in the locality of the new official station and to the extent the cost does not exceed amounts customarily paid for such insurance. 41 CFR 302-6.2(d)(1)(ix).

Here, claimant has told us that the mortgage company required him to buy title insurance, but has not provided any corroborating written confirmation of this requirement from the lender. Even if this were sufficient evidence to establish that the insurance was a

prerequisite to financing, however, claimant has not established that, in this locality, buyers customarily pay for owner's title insurance and that the amount charged did not exceed amounts customarily paid for the coverage. It is claimant's burden to furnish evidence that local custom supports his position. See, e.g., Ernestine S. Canty, GSBCA 15541-RELO, 01-2 BCA ¶ 31,612. In the absence of sufficient information to establish that the expense should be reimbursed, the agency properly disallowed the cost. Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281. If, however, claimant is able to furnish written statements from the mortgage company or local realtors confirming that owner's title insurance was required, that it was customary at the time claimant purchased his residence in Miami for buyers to pay for owner's title insurance, and that the cost did not exceed amounts customarily paid, the State Department should reconsider its position with respect to the reimbursement of this item of cost.

### Miami - Washington, D.C.

For his second PCS move, from Miami to Washington, D.C., claimant questions the State Department's decision to disallow some five items of expense incurred in connection with the purchase of a residence in Arlington, Virginia. The items of cost that were disallowed included a recording fee, a closing fee, owner's title insurance, an administration fee, and a tax service fee. The State Department has not offered a specific explanation for its disallowance of the costs, but simply states they are not allowable under the FTR. In seeking reimbursement of these items, claimant offers a general statement to the effect that his realtors, closing agents, and mortgage company representative have assured him that most of these costs are customary and commonplace in residence transactions in both the Miami and metropolitan Washington, D.C. areas.

#### Recording Fee

Under the FTR, recording fees are reimbursable legal and related expenses if customarily paid by the buyer in the locality of the new duty station and if not in excess of amounts customarily paid in that locale. 41 CFR 302-6.2(c) (2001). Claimant's conclusory summation of his conversations with lenders and realtors does not suffice to make the required showing. If he is able to supply written evidence from the lender or local realtors corroborating his assertion, the State Department should reconsider its position with respect to this cost item.

#### Owner's Title Insurance

The discussion of this item above, with respect to the purchase of the residence in Miami, is equally applicable here. Again, the State Department should reconsider its disallowance of this cost item if Mr. Hicks furnishes appropriate written evidence that the insurance was required by the lender, that it is customarily paid by buyers in this area, and that the amount charged does not exceed what is customarily paid.

#### Closing Fee

The closing fee is the type of miscellaneous expense that may be reimbursed if it is customarily paid by the buyer in the local area and does not exceed amounts customarily charged for the service provided. 41 CFR 302-6.2(d)(1); James A. Schampers, 69 Comp. Gen. 573 (1990). Thus, if Mr. Hicks is able to supply written evidence from the lender or local realtors corroborating his assertion, the State Department should reconsider its position with respect to this cost item.

#### Administration Fee

There is no explanation in the record of the nature of the services for which this fee was charged. Mr. Hicks needs to obtain a written explanation of what the fee is from either the lender or a realtor, and, if it is similar to the expenses considered to be recoverable under 41 CFR 302-6.2(d)(1), written confirmation that this expense is customarily paid by the purchaser in the local area and that the amount paid does not exceed customary charges for the service.

#### Tax Service Fee

As we explained above in addressing the VA funding fee, most fees that are assessed in connection with the extension of credit are considered to be nonreimbursable finance charges under the FTR. The Board has consistently held that the tax service fee is a nonreimbursable charge. E.g., Daniel H. Coney, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610; Janeen M. Rosenberg, GSBCA 15591-RELO, 01-2 BCA ¶ 31,614; Richard A. Poisel, GSBCA 15333-RELO, 01-1 BCA ¶ 31,284 (2000). Thus, the State Department properly disallowed this expense.

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CATHERINE B. HYATT  
Board Judge