

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

December 9, 2003

GSBCA 16281-RELO

In the Matter of PAULA K. FOWLER

Paula K. Fowler, Lake Havasu City, AZ, Claimant.

Jim Kernan, Accounting Operations Branch, National Business Center, Office of the Secretary, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Claimant, Paula K. Fowler, is an employee of the Department of Interior, Bureau of Indian Affairs. She has requested this Board to review an agency denial of her claim for reimbursement of loan origination fee costs incurred during the sale of her residence at her old duty station as the result of her permanent change of station (PCS) in September 1999.

Factual Background

In Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281, this Board rendered a decision with regard to claimant's initial request to the agency for reimbursement of various costs arising from her PCS. With regard to the issue of the loan origination fee, we stated:

Claimant seeks reimbursement of the loan origination fee in the amount of \$1905.50. The agency denied reimbursement because it determined a fee of this nature is not reimbursable in conjunction with the sale of a residence.

Federal Travel Regulation (FTR) 302-6.2(d)(1)(ii) states:

The following items are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station . . . to the extent they do not exceed amounts customarily paid in the locality of the residence: . . . (ii) loan origination fees.

41 CFR 302-6.2(d)(1) (1997) (FTR 302-6.2(d)(1)).

The settlement statement for the sale of the residence clearly shows that \$1905.50 was paid by the claimant for a loan origination fee. Also, the Employee Application for Reimbursement of Expenses Incurred shows that a loan origination fee was paid by the seller. A loan origination fee, paid by the seller during the sale of a residence, is reimbursable if customarily paid by the seller. David H. Moore, GSBCA 15091-RELO, 00-1 BCA ¶ 30,748. While the record indicates that claimant paid the loan origination fee, there is no indication in the record that the seller customarily does pay this fee in the locality of the residence. If claimant is able to supply such information to the agency, claimant would be entitled to reimbursement.

01-1 BCA at 154,473-74.

Claimant submitted information to the agency to prove that the seller customarily does pay a loan origination fee in the locality of her residence at the old duty station. She submitted a letter dated December 1, 2002, from claimant's seller's agent which stated:

During the sale of [claimant's] home, [claimant] paid \$1909.50 as a loan origination fee. This is a fee that is paid by the seller in a lot of sales in the Portland metropolitan area based on negotiations with the seller.

Claimant also submitted a letter dated March 18, 2002, from a senior housing specialist of the U.S. Department of Housing and Urban Development which read in relevant part:

Loan Origination fee of \$1905.50 is an allowable charge to the borrower but may be negotiated for the seller to pay, and is therefore not uncommon for the seller to pay.

The agency did not consider the two letters submitted by claimant to be sufficient to support her claim for reimbursement of the loan origination fee. The agency stated:

As established by the [previous] decision . . . concerning this employee, a loan origination fee paid by the seller during the sale of a residence, is reimbursable if customarily paid by the sellers in the locality where the residence was sold. A reclaim for the loan origination fee of \$1905.50 . . . was disallowed because it did not firmly establish that the seller usually and customarily pays the loan origination fee in the Portland metropolitan area. A letter submitted by [the] former realtor . . . stated that the loan origination fee "is paid by the seller in a lot of sales based on negotiations with the seller". An additional hand written line was added to include "in the Portland metropolitan area". A statement of this nature is too vague to satisfy the requirement that it is usual and customary for the seller to pay this fee for the Portland area. In fact, it substantiates that the payment of this fee is a negotiable item. Further, the Addendum to Real Estate Sale Agreement clearly states that the seller and buyer agree that "Seller to pay \$7,500 of buyer's prepaids and closing costs.

Additionally, a letter was submitted [from] . . . the U.S. Department of Housing and Urban Development office in Santa Ana, CA, stating that the loan origination fee "is an allowable charge to the borrower but may be negotiated for the seller to pay". A handwritten addition stated that it "is therefore not uncommon for the seller to pay". This statement does not satisfy the requirement that it usual and customary for the seller to pay the loan origination fee, only that it may be negotiated. The letter also does not specify whether her statements pertain to all real estate transactions, or only those in Portland, OR.

The claim for the reimbursement of the loan origination fee was denied by the National Business Center staff due to the reasons given above. The employee has not provided sufficient documentation to satisfy the requirement of proving that payment of a loan origination fee by the seller of a residence in the Portland, OR area is usual and customary. All she has provided is documentation to show that payment of this fee is a negotiable item between the seller and the buyer, which does not obligate the government to reimburse her for this fee.

Discussion

Claimant has submitted information attempting to prove local custom. We have previously stated that when questions of local custom arise, as in other matters, the burden is on the claimant to show why he or she should prevail. Board Rule 401(c) (48 CFR 6104.1(c) (2002)); Robert Messie, GSBCA 13807-RELO, 97-1 BCA ¶ 28,924; Christopher L. Cretien, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701 (1996). The claimant has not met this burden. The deciding factor is whether it is customary in the area for the buyer or the seller to pay a loan origination fee. David H. Moore, GSBCA 15091-RELO, 00-1 BCA ¶ 30,748. The statements of both the realtor and the HUD official both stop short of the issue, as they indicate only that the seller may pay the loan origination fee.

Based on the information submitted by claimant, the agency correctly denied reimbursement of the loan origination fee.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge