

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 26, 2005

GSBCA 16540-RELO

In the Matter of KERRY M. KENNEDY

Kerry M. Kennedy, Virginia Beach, VA, Claimant.

Stephen J. Allison, Assistant District Counsel, United States Army Corps of Engineers, Louisville, KY, appearing for Department of the Army.

DeGRAFF, Board Judge.

In 2004, the Department of Defense (DoD) transferred Kerry M. Kennedy from one permanent duty station to another and authorized him to incur reimbursable real estate sales transaction expenses in connection with the transfer. Mr. Kennedy sold his house at his old duty station and DoD reimbursed \$5975 of Mr. Kennedy's claimed sales transaction expenses. Mr. Kennedy asks us to review DoD's decision to disallow the remainder of his claimed expenses.

DoD disallowed \$1422.78 Mr. Kennedy paid at closing on behalf of the purchaser of his house for hazard insurance, property taxes, a tax service fee, an appraisal fee, a title examination fee, a credit report fee, a mortgage processing fee, and a flood check fee. The flood check fee was paid by Mr. Kennedy in connection with the purchaser's loan. DoD also disallowed \$767.50 Mr. Kennedy spent for painting and termite treatment, which were services required by the Department of Veterans Affairs before it would guarantee the loan made to the purchaser. In its submission to us, DoD says it disallowed all of these expenses because Mr. Kennedy did not establish it was customary in the area of his old duty station for sellers to pay these closing costs on behalf of purchasers.

According to the regulations in effect when Mr. Kennedy reported to his new duty station, DoD does not have the authority to reimburse a seller for insurance against loss or damage to property, property taxes, or any fee that is part of the finance charge unless specifically authorized by the regulations. 41 CFR pt. 302-11.200 (2003); Joint Travel Regulations (JTR) C14002. A tax service fee is a part of the finance charge and reimbursement is not specifically authorized by the regulations. Larry W. Poole, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776. Thus, no matter whether it was customary for a seller to pay hazard insurance, property taxes, or a tax service fee on behalf of a purchaser in the area

of Mr. Kennedy's old duty station, DoD cannot reimburse these expenses. In Mr. Kennedy's case, these nonreimbursable expenses total \$629.07.

The regulations require DoD to reimburse some expenses, provided they are customarily paid by a seller of a residence at the old duty station. These reimbursable expenses include the customary cost of an appraisal; the cost of a title examination, provided this cost has not been included in any other related transaction cost and does not exceed the amount customarily charged in the area; the cost of preparing a credit report, provided this cost does not exceed the amount customarily charged in the area; a loan origination fee or similar charge for services similar to those covered by a loan origination fee; and expenses paid for "required services." 41 CFR pt. 302-11.200; JTR C14002. A service required by a lender is a "required service." Wayne E. Smith, GSBCA 14844-RELO, 99-1 BCA ¶ 30,247; Elizabeth L. Atkeson, GSBCA 14223-RELO, 98-1 BCA ¶ 29,396 (1997).

The burden is on the claimant to establish that payment of an expense is customary in the area at the time in question. Dawn S. Daugherty, GSBCA 14065-RELO, 97-2 BCA ¶ 29,050. Mr. Kennedy provided a letter from the attorney for the title company that performed the closing when he sold his house. According to the attorney, it is a "customary practice in our area for the seller to pay a portion of the buyer's closing costs as a method of getting the deal completed." The attorney also said Mr. Kennedy followed the local custom by paying a portion of the purchaser's closing costs. As we observed in Daugherty, in other transactions involving Department of Veterans Affairs financing, it has been customary for the seller to pay the purchaser's closing costs. Although DoD challenged the sufficiency of Mr. Kennedy's evidence regarding local custom, it provided no evidence of its own.

Mr. Kennedy's un rebutted evidence convinces us it was customary for a seller in the area of his old duty station to pay a portion of a purchaser's closing costs at the time he sold his house. The regulations require DoD to reimburse the cost of the appraisal (\$300), provided the cost was customary; the cost of the title examination (\$156.61), provided this cost has not been included in any other related transaction cost and does not exceed the amount customarily charged in the area; the cost of preparing the credit report (\$12.90), provided this cost does not exceed the amount customarily charged in the area; and the mortgage processing fee (\$350), provided this fee was a charge for services similar to those that would have been covered by a loan origination fee. The regulations also require DoD to reimburse Mr. Kennedy for the cost of the flood check fee (\$9) and the work required by the Department of Veterans Affairs (\$767.50), provided these services were required by the lender.

The claim is granted in part.

MARTHA H. DeGRAFF
Board Judge