



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 1, 2007

CBCA 889-RELO

In the Matter of MERVIN H. KEMP

Mervin H. Kemp, Carthage, NY, Claimant.

Joseph A. Fedorko, Office of the Staff Judge Advocate, Department of the Army, Fort Drum, NY, appearing for Department of the Army.

PARKER, Board Judge.

Mervin H. Kemp has asked the Board to review the Department of the Army's decision not to reimburse him for certain costs he incurred in connection with the purchase of a home at his new duty station. Mr. Kemp was transferred by the Army from Heidelberg, Germany, to Fort Drum, New York, in 2006.

Mr. Kemp incurred (1) a mortgage broker fee in the amount of \$3396, (2) a broker processing fee of \$695, and (3) some amount for recording fees. The Army reimbursed Mr. Kemp the mortgage broker fee and the processing fee up to one percent of the amount of the mortgage loan amount, or \$2015. The agency also reimbursed Mr. Kemp for \$122 of the claimed \$135 in recording fees, but said that it would reconsider the amount upon submission of additional documentation. We discuss each of these claimed costs below.

Mortgage Broker's Fee and Broker Processing Fee

_____ The Federal Travel Regulation (FTR) establishes, as a general rule, that "[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" is not reimbursable. 41 CFR 302-11.202(g) (2006). The FTR also

contains an exception to the general rule stated above: a loan origination fee and similar charges, although paid incident to and as a prerequisite to the extension of credit, are reimbursable. 41 CFR 302-11.200(f)(2); *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722; *Verna Pope*, GSBCA 15718-RELO, 02-1 BCA ¶ 31,822; *Larry W. Poole*, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776. A loan origination fee and similar charges are intended to compensate the lender for administrative expenses incurred in originating and processing a loan. *Pope*; *Kathleen M. Lewis*, GSBCA 15613-RELO, 01-2 BCA ¶ 31,616; *Joseph Thompson*, GSBCA 15077-RELO, 00-1 BCA ¶ 30,615 (1999). Once an employee has been reimbursed for these fees in the amount of one percent of the loan amount, however, additional reimbursement is possible only if the employee provides evidence that the higher rate (a) does not include prepaid interest, points, or a mortgage discount; and (b) is customarily charged in the locality where the residence is located. 41 CFR 302-11.201. “If such a charge exceeds one percent of the loan amount, the lender must itemize its administrative charges and the employee making the claim must show the higher rate is customarily charged in the area and does not include prepaid interest, points, or a mortgage discount.” *Ginevra A. Hightower*, GSBCA 16512-RELO, 05-1 BCA ¶ 32,818 (2004).

The mortgage broker’s fee and the processing fee Mr. Kemp incurred have been held to be similar in nature to a loan origination fee and are to be included in calculating the one percent limitation. *E.g.*, *Lockett*. Mr. Kemp may not be reimbursed in an amount greater than one percent of his loan amount because he has not provided convincing evidence that additional reimbursement would not include prepaid interest, points, or a mortgage discount. To the contrary, an assistant sales manager from the mortgage company explained to Mr. Kemp that, had the company known that the Army would reimburse only one percent of the broker’s fee, it may have been able to work something out that would have resulted in a higher interest rate. This suggests that the additional broker’s fee was really a form of interest (or mortgage discount), rather than a reimbursement of legitimate lender administrative expenses. Moreover, there is no itemization showing what administrative expenses were incurred by the lender so as to result in these additional fees charged to Mr. Kemp. The Army was correct in applying the one percent limitation to Mr. Kemp’s reimbursement.

Recording Fee

The cost of recording a deed is generally borne by the purchaser and, as such, is reimbursable. *See David G. Winter*, GSBCA 14229-RELO, 98-1 BCA ¶ 29,631. The record in this case contains a settlement sheet that shows recording fees totaling \$135 charged to Mr. Kemp. There is also, however, a later-dated receipt from the Jefferson, New York, County Clerk’s office showing payment of a recording fee in the amount of

\$122. Although we normally look to the settlement statement for the best evidence of costs incurred, under the unusual circumstances here, the agency was correct to reimburse Mr. Kemp \$122 pending further explanation from him. Mr. Kemp has attempted to explain to us the discrepancy in amount, but we have found his explanation to be confusing at best and, ultimately, unconvincing. Perhaps Mr. Kemp can do a better job of convincing the Army to pay him the additional \$13.

Decision

For the reasons discussed above, the claim is denied.

ROBERT W. PARKER
Board Judge