

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

September 11, 2002

GSBCA 15888-RELO

In the Matter of ALFRED A. DAVIS

Alfred A. Davis, Leesburg, VA, Claimant.

Cindy Osif, Supervisor/Certifying Officer, Travel/Employee Relocation, National Business Center, Products and Services, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Alfred A. Davis, an employee of the Department of the Interior, claims entitlement to reimbursement of \$5607 for a Department of Veterans Affairs (VA) funding fee incurred in the purchase of his new home after his permanent change of station (PCS) transfer from Denver, Colorado, to Reston, Virginia, in July 2001. He also requests reimbursement of the \$1000 earnest money deposit he made.

VA Funding Fee

Claimant used a VA loan to finance the purchase of his house. As stated on the settlement sheet, claimant incurred an expense of \$5607 for a "VA funding fee." The agency disallowed the reimbursement of the funding fee because it considered that fee to be a non-reimbursable finance charge under the Federal Travel Regulation (FTR). Claimant maintains that the funding fee is an allowable charge because it is similar to the reimbursable VA loan application fee and because the FTR makes such a "similar" fee reimbursable.

As we explained in Peter C. Wagner, GSBCA 13907-RELO, 97-1 BCA ¶ 28,793, the VA funding fee is not reimbursable. The FTR lists as a reimbursable miscellaneous expense a VA loan application fee. 41 CFR 302-6.2(d)(1)(i) (2001) (FTR 302-6.2(d)(1) (i)).¹ It also lists as a reimbursable expense "other fees and charges similar in nature to those listed in

¹ Prior versions of these provisions in the FTR were applicable in the Wagner case, but the language remains substantively the same in the provisions that were applicable at the time of claimant's PCS.

paragraph (d)(1)(i) through (v) of this section [which includes the VA loan application fee] unless specifically prohibited in paragraph (d)(2) of this section." FTR 302-6.2(d)(1)(vi).

Paragraph (d)(2) of Section 302-6.2 includes in its list of non-reimbursable expenses: "no fee, cost, charge, or expense determined to be part of a finance charge under the Truth in Lending Act . . . and Regulation Z issued by the Board of Governors of the Federal Reserve System." FTR 302-6.2(d)(2)(v). We have held that the VA funding fee is a finance charge within the meaning of Regulation Z because it is imposed in connection with the extension of credit, rather than for services rendered without regard to whether the credit was sought or obtained. Charles E. Piper, GSBCA 14299-RELO, 98-1 BCA ¶ 29,727; Rizal F. Golla, GSBCA 14535-RELO, 98-2 BCA ¶ 29,843.

Accordingly, claimant is not entitled to reimbursement of the VA funding fee.

Earnest Money

Claimant also requests reimbursement of the earnest money deposit of \$1000. The Government correctly responds that the earnest money deposit is simply an advanced partial payment toward the total amount that will be due from the purchaser at settlement. This partial payment is applied at settlement as a credit against the total amount due from the purchaser. The earnest money is not an expense, nor does it increase the total financial obligation of the purchaser. If claimant had not paid the \$1000 earnest money deposit before settlement, he would have had to pay an additional \$1000 at settlement. Claimant is not entitled to reimbursement of the earnest money.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge