



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 26, 2007

CBCA 867-RELO

In the Matter of HASAN POURTAHERI

Hasan Pourtaheri, New Orleans, LA, Claimant.

Linda C. LaBure, Chief, Real Estate Division, New Orleans District, United States Army Corps of Engineers, New Orleans, LA, appearing for Department of the Army.

GILMORE, Board Judge.

Background

Mr. Hasan Pourtaheri (Mr. Pourtaheri or claimant), an employee of the United States Army Corps of Engineers, was relocated from his permanent duty station (PDS) in the Wilmington, North Carolina, District to a new PDS in the New Orleans, Louisiana, District. The transfer was effective on April 20, 2006. He and his wife purchased a home in New Orleans by cash and he submitted for reimbursement the following expenses associated with the purchase:

Title Search	\$ 174
Document Preparation	\$ 350
Attorney Fees to Cameron C. Gamble	\$1500
Owner's Title Insurance	\$2310
Power of Attorney Fee	\$ 50
Recording Fee (Deed)	\$ 90
Courier Fees	\$ 60
Home Inspection (Structural)	\$ 575
Mold Inspection	\$ 685
Plumbing Inspection	<u>\$ 250</u>
Total	\$6044

The Real Estate Division of the New Orleans District, Corps of Engineers, allowed reimbursement for the title search, document preparation, recording fee, and courier fees, totaling \$674. It denied reimbursement for attorney fees to Cameron C. Gamble, owner's title insurance, power of attorney fees, and home inspection fees (structural, mold, and plumbing), totaling \$5370. Claimant asks the Board to review the claimed costs that were denied.

Discussion

Attorney Fees: Claimant seeks reimbursement of \$1500 in attorney fees paid to Mr. Gamble, stating that he did not use the settlement attorney for legal advice but instead used his own attorney to review the sales transaction. He stated that one of the sellers was an attorney with the law firm handling the closing, and that the other seller was the purchasers' real estate agent. Additionally, he stated that the sellers' and purchasers' agents worked for the same real estate company. He stated that he wanted his own attorney to review the documents and advise him on matters relating to the purchase because of these conflicts.

The Corps of Engineers denied the reimbursement because (1) claimant's attorney was not the attorney of record for the closing; (2) the fees were not itemized; and (3) the fees were beyond those "reasonable and customary" for the New Orleans area. The Corps of Engineers stated that the average attorney fees in the area for closings ranged from \$300 to \$500.

The relevant Federal Travel Regulation (FTR), 41 CFR 302-11.200(e) (2006), provides that the agency will pay:

The costs of searching title, preparing abstracts, and the legal fees for a title opinion to the extent such costs:

- (1) Have not been included in other related transaction costs (i.e., broker's fees or real estate agency fees); and
- (2) Do not exceed the charges, for such expenses, that are customarily charged in the locality of [the] residence[.]

The Department of Defense Joint Travel Regulations (JTR), implementing the FTR, provide in pertinent part, at JTR C14002-A.3, as follows:

Legal and Related Costs. To the extent they are not included in broker's or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to a residence sale (if customarily paid by the residence seller at the old PDS) and purchase (if

customarily paid by a purchaser at the new PDS). These expenses are payable to the extent they do not exceed amounts customarily charged in the residence locality:

- a. Searching title, preparing abstract and legal fees for a title opinion, or where customarily furnished by the seller, the cost of a title insurance policy;
- b. Preparing conveyances, other instruments, and contracts;
- c. Related notary fees and recording fees;
- d. Making surveys, preparing drawings or plats when required for legal financing purposes; and
- e. Similar expenses.

When a single over-all legal fee is charged, that fee may be paid without itemization if it is within the customary range of locality residence transaction charges (56 Comp. Gen. 561 (1977)). Litigation costs are not reimbursable.

The regulations allow reimbursement of several stated categories of legal expenses and of “similar expenses.” However, legal and related expenses cannot exceed the amount customarily charged in the residence locality. The agency has stated that fees charged by a settlement attorney for closings are in the range of \$300 to \$500.

Here, claimant agreed to use for settlement the law firm that employed one of the sellers. Because of this conflict, he wanted his own attorney to independently review the documents. The agency has reimbursed claimant for the legal fees charged by the law firm for document preparation in the amount of \$350. The attorney handling the closing sent the closing documents to claimant’s attorney as requested with a check for \$1500 (which was costed to claimant at settlement). Claimant, however, has not submitted any documentation or other evidence establishing what services were rendered by his attorney for \$1500, nor made any attempt to justify the fees charged, other than to contend that, after Hurricane Katrina, the New Orleans housing market was different from the housing market in other parts of the country, so a purchaser had more legal issues to address. Even if this were true, claimant must establish what services were rendered, that they were services customarily paid by the purchaser, and that the fees charged for those services were within the range customarily charged in the area. Although claimant stated that he has been unable to secure an itemized statement from his attorney, claimant himself should have been able to produce

some evidence of the services rendered (i.e., retainer agreement, written title opinion, or an affidavit from his attorney).

As the record now stands, the only legal services that we know were provided are document preparation services for which claimant has been reimbursed \$350. Because claimant has not provided evidence of what services were provided by his own attorney, nor shown that the costs for such services were customary for that area, we sustain the agency's denial of reimbursement of \$1500 in attorney fees to Mr. Gamble.

Owner's Title Insurance: Claimant requests reimbursement of \$2310 paid for owner's title insurance that he secured for his own protection. The Corps of Engineers denied the cost because it was not a prerequisite to financing or to the transfer of the property. As set forth in the FTR, 41 CFR 302.11.200(f)(9), the cost of owner's title insurance will be paid by the agency, "provided it is a prerequisite to financing or the transfer of the property; or if the cost of the owner's title insurance policy is inseparable from the cost of other insurance which is a prerequisite." Because this insurance was not a prerequisite to financing or the transfer of the property, we sustain the agency's denial of the cost. Certainly, it was wise for the claimant to secure this type of insurance. However, it is not a reimbursable cost.

Power of Attorney Fee: Claimant paid a fee of \$50 to the law firm handling the settlement to draft a "Power of Attorney to Purchase Real Estate" document authorizing claimant to act as an attorney and agent for his wife during the real estate closing. The agency denied the cost, stating that it was for the convenience of the purchasers and not a real estate expense.

Although the cost was incurred for the purchasers' convenience, it appears that claimant's wife was unable to attend the closing and it was necessary for claimant to represent her at the closing. Because the fee was reasonable and was incurred in conjunction with the closing, we will allow reimbursement of this expense.

Home Inspection (Structural, Mold, Plumbing): Claimant contends that because the property was located in New Orleans and because of the effects of Hurricane Katrina on the area, these inspections were necessary and reasonable. The Corps of Engineers denied the expenses, citing 41 CFR 302-11.200(f)(11), which provides that the agency may pay "[e]xpenses in connection with environmental testing and property inspection fees when required by Federal, State, or local law; or by the lender as a precondition to sale or purchase." The agency stated that the expenses did not meet the criteria for reimbursement because they were not required by law or by a lender. We agree with the agency and sustain the denial of these inspection costs.

Decision

Claimant is entitled to reimbursement of the power of attorney fee of \$50. We sustain the agency's denial of all other disputed costs.

BERYL S. GILMORE
Board Judge