

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 14, 2005

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GSBCA 16622-RELO

In the Matter of KEVIN M. FAHEY

Kevin M. Fahey, Warren, MI, Claimant.

Pamela J. Farr, Paralegal Specialist, United States Army TACOM Life Cycle Management Command, Warren, MI, appearing for Department of the Army.

**HYATT**, Board Judge.

Claimant, Kevin M. Fahey, was transferred by the Department of the Army from the Picatinny Arsenal in New Jersey to the Tank Automotive and Armaments Command (TACOM) in Warren, Michigan. His relocation benefits included reimbursement of allowable real estate expenses in connection with the purchase of a home at the new duty station. Mr. Fahey has questioned the Army's disallowance of two items of cost he believes should be reimbursed: a processing fee and a radon inspection fee.

## Mortgage Company's Processing Fee

The settlement statement for Mr. Fahey's purchase of the residence in Michigan reflects that, in connection with the mortgage loan, Mr. Fahey was charged a one percent loan origination fee in the amount of \$2440 and an additional loan processing fee of \$235. The Army paid the loan origination fee, but disallowed the loan processing fee as duplicative of the loan origination fee.

In general, real estate transaction charges which are paid incident to and as a prerequisite to the extension of credit are considered to be finance charges under the Federal Travel Regulation (FTR) and are not reimbursable except to a limited extent. 41 CFR 302-11.200(f)(2)(v) (2004); *Jeffrey W. Rose, II*, GSBCA 16386-RELO, 04-2 BCA ¶ 32,723. The Joint Travel Regulations (JTR), which implement and supplement the FTR and apply to civilian employees of the Defense Department, contain similar limitations. JTR C14002-A.4.b. The major exception to the rule that charges incident to the extension of credit are not reimbursable is the payment of a loan origination fee when charged by a lender for administrative expenses, such as costs of originating the loan, processing documents, and related work of processing the mortgage loan. A loan origination fee of up to one percent of the mortgage amount is permitted to be reimbursed under the regulations. 41 CFR 302-11.200(f)(2)(v); JTR C-14002-A.4.a(2); *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625.

Mr. Fahey has already been compensated for a loan origination fee in the maximum amount of one percent of the loan amount. In general, once the agency has reimbursed the maximum allowable loan origination fee, the employee cannot be further compensated for added fees that serve the same purpose, however denominated by the lender. *Rose; Koch; Gary C. Duell*, GSBCA 15812-RELO, 02-2 BCA ¶ 32,034; *Daniel H. Coney*, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610. Thus, the additional processing fee imposed by claimant's mortgage company would only be payable if claimant could satisfactorily itemize the full amount sought and show that it (1) does not include prepaid interest, points, or a mortgage discount, and (2) is customarily charged in the locality where the residence is located. JTR C14002-A.4.a(2).

Mr. Fahey says that the charges are "itemized" separately on the settlement statement and further avers that he was referred to the lender he used by the "Government Relocation Services" provided to him in connection with his transfer. He cannot understand why a fee charged by an institution recommended to him in connection with the move would not be considered reasonable and customary.

The fact that the two charges are listed separately on the settlement statement does not constitute the "itemization" contemplated by the JTR. The itemization requirement is intended to enable the agency to confirm that the charges do not include any nonreimbursable costs and to gauge whether the charges are reasonable. Further, the fact that the lender was recommended to Mr. Fahey has no bearing on whether the administrative costs charged for originating and processing the loan are customary and reasonable. It is up to the claimant to show what is customary in the local area. *Ginevra A. Hightower*, GSBCA 16512-RELO, 05-1 BCA ¶ 32,818 (2004). Absent some credible evidence that the great majority of purchasers

in the local area pay loan origination and processing fees in excess of one percent, we cannot conclude that this a customary practice in the area.

Accordingly, since the lender's administrative charges are neither properly itemized nor shown to be customarily paid in the locality, the Army properly disallowed the processing fee charged by the lender.

#### Radon Inspection Expense

Mr. Fahey also strongly believes he should be compensated for the cost of a radon inspection that he obtained prior to purchasing the new home. When his home inspector asked if he wanted the radon inspection, he agreed because the house he sold in New Jersey had been discovered to have such a problem and he was required to have it fixed before the sale could be completed. Moreover, the house he purchased in Michigan did have a radon problem, and he required the seller to fix it prior to final purchase. Claimant further argues that nothing in the regulations prohibit such an expense.

As the Army points out, JTR C14002-A.4(a)(11) permits reimbursement of expenses incurred in connection with environmental testing (such as radon testing) and property inspection fees only when they are required by federal, state, or local law, or when imposed by a lender as a precondition to sale or purchase. The Board has previously observed that no matter how prudent such expenditures may seem to the buyer, the regulations permit payment only when the specified conditions are met. *Susan J. Jackson*, GSBCA 16516-RELO (Mar. 1, 2005); *Linda Little*, GSBCA 16441-RELO, 04-2 BCA ¶ 32,798. We have no evidence that this test was required by federal, state, or local law, or as a precondition of the loan for this purchase. Accordingly, the agency properly disallowed this expense.

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CATHERINE B. HYATT  
Board Judge