

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 11, 2005

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GSBCA 16496-RELO

In the Matter of TIMOTHY R. DEFOGGI

Timothy R. Defoggi, Alexandria, VA, Claimant.

W. David Malone, Certifying Officer, Department of State, Washington, DC,  
appearing for Department of State.

**GOODMAN**, Board Judge.

Claimant, Timothy R. Defoggi, is an employee of the Department of State. He has asked this Board to review the agency's denial of reimbursement of expenses incurred during his permanent change of station (PCS).

## Background

Claimant was issued travel orders in April 2003 to accomplish a PCS move from his duty station in Parkersburg, West Virginia, to his new duty station in Washington, D.C. Claimant purchased a residence at the new duty station and submitted a voucher for reimbursement of costs associated with the purchase. The agency denied reimbursement of \$275 in attorney fees, \$3291.75 for a mortgage broker fee, and \$75 for a final inspection fee. Claimant requests our review of the agency's denial.

## Discussion

### Attorney Fees

Two similar items appear on claimant's settlement sheet under the designation "Title Charges" - a settlement or closing fee in the amount of \$175 paid to the law firm from the seller's funds (line 1101) and attorney fees in the amount of \$275 paid to the law firm from the borrower's (claimant's) funds (line 1107).<sup>1</sup> Charges for a title search, title insurance binder, and title bring downs were itemized and charged separately (lines 1102, 1104, and 1114). The agency did not reimburse claimant for the attorney fees, stating that claimant did not provide with the original voucher an itemization of services performed. Claimant subsequently supplied to the agency a copy of an electronic mail message from the attorney's office which stated only that "the charge is for [the law firm's] services as Closing Attorney." The message provided no further itemization.

The Federal Travel Regulation (FTR) makes specifically designated legal and related expenses reimbursable if they (1) are not included in brokers' or similar charges for which reimbursement is claimed under other categories, (2) are customarily paid by a purchaser of a residence in the locality in question, and (3) are in an amount not in excess of what is customarily paid in that locality. These legal and related expenses include charges for title searches, preparation of documents, and other legal services. 41 CFR 302-11.200 (d), (e) (2002) (FTR 302-11.200(d), (e)). Charges for these services are similar to the charges on lines 1102, 1104, and 1114 of the settlement sheet. Claimant did not supply sufficient information with regard to the attorney fees to assure the agency that such fees did not duplicate the other separately charged expenses and were reimbursable pursuant to the regulatory requirements. As it is the claimant's burden to demonstrate that costs are reimbursable, Paula K. Fowler, GSBCA 15384-RELO, 01-1 BCA ¶ 31,281, we conclude that the agency correctly denied reimbursement for these expenses.

### Mortgage Broker Fee

Claimant incurred a charge for a mortgage broker's fee in the amount of \$3291.75 (line 808). The agency bases its denial of reimbursement of the mortgage broker fee on FTR 302-11.202(b), which states that broker fees are not reimbursable. Claimant seeks reimbursement of this fee in the amount of one per cent of his loan (\$2926) as a loan origination fee. Line 801 of the settlement sheet, "Loan Origination Fee," contains no entry. Other entries relevant to this issue are lender paid broker's fee in the amount of \$1097.25 (line 809) (this amount is indicated as a credit against the mortgage broker's fee) and the processing fee in the amount of \$350 (line 810).

Claimant asserts that reimbursement of this fee is allowed pursuant to FTR 301-11.200(f)(2), which applies to "[l]oan origination fees and similar charges such as loan

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<sup>1</sup> It appears that claimant sought reimbursement for both charges, even though he did not incur the settlement or closing fee. It is not clear from the record whether the agency paid him for this fee.

assumption fees, loan transfer fees or other similar charges not to exceed 1 percent of the loan amount without itemization of the lender's administrative charges."

Claimant's loan officer has submitted a statement that "the mortgage broker fee . . . is the loan origination fee. Each lender calls it a different name but it is the Loan Origination Fee or Broker Fee that we did charge. It is 1.125% of the loan amount."

We have held that the regulations contemplate that ordinarily the loan origination fee will be charged by the lender. However, if it is clear that the administrative services for which such a fee is reimbursable - originating and processing a loan - are performed wholly or partially by another party such as a mortgage broker, the employee may be reimbursed for the other party's charge for such services. Michael L. Rivera, GSBCA 16488-RELO, 05-1 BCA ¶ 32,817 (2004); Philip R. Merkel, GSBCA 14688-RELO, 98-2 BCA ¶ 30,094. Thus, "mortgage broker fees" that are clearly loan origination fees by another name are exceptions to the rule stated in the FTR provision relied upon by the agency, and they are reimbursable pursuant to FTR 301-11.200(f)(2). Willo D. Lockett, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722.

While claimant's lender has submitted a statement that the fee in question is a "loan origination fee," this Board is not bound by the characterization of the charge by the mortgage lender. We must look to the substance of the transaction and the charge. Michael Blazis, GSBCA 16519-RELO (Feb. 3, 2005). The settlement sheet indicates that the mortgage broker fee actually incurred by claimant totaled \$2194.50, taking into account the credit from the lender. The mortgage broker charged a separate amount of \$350 as a processing fee for the loan, which is a major component of a loan origination fee. The amount of \$2195.50 actually charged as a mortgage broker's fee therefore does not appear to be compensation for administrative-type expenses incurred in originating and processing a loan, as a separate fee has been charged for these expenses. There is no basis in the record to determinate that the amount of \$2194.50 represents costs associated with loan origination fees. The burden is on claimant to establish his right to payment. Absent such evidence, this claim fails. See, e.g., Larry Wakefield, GSBCA 15823-RELO, 03-01 BCA ¶ 32,066 (2002). The agency correctly denied reimbursement for this expense.

### Final Inspection Fee

The agency states that the \$75 final inspection fee was determined to be a finance charge and not reimbursable. Claimant states that his residence was newly constructed and not completed when first inspected by the appraiser, and that the final inspection was part of the appraisal and required by the lender as a precondition of purchase. While claimant asserts that the inspection fee was part of the appraisal, the settlement sheet contains a \$50 charge for "appraisal fee" (line 803) and a separate \$75 charge for final inspection fee (line 805). There is no evidence to support claimant's statement that the final inspection fee was part of the appraisal.

Property inspection fees are reimbursable under the conditions stated in FTR 302-11.200(f)(11), which provides that "[e]xpenses in connection with environmental testing and property inspection" are reimbursable only when they meet all three of the following tests:

the fees must be (a) customarily paid by the purchaser of a residence in the locality in question, (b) in an amount no greater than is customarily paid in that locality, and (c) required by federal, state, or local law, or by the lender as a precondition to the purchase." Michael Cutaia, GSBCA 16271-RELO, 04-1 BCA ¶ 32,519 (2003); Verna Pope, GSBCA 15718-RELO, 02-1 BCA ¶ 31,822; see also Jack E. Hudson, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351; David P. Brockelman, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971. While claimant states that the final inspection fee was required by the lender as a precondition to purchase, he offers no evidence as to the first two conditions for reimbursement, and thereby fails in his burden to demonstrate that the expense is reimbursable. The agency correctly denied reimbursement of this fee.

Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge