

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

April 12, 2005

---

GSBCA 16485-RELO

In the Matter of CHARLES W. ADAMS

Charles W. Adams, Northvale, NJ, Claimant.

Shirley L. Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Mr. Charles W. Adams, is a civilian employee of the Army Corps of Engineers. He has asked us to review a ruling by his agency that he is not entitled to reimbursement of a commitment fee and application fee he was required to pay in conjunction with his purchase of a residence near his new duty station. For the reasons set out below, we affirm the agency's decision denying reimbursement of the commitment fee but grant Mr. Adams' claim for reimbursement of the application fee.

## Background

In January 2003, Mr. Adams underwent a permanent change of station move from Waipahu, Hawaii, to Northvale, New Jersey. Among the real estate costs claimed for his purchase of a residence near his new duty station, Mr. Adams sought \$724 for a commitment fee paid to his mortgage company and \$300 paid to the same company as an application fee.

Mr. Adams' agency denied reimbursement for these two fees on the ground that reimbursement of both fees is prohibited pursuant to section C14002-A.4.b(5) of the Joint Travel Regulations (JTR) of the Department of Defense -- to which Mr. Adams, as a civilian employee of the Department, is subject.

Section C14002-A.4 of the JTR is a listing of miscellaneous reimbursable and non-reimbursable expenses for the sale or purchase of a transferred employee's residence. The particular provision cited by the agency in this case, namely C14002-A.4.b(5), is found among the listing of non-reimbursable items which follows the listing of reimbursable items in C14002-A.4.a. It reads:

[N]o fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, PL 90-321, and Regulation Z issued in accordance with PL 90-321 by the Board of Governors of the Federal Reserve System unless specifically authorized in subpar. a above.

JTR C14002-A.4.b(5) (Jan. 2003).

The subparagraph a referenced in this provision of the JTR lists twelve types of reimbursable expenses. Of interest to us here are only the first two. The first reimbursable expense reads; “FHA or VA fee for a loan application.” JTR C14002-A.4.a(1). The second reimbursable expense reads:

[L]oan origination fees and similar charges such as loan assumption fees and loan transfer fees; (A loan origination fee is a fee paid by a borrower to compensate a lender for administrative-type expenses incurred in originating and processing a loan. Reimbursement for a loan assumption fee, a loan transfer fee, or a similar charge also may be allowed, if it is assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee. . . .).

JTR C14002-A.4.a(2).<sup>1</sup>

The agency’s reasoning in denying Mr. Adams’ request for reimbursement is that both the commitment fee and the application fee are part of a finance charge paid incident to and as a prerequisite to the extension of credit. In the absence of a specific authorization under JTR C14002-A.4.a authorizing reimbursement of an employee for these fees, the agency has concluded that the fees are not allowable.

Mr. Adams disagrees with the agency’s determination. He states that the fees are not prepaid interest, points, or a mortgage discount, but rather, are fees paid to the mortgage company for administrative expenses related to the loan.

---

#### Discussion

So far as the commitment fee is concerned, we agree with the agency that it is not reimbursable. As we have previously noted, this fee, normally imposed by the lender in order to set aside funds for the borrower or as a “lock-in” fee that a borrower pays to bind the lender to make the mortgage, is considered a finance charge under the Truth in Lending Act and Regulation Z. *Rodney D. Hartleib*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Jeffrey W. Rose, II*, GSBCA 16386-RELO, 04-2 BCA ¶ 32,723; *Jack E. Hudson*, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351; *David P. Brockelman*, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971.

---

<sup>1</sup> Provisions similar to those in JTR C14002-A.4 appear in the Federal Travel Regulation at 41 CFR 302-11.200, .202 (2002).

With regard to the application fee paid by Mr. Adams, we disagree with the agency conclusion. It is, of course, correct that JTR C14002-A.4.a(1), which expressly identifies reimbursable fees for a loan application, speaks only of FHA and VA application fees. We are not, however, necessarily bound by a mortgage lender's particular characterization of a charge. As we recently pointed out, regardless of the terminology used to characterize a transaction, we must look to the substance of the transaction and the charge. *Michael Blazis*, GSBCA 16519-RELO (Feb. 3, 2005).

The residence which Mr Adams purchased is located in the state of New Jersey. His purchase of it, therefore, was subject to the laws of that state. In *Blazis*, we had occasion to examine in detail the New Jersey statute and implementing regulations regarding fees that a person licensed as a mortgage banker or broker is permitted to charge incidental to the origination, processing, and closing of a mortgage loan transaction. The statute sets out seven fees which mortgage bankers and brokers are authorized to charge. No mention is made of "loan origination fee" as such. An "application fee," however, is identified in the statute as allowable. N.J. Stat. Ann. § 17:11C-23 (West, WESTLAW through L2005, c. 1 to 42). In implementing this statute, the New Jersey Department of Banking defines "application fee" as follows: "[A] fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed." N.J. Admin. Code tit. 3, § 1-16.2 (a)(1) (WESTLAW through Apr. 4, 2005). In view of this definition, we consider the application to be sufficiently similar to a loan origination fee as to be reimbursable under JTR C14002-A.4.a(2).

Since no amount has been entered for a loan origination fee on the settlement sheet for the purchase of Mr. Adams' residence in Northvale, New Jersey, we conclude that he is entitled to reimbursement of his loan application fee as being equivalent to a loan origination fee.

#### Decision

Mr. Adams' claim for reimbursement of his commitment fee is denied. His claim for reimbursement of his application fee is granted.

---

EDWIN B. NEILL  
Board Judge