

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 9, 2005

GSBCA 16642-RELO

In the Matter of BEATRICE SHEARN

Beatrice Shearn, Hampton, VA, Claimant.

W.B. Wagner, Director, Human Resources Division, PCS Travel Office, Patuxent River, MD, appearing for Department of the Navy.

BORWICK, Board Judge.

The agency, Department of the Navy, authorized claimant Beatrice K. Shearn's permanent change of station (PCS) in the interest of the Government from the Department of the Navy's Office of Counsel, Patuxent River, Maryland, to Langley Air Force Base, Virginia. The agency granted claimant reimbursement of real estate transaction expenses. Claimant sold her house at her old duty station and sought reimbursement for certain real estate transaction expenses associated with that sale, including the prepayment penalty of a home equity line of credit and a lien release fee. The agency denied reimbursement because "a review of GSBCA and Comptroller General decisions did not reveal any decisions dealing with this expense." We grant the claim. Claimant is entitled to reimbursement of those expenses under both the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR).

The record indicates the following. The agency authorized claimant's PCS on or about January 18, 2005. According to the settlement sheet, claimant sold her house at her old duty station on February 15, 2005.

At the settlement, claimant paid off her home equity line of credit on the residence at her old duty station. Claimant had secured the line of credit on November 6, 2002. The home equity lender assessed claimant an interest payment of \$632.05 and a separate

prepayment penalty early closure fee of \$1840.70, in accordance with a provision in the line of credit note that provided for assessment of the fee if prepayment was made within the first five years the credit account was opened:

If borrower closes this account and makes full prepayment of all sums due under the Agreement within the first five years after the date on which this Account is opened, Borrower will pay an Account Closure Fee on the amount prepaid in an amount equal to the greater of \$900 or six (6) months' advance interest, calculated at the Annual Percentage Rate in effect on the date of Account Closure.

Claimant sought reimbursement of the prepayment fee, but the agency denied payment of that expense.

Claimant also incurred the expense of \$230 for a lien release fee. According to claimant, the lien release fee was assessed by the Atlantic Coast Title Company, the firm that conducted the settlement for the sale of the house. Claimant says that Atlantic Coast Title charged the fee for obtaining lien releases from both the mortgage lender and the home equity line of credit lender. The fee also covered recording the releases with the county.

Claimant sought reimbursement from the agency of the lien release fee. The agency originally reimbursed claimant for half of the fee--\$115--but later advised the Board that the reimbursement was erroneous. The agency now seeks claimant's repayment of the \$115 reimbursement, as well as Board denial of the claim for payment of the remainder of that fee.

Discussion

Claimant is entitled to reimbursement of the home equity line of credit prepayment fee. The FTR provides that a charge for prepayment of a mortgage or other security instrument in connection with the sale of a residence is payable as a miscellaneous expense, if the mortgage or other security instrument provides for this charge. 41 CFR 302-11.200(f)(7) (2004). The JTR are to the same effect. C14002-A.4.a(7). The home equity line of credit note in this case was undoubtedly a security instrument, i.e., a second mortgage, and contained the prepayment penalty provision quoted above. The prepayment penalty was also distinct from the last interest payment claimant made in connection with paying off the home equity line of credit.

The General Accounting Office (GAO), construing an earlier version of the FTR, allowed reimbursement of prepayment fees for early pay-off of second mortgages, as well as for early pay-off of first mortgages. *Donald F. Reynolds*, B-194892 (Mar. 14, 1980);

Charles L. Putnam, et. al., B-183251 (May 29, 1975); *see also Orville D. Grossarth*, B-216425 (Aug. 21, 1985). The amount of fee seems to be in accord with the prepayment provision in the home equity line of credit, and the agency does not maintain that the amount of the fee is unreasonable. Claimant is entitled to be reimbursed the \$1840.70.

We next consider whether the lien release fee is reimbursable. The FTR allows as reimbursable miscellaneous expenses the “cost of preparing conveyances, other instruments and contracts, and related . . . recording fees.” 41 CFR 11.302-200(d) (2004). The JTR are to the same effect. C14002-A.3.b. The lien release fee was the fee charged claimant for obtaining the documentation of the lien releases from the mortgage lenders and making the necessary recording of those lien releases. The fee is thus properly considered a cost of preparing a conveyance document and “other instruments” and the cost of a “related recording fee” under the FTR as sensibly construed. The GAO allowed reimbursement of such lien release fees. *Richard B. Dawson*, B-189140 (Nov. 23, 1977).

Our decision in *Richard P. Herbert*, GSBCA 14575-RELO, 98-2 BCA ¶ 30,051, does not dictate the opposite result. In *Herbert*, we upheld the agency’s refusal to reimburse an employee for his expense, associated with his house purchase, in paying off a lien on the property imposed by the State of Maine. We concluded that regulation did not authorize reimbursement of property lien payments imposed by the state. This case involves not the payment of a government-imposed lien itself, but the fee to secure the documentation for release of liens on property held by mortgage lenders. Therefore, claimant is entitled to be reimbursed the full amount she paid for the lien release fee. The agency is not entitled to the refund it now seeks.

For the reasons above, the Board grants the claim.

ANTHONY S. BORWICK
Board Judge