

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 29, 2001

GSBCA 15591-RELO

In the Matter of JANEEN H. ROSENBERG

Janeen H. Rosenberg, Orangevale, CA, Claimant.

John R. Thomas, Chief, Purchase and PCA Section, Real Estate Division, Savannah District, United States Army Corps of Engineers, Savannah, GA, appearing for Department of the Army.

HYATT, Board Judge.

Claimant, Janeen H. Rosenberg, a civilian employee of the United States Army Corps of Engineers, transferred from the Atlanta, Georgia area to Orangevale, California. Incident to this permanent change of station she sold her residence in Lilburn, Georgia. The Corps declined to pay certain of the expenses claimed by Ms. Rosenberg in connection with this sale. She has asked the Board to review the disallowance of these expenses.

The expenses disallowed include a variety of items that the Corps, based on the information available to it at the time, considered were not customarily paid by sellers in the locality of the residence and thus not reimbursable. These included fees for loan origination, a title search, title insurance, and the like. The total amount of the fees disallowed for this reason was \$2735. In addition, the Corps disallowed an underwriting fee and tax service fee, a fee for treatment of termites, and various costs incurred in repairs and cleaning. Although Ms. Rosenberg submitted receipts for the amounts paid, the Corps did not reimburse these items because they appeared to be operating and maintenance expenses and thus not reimbursable under the applicable regulations.

In submitting her claim to the Board, Ms. Rosenberg provided letters from several real estate agents and brokers averring that, in recent years, in the Atlanta, Georgia area it has become customary for sellers to pay all or some portion of the buyer's closing costs. In addition, Ms. Rosenberg submitted evidence of home sales in her particular subdivision in which sellers paid all or most of the buyer's closing costs. Ms. Rosenberg also notes in her

claim letter that she lost more than \$7000 from the price she originally paid for the house when she purchased it in 1999.¹

After reviewing this supplemental evidence and making independent inquiries of Atlanta metropolitan area brokers, the Corps has agreed that it is customary in the Atlanta area for sellers to pay a large portion of what has traditionally been regarded as a buyer's closing cost. Thus, the Corps states in its agency report that it now considers that the amount of \$2735, representing Ms. Rosenberg's share of the buyer's allowable closing costs, may properly be reimbursed. The Corps continues to assert that the remaining disallowed expenses are not reimbursable. Ms. Rosenberg filed a response to the agency report in which she asked the Board to approve the Corps' revised position concerning reimbursement of the buyer's closing costs, but did not address the remaining items that were disallowed.

Under applicable provisions of the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR), which implement and supplement the FTR with respect to travel and relocation expenses of civilian employees of the Department of Defense, the agency may reimburse a transferred employee for certain miscellaneous expenses incurred in the sale of a residence at the old permanent duty station provided they are customarily paid by the seller of a residence in that locality. 41 CFR 302-6.2(d) (2000); JTR C14002-A.4. In our view, the claimant has met her burden to establish that it is customary for the buyer to assume a large percentage of the buyer's closing costs in the Atlanta metropolitan area. E.g., Robert P. Azinger, Jr., GSBCA 15350-RELO, 00-2 BCA ¶ 31,062; Byron D. Cagle, GSBCA 15218-RELO, 00-1 BCA ¶ 30,903. The agency agrees that this is the case and that certain expenses are otherwise allowable. Accordingly, the Corps should reimburse Ms. Rosenberg for the closing expenses totaling \$2735.

With respect to the other items of expense claimed by Ms. Rosenberg, on the record before us it appears that the Corps has properly disallowed these charges. The Board has consistently held that underwriting and tax service fees are not recoverable under the FTR, 41 CFR 302-6.2(d)(2)(v), which provides that unless specifically authorized elsewhere in the regulation, no fees, charges, costs, or expenses determined to be part of the finance charge under the Truth in Lending Act, 15 U.S.C. § 1605 (1994), may be reimbursed. Accord JTR C14002-A.4.b(5). The Truth in Lending Act provides that the finance charge shall be determined as the sum of all charges imposed directly or indirectly by the creditor incident to the extension of credit. The Board has consistently recognized that these fees are charges paid incident to and as a prerequisite to the extension of credit, and thus are not reimbursable. Thomas E. Sullivan, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339; Richard A. Poisel, GSBCA 15333-RELO, 01-1 BCA ¶ 31,284; Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513; Stanley H. Levine, GSBCA 15065-RELO, 00-1 BCA ¶ 30,809.

Finally, as the Corps points out, the amounts claimed for repairs and cleaning appear to be operating and maintenance costs, which are not reimbursable under applicable

¹ Claimant does not appear to request reimbursement of this amount, which is not allowable under the Federal Travel Regulation (FTR). 41 CFR 302-6.2(e) (2000). Rather, she simply seems to be making the point that reimbursement of the closing costs would help somewhat to defray this loss.

regulations. 41 CFR 302-6.2(d)(2)(iv); JTR C14002-A.4.b(4); Thomas E. Sullivan; Harlan C. Thiel, GSBCA 13669-RELO, 97-1 BCA ¶ 28,710 (1996). Ms. Rosenberg has provided no evidence or information to demonstrate that the claimed expenses are in fact reimbursable. Accordingly, the Corps properly disallowed these expenses.

CATHERINE B. HYATT
Board Judge