

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 2, 2004

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GSBCA 16391-RELO

In the Matter of WILLO D. LOCKETT

Willo D. Lockett, Martinez, GA, Claimant.

Elizabeth Rodriguez, Lead/Coordinator, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

**DANIELS**, Board Judge (Chairman).

In September 2003, the Department of Veterans Affairs (VA) hired Willo D. Lockett to work in its medical center in Augusta, Georgia. To accept this assignment, Ms. Lockett moved from Virginia, where she had been working for another agency. Among the relocation benefits authorized for this transfer in the interest of the Government was reimbursement of expenses the employee might incur in purchasing a home in Georgia. Ms. Lockett did purchase such a home, and the VA did reimburse most of the transaction expenses she claimed. The agency did not reimburse a few of the expenses, however, and at Ms. Lockett's request, we consider whether that action was proper. We conclude that as to each of the expenses at issue, the VA acted correctly in denying reimbursement.

The expenses with which we are concerned are as follows: underwriting fee, tax service fee, loan application or "administrative" fee, processing fee, mortgage broker's fee, and post-closing compliance fee. We discuss these expenses below.

## Underwriting fee and tax service fee

The Federal Travel Regulation (FTR) establishes as a general rule, "Any 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 in § 302-11.200" is not reimbursable. 41 CFR 302-11.202(g) (2003). Underwriting and tax service fees have both been held many times to be charges paid incident to and as a prerequisite to the extension of credit, and they are consequently not reimbursable. E.g., Craig A. Czuchna, GSBCA 15799-RELO, 02-2 BCA ¶ 31,898; Pamela R. Harris, GSBCA 15645-RELO, 01-2

BCA ¶ 31,640; Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281; Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513 (1997).

#### Loan application fee, processing fee, and mortgage broker's fee

The FTR contains an exception to the general rule stated above: a loan origination fee and similar charges, although paid incident to and as a prerequisite to the extension of credit, are reimbursable. 41 CFR 302-11.200(f)(2); Verna Pope, GSBCA 15718-RELO, 02-1 BCA ¶ 31,822; Larry W. Poole, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776. A loan origination fee is intended to compensate the lender for administrative expenses incurred in originating and processing a loan. Pope; Kathleen M. Lewis, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616; Joseph Thompson, GSBCA 15077-RELO, 00-1 BCA ¶ 30,615 (1999). Once an employee has been reimbursed for a loan origination fee in the amount of one percent of the loan amount, additional reimbursement is possible only if the employee provides evidence that the higher rate (a) does not include prepaid interest, points, or a mortgage discount; and (b) is customarily charged in the locality where the residence is located. 41 CFR 302-11.201.

The loan application fee, processing fee, and mortgage broker's fee Ms. Lockett paid are each similar in nature to a loan origination fee. The settlement statement for the purchase of her residence shows that she paid separately a fee designated "loan application fee" in the amount of one percent of the loan amount. When matters of local custom arise, the burden is on the claimant to show why he or she should prevail. Lewis (citing many cases). Ms. Lockett has not provided any evidence that a rate higher than one percent is customarily charged in Martinez, Georgia, the locality where the residence is located. Accordingly, no additional reimbursement is permissible for any of the three additional species of loan origination-like fees. E.g., David L. Malone, GSBCA 15817-RELO, 02-2 BCA ¶ 31,991; Harris; Waymon T. Saxon, Jr., GSBCA 15419-RELO, 01-1 BCA ¶ 31,209 (2000); Thompson.<sup>1</sup>

#### Post-closing compliance fee

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<sup>1</sup>We add these comments about two of the fees at issue. First, if Ms. Lockett had demonstrated that the loan application fee was a fee imposed on all applicants whether or not credit is actually extended, it would not be considered an unallowable finance charge. Cindy L. Luciano, GSBCA 16403-RELO (July 15, 2004). She has not made such a demonstration. Second, the VA appears to believe that the mortgage broker's fee was actually a real estate broker's commission. If it were such a charge, it would not be reimbursable, as the VA maintains. This is because the FTR allows for reimbursement of a commission only on the sale of a house at an employee's old duty station, not on the purchase of a house at the new duty station. 41 CFR 302-11.200(a), .202(b); Jeffrey L. Troy, GSBCA 16072-RELO, 03-2 BCA ¶ 32,329. The record makes clear, however, that the fee Ms. Lockett paid went to a mortgage broker, not a real estate broker. The denial of reimbursement is therefore more appropriately based on the employee's failure to prove that a loan origination fee in excess of one percent of the loan amount was customarily charged in Martinez, Georgia, at the time she bought her house.

The FTR allows reimbursement of "[o]ther expenses of sale and purchase made for required services that are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station." 41 CFR 302-11.202(f)(12). Although we are not sure what a "post-closing compliance fee" represents, such a fee could conceivably be a reimbursable "other expense." Jeffrey B. Hicks, GSBCA 15860-RELO, 03-1 BCA ¶ 32,083 (2002). Ms. Lockett has not supplied any evidence, however, that this fee is customarily paid by a buyer in Martinez, Georgia, and that the amount she paid does not exceed the amount customarily charged for it. (She has not even explained the nature of the services covered by the fee.) The VA therefore acted properly in denying reimbursement of this item.

### Importance of Board decisions

As the reader has undoubtedly recognized, all of our conclusions in this case are buttressed by citations to numerous decisions previously issued by the Board. Today's decision makes no new law. As we have previously explained, our "travel and relocation decisions are [all] precedential, which means that they are meant to be used as an example or a standard in resolving subsequent similar claims." Edward W. Irish, GSBCA 15968-RELO, 03-1 BCA ¶ 32,122 (2002) (quoting D. Gregory Arnold, GSBCA 15692-TRAV, 02-1 BCA ¶ 31,772, and Brent A. Myers, GSBCA 15466-RELO, 01-2 BCA ¶ 31,458). Thus, these decisions, like those of other courts and boards, serve an educational purpose as well as resolving particular disputes. We expect agencies and employees who must interpret and apply travel and relocation statutes and regulations to read and reflect on our decisions before making determinations or challenging them. The VA did so as to Ms. Lockett's claim. By citing many of those decisions in its denial of the claim, it alerted the employee to the reasons for its determination. Had the employee read the decisions cited, she would have understood why the agency acted as it did.

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STEPHEN M. DANIELS  
Board Judge