



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 6, 2007

CBCA 703-RELO

In the Matter of HWAI-TAI LAM

Hwai-Tai Lam, Washington, DC, Claimant.

Lori Brock, Chief, PCS Travel Accounting, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

KULLBERG, Board Judge.

Claimant, Hwai-Tai Lam, an employee of the Department of Veterans Affairs (VA), appeals the denial of reimbursement for costs that he incurred as a result of his transfer. Subsequent to filing his appeal, the VA's May 11, 2007 submission to the Board advised that Mr. Lam would be allowed reimbursement for two previously denied costs, which were the cost of the tax certificate (\$15) and taxi fare from his former residence to the airport (\$24). The VA, however, has continued to deny the remainder of Mr. Lam's claim for costs related to the settlement on his Washington, D.C. home. For the reasons stated below, we deny Mr. Lam's claim for those costs.

Background

In November 2006, Mr. Lam, a health systems specialist with the VA, was transferred from Los Angeles, California to Washington, D.C. He purchased a home in Washington, D.C. and submitted his claim for the costs incurred in that purchase. The VA denied reimbursement for the loan application fee (\$540), the commitment fee (\$565), and courier fees (\$45). Mr. Lam argues, generally, that those costs are allowable. The VA contends that the loan application fee and commitment fee are not reimbursable under the Federal Travel

Regulation (FTR), and the courier fees are not reimbursable because the fees were not paid to the lender.

Discussion

The VA properly denied reimbursement for Mr. Lam's loan application fee. Under the FTR, reimbursement for loan application fees is allowed only in the case of VA and Federal Housing Administration (FHA) loans. 41 CFR 302-11.200(f)(1) (2006) (FTR 302-11.200(f)(1)). Mr. Lam did not obtain either a VA or FHA loan. Instead, he obtained a conventional uninsured loan, so he is not allowed reimbursement unless his loan application fee was charged in lieu of a loan origination fee, which is reimbursable. *See Charles W. Adams*, GSBCA 16485-RELO, 05-1 BCA ¶ 32,956. But, the VA reimbursed Mr. Lam separately for a loan origination fee that was 1% of the amount of his loan, and the FTR limits reimbursement for loan origination fees and other similar fees to 1% of the amount of the loan. FTR 302-11.200(f)(2). Reimbursement for loan origination fees and other fees in excess of 1% of the amount of the loan would require that Mr. Lam demonstrate that the application fee "(a) [d]oes not include prepaid interest, points, or a mortgage discount; and (b) [i]s customarily charged in the locality where the residence is located." FTR 302-11.201. Mr. Lam has presented no evidence to show that his loan application fee was a reimbursable fee that was customarily charged in excess of 1% of the loan, and his claim for the loan application fee fails for lack of evidence.

Mr. Lam is not entitled to reimbursement for the loan commitment fee. The FTR provides that reimbursement is not allowed for "[a]ny fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, as amended, and Regulation Z issued by the Board of Governors of the Federal Reserve System (12 CFR part 226), unless specifically authorized in § 302-11.200" FTR 302-11.202(g). A "loan commitment fee is a finance charge within the meaning of Regulation Z because it was imposed . . . incident to the extension of credit." *David P. Brockelman*, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971, at 148,287. Consequently, the commitment fee that Mr. Lam paid was a finance charge that was properly denied by the VA.

Reimbursement for Mr. Lam's courier fees is not allowed. The FTR provides for reimbursement of various miscellaneous costs in connection with the sale of a home. FTR 302-11.200(f). Courier fees are not specifically included among those reimbursable costs, but the FTR does provide for reimbursement for required services that are customarily paid by the buyer. FTR 302-11.200(f)(12). However, Mr. Lam has the burden of proving that the courier fees were required for a reason other than personal convenience and were customarily charged to the buyer. *See Andrew Perez*, GSBCA 16764-RELO, 06-1 BCA ¶ 33,206; *Stanley H. Levine*, GSBCA 14909-RELO, 00-1 BCA ¶ 30,603 (1999). The record only

shows that Mr. Lam paid a company named “Apple” for the courier service, but there is no evidence that the courier fee was required or customarily charged. That portion of Mr. Lam’s claim also fails for lack of evidence.¹

Decision

With the exception of the costs of the tax certificate (\$15) and taxi fare (\$24), which the VA determined to have been reimbursable subsequent to the filing of this appeal, the remainder of the claim is denied.

H. CHUCK KULLBERG
Board Judge

¹Although the VA argued that the courier fees were not reimbursable because payment was made to the courier rather than the lender, that fact is not controlling in the Board’s finding that those fees were not reimbursable.