

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 16, 2003

GSBCA 15975-RELO

In the Matter of FRANK D. CAIRO

Frank D. Cairo, Jackson, NJ, Claimant.

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

NEILL, Board Judge.

Claimant, Mr. Frank D. Cairo, is an employee in the Department of State's Bureau of Diplomatic Security. In late July 2002, Mr. Cairo purchased a home near his new permanent duty station in New York City. In connection with this purchase, he sought reimbursement in the amount of \$9672.81 for various closing costs. The agency has allowed only \$1535 of the amount claimed. Mr. Cairo asks that we review the agency's determination. Upon review of the record before us, we affirm the agency's determination.

Background

In seeking reimbursement for closing costs associated with the purchase of his house, Mr. Cairo submitted a voucher listing the following costs:

1. Appraisal fee	\$ 65.00
2. Title insurance binder	\$1770.00
3. Attorney's fee	\$1000.00
4. Recording fee	\$ 175.00
5. City/County tax stamps.....	\$1875.00
6. State tax stamps	\$1650.00
7. Commitment fee.....	\$ 480.00
8. Discount Funding Associates.(905).....	\$ 3050.00
9. Lender's tax fee.....	\$ 79.00
10. Hazard insurance.....	\$ 156.00
11. Overnight delivery.....	<u>\$ 50.00</u>

Total.....\$ 9627.81¹

On review of Mr. Cairo's claim, the agency concluded that, based on applicable provisions of the Federal Travel Regulation (FTR), Mr. Cairo was entitled to payment of not more than \$1535. Specifically, the allowed expenses related to the appraisal fee, the recording fee, and the attorney's fee.

Discussion

We discuss the unallowed expenses and the agency's treatment of them in the order in which they appeared on Mr. Cairo's voucher.

Mr. Cairo has asked to be reimbursed for \$1770 he paid at closing for a title insurance binder. Under the applicable FTR provisions dealing with title insurance, the Government will reimburse an employee for the cost of mortgage title insurance or owners's title insurance when it is purchased for the protection of and required by the lender. 41 CFR 302-11.200(f)(8), (9) (2002) (FTR 302-11.200(f)(8), (9)). However, the cost of owner's title insurance paid for in connection with the purchase of a residence by the claimant for his or her own protection is not reimbursable. Id. 302-11.202(c).

The agency advises us that it is prepared to reimburse Mr. Cairo for the cost of the lender's title insurance coverage but has "suspended" this payment until Mr. Cairo provides a breakdown of the total \$1770 so that it can determine what portion of the cost claimed is attributable to insurance purchased for the claimant's protection and what is attributable instead to coverage required by claimant's lender. Although Mr. Cairo was furnished a copy of the agency's report and given an opportunity to comment on it, he has provided us with no additional information on this or any other element in his claim. Under the circumstances, therefore, we find the agency's decision to suspend payment of title insurance costs reasonable.

Mr. Cairo seeks \$1875 for what he refers to in his voucher as "City/County tax stamps." As shown on the settlement sheet, this figure actually refers to city property tax. The agency has disallowed this part of Mr. Cairo's claim on the ground that under the FTR, property taxes paid at settlement are not reimbursable. This is of course correct. See FTR 302-11.202(e). We have, on more than one occasion, confirmed that property taxes are not reimbursable. E.g., William D. Genda II, GSBCA 15227-RELO, 01-1 BCA ¶ 31,287; David G. Winter, GSBCA 14229-RELO, 98-1 BCA ¶ 29,631.

¹ The total of \$9627.81 appearing on the claimant's voucher obviously is in error. The correct total of the costs listed above should have been \$10,350. The figure of \$9627.81, however, is the total shown on the settlement sheet of charges to be paid from the borrower's funds at settlement. This figure differs from the correct total of \$10,350 above because Mr. Cairo included in his voucher one cost listed on the settlement sheet as being for the seller's account and omitted a limited number of other costs shown on the same settlement sheet as being for his own (borrower's) account.

The agency's objection to Mr. Cairo's request for reimbursement of \$1650 for state tax stamps is simply that this is not a cost actually incurred by him. The figure appears on the settlement sheet in the column of costs said to be "paid from seller's funds at settlement." It is fundamental to the FTR's reimbursement provisions for residential transactions that the reimbursement be for expenses the employee has incurred. FTR 302-11.1. In determining what expenses an employee actually incurred and paid in connection with a housing transaction, the Board looks to the settlement sheet. See Marion L. Ladd, GSBCA 15138-RELO, 00-1 BCA ¶ 30,890 (and cases cited therein). Although the agency has advised the claimant why this part of the claim has not been allowed, Mr. Cairo submitted nothing either to the agency or to us which would suggest that the cost in question was not borne by the seller. We, therefore, have no reason to question the accuracy of the settlement sheet entry or the agency's subsequent conclusion that the \$1650 for state tax stamps is not allowable because it was not an expense incurred by the claimant.

Mr. Cairo's claim of reimbursement of \$480 for a commitment fee was rejected by the agency on the ground that the fee was an unallowable finance charge. The agency's action was correct. A loan commitment fee is a charge imposed by a lender in order to set aside funds for a borrower. We have held that this fee is not reimbursable under the FTR. David P. Brockelman, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971. We based our ruling on the fact that the FTR expressly provides that, unless specifically authorized, a residential transaction expense is not reimbursable if it is determined to be part of the finance charge under Regulation Z issued by the Board of Governors of the Federal Reserve System. FTR 302-11.202(g). Regulation Z explains that a finance charge is "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) (2002). Because a loan commitment fee, by its very nature, readily falls into the category of a finance fee and reimbursement of the fee is not specifically authorized under the FTR, the agency has concluded correctly that the fee may not be reimbursed.

On his original claim, Mr. Cairo listed the following: "Discount Funding Associates (905).....\$3050.00." Line 905 on his settlement sheet reads "To Discount Funding Assoc., Inc. rebate." It is not altogether clear just what this charge is. The figure itself amounts to one percent of the principal amount of the borrower's loan. The agency has assumed that this is a funding fee imposed as a condition to the extension of credit. Since such a fee falls into the category of an unauthorized finance charge, the agency has concluded that reimbursement of the amount claimed is not permissible under the FTR.

We are not convinced that the use of the term "Funding" on the settlement sheet entry for line 905 necessarily refers to a funding fee rather than to a corporate payee with the word "Funding" in its name. Nevertheless, in the absence of any clarification from the claimant himself, we are prepared to agree with the agency – at least to the point that the payment made to "Discount Funding Assoc., Inc." is some type of "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." As such, we agree that it is not reimbursable.

Of course, if Mr. Cairo can demonstrate that all or a part of the \$3050 being sought for this part of his claim represents a finance charge for which reimbursement is specifically authorized under FTR 302-11.200, then those charges should be reimbursed. In the absence

of such a showing, however, the agency, as in the case of Mr. Cairo's claim for the cost of title insurance, has acted properly by denying or suspending payment.

The agency concluded that the tax fee of \$79 which Mr. Cairo paid at settlement was also an unallowable finance charge under the FTR. This determination is clearly correct and in line with several Board decisions regarding the same fee. E.g., Laura A. Cushler, GSBCA 14210-RELO, 98-2 BCA ¶ 29,792; Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513; Floyd L. Craft, GSBCA 13698-RELO, 97-2 BCA ¶ 29,092.

Mr. Cairo's claim for reimbursement of \$156 paid at settlement for hazard insurance was denied by the agency as a recurring operating expense not reimbursable under the FTR. It is, of course, correct that operating or maintenance costs included among residence transaction expenses are not recoverable. FTR 302-11.202(f). However, and perhaps more to the point, the cost of optional insurance which an employee chooses to obtain for his or her own protection in connection with the purchase of a residence is specifically identified in the FTR as not allowable. FTR 302-11.202(c). See Jeffrey B. Hicks, GSBCA 15860-RELO (Oct. 3, 2002).

The agency's treatment of Mr. Cairo's claim of \$50 for overnight delivery is terse and to the point. The expense is said to be a non-reimbursable finance charge because "there is nothing in the claim that shows it is anything but that." Mr. Cairo's voucher simply states "Overnight Delivery....\$50." His settlement sheet indicates that there were three charges, but no information has been provided by the claimant regarding the need or nature of the three deliveries.

In the past, we have noted that, although there is no specific entitlement to reimbursement of overnight mailing charges under statute or regulation, the provisions of the FTR for reimbursement of incidental charges, if required and not simply used as a convenience, may justify reimbursement. Sandra L. Wilks, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962. Of course, if it is ultimately determined that the overnight charge was imposed directly or indirectly by the lender, then that charge remains an unallowable finance charge. In the absence of any information indicating that the overnight delivery charges in Mr. Cairo's case were necessary and were required by some party or parties other than the lender, we have no choice but to concur with the agency. In the absence of a showing to the contrary, we assume that these deliveries were required by the creditor as an incident to or a condition of the extension of credit. Accordingly, the costs of these deliveries are not reimbursable.

For the reasons stated above, the determinations of Mr. Cairo's agency regarding his claim are affirmed.

EDWIN B. NEILL
Board Judge