



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 27, 2007

CBCA 654-RELO

In the Matter of DANIEL T. MATTSON

Daniel T. Mattson, Boise, ID, Claimant.

Tammy S. Alphonse, Program Analyst/Authorized Certifying Officer, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

STEEL, Board Judge.

Claimant, Daniel T. Mattson, was authorized relocation expenses by the Department of Agriculture (USDA) for a change in station from Grangeville, Idaho, to Boise, Idaho. He purchased a home at his new duty station.

The Office of the Chief Financial Officer (CFO) denied payment of a home owners' association set up fee (HOA fee) in the amount of \$250 and an underwriting fee in the amount of \$375. Mr. Mattson has submitted a reclaim voucher for those two fees, and the USDA requests our opinion as to whether Mr. Mattson's reclaim may be certified for payment.

Discussion

Statute provides that "an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses for the . . . purchase of a residence at the new official station that are required to be paid by the employee when the old and new official stations are located within the United States." 5 U.S.C. § 5724a(d)(1) (2000). Further, the FTR provides that an agency will pay residence transaction expenses "provided they are customarily paid by the seller of a residence at the old duty station or by the purchaser of a residence at the new official station" 41 CFR 302-11.200(a)-(f). Among

those expenses which are reimburseable are loan origination fees and “[o]ther expenses of purchase made for *required services* that are customarily . . . paid by the purchaser of a residence at the new official station.” 41 CFR 302-11.200(f)(12) (emphasis added).

Home Owners Association Set Up Fee

The HOA fee in the amount of \$250 was denied initially because the CFO believed that the fee was “an item of added value for the benefit of the purchaser and not part of the reimbursable expenses of purchasing a home at the new official duty station, nor is it required for an extension of credit by the lending institution,” as allowable under 41 CFR 302-6.2d(2)(d). The CFO cited *Keith E. Mullnix*, B-216973 (Apr. 22, 1985), to support its determination.

In *Mullnix*, the claimant received a permanent change-of-station transfer from Eureka, California, to Mission Viejo, California, in January 1984, and was authorized reimbursement of relocation expenses. His claim for a \$100 association fee was denied because the fee was used for landscaping and other maintenance costs. However, the fee was also denied because as a membership fee it was considered an item of added value continuing to benefit the purchaser. The Comptroller General found that “[a]s such [the fee is] considered a part of the purchase price and not a part of the cost or expenses of purchasing.” *Mullnix* (citing *Herbert W. Everett*, 60 Comp. Gen. 451 (1981)).

Submitting evidence from his closing agent that such a charge is customary in the locality and a copy of the restrictive covenants in the new subdivision, Mr. Mattson argues that his HOA fee is a required initial fee and is not a regular annual assessment. Thus, the question is whether the HOA fee is a reimbursable expense for required services customarily paid by a purchaser or a non-reimbursable operating and maintenance expense.

This Board has recently examined this question in *Andreas Frank*, CBCA 557-RELO, 07-1 BCA ¶ 33,531. Like Mr. Mattson, Mr. Frank demonstrated that he was charged an initial homeowner’s association “community enhancement fee” (CEF) required to be paid by all homes in his community. The Board found that it was clear that the CEF was an expense customarily paid by the purchaser of a residence at his new official station. However, the Board also found that Mr. Frank had not shown that the expense was made for “required services,” which it explained to be:

those services imposed on the employee by a lending institution or by state or local law as a precondition of sale. Such fees as lender inspection fees, termite inspection, roof inspection, and other such fees required by lenders are “required services” to which a seller or purchaser is entitled.

Id. at 166,115 (quoting *Edward C. Brandt*, GSBCA 13649-RELO, 97-2 BCA ¶ 29,054); *see also Leonard J. Garofolo*, 67 Comp. Gen. 449 (1988). Thus, some fees charged in conjunction with the transfer of residences, such as fees for real estate brokerage and for preparing documents for the transfer of ownership, have been held to be reimbursable. *See Frank*, 07-1 BCA at 166,115.

While Mr. Mattson has shown that the HOA fee was an initial fee and not an annual or monthly maintenance fee paid by all members of the community, that does not change the nature of the fee itself. It is a one-time, nonrefundable, and nontransferable fee, and it is essentially a membership fee which is not included as a reimbursable expense under the FTR. It is regarded as an item of added value continuing to benefit the purchaser, and is considered part of the cost or expense of purchasing.

[T]he cost of a membership is considered a personal expense of the employee and not reimbursable. . . . [T]he membership fee had no relationship to any expense or charge for services required for the purchase of the property. It was a requirement for occupancy and participation in the management of the cooperative development. Accordingly, such membership fee is not reimbursable as a relocation expense under the Federal Travel Regulation [].

Everett, 60 Comp. Gen. at 452. Mr. Mattson is therefore not entitled to reimbursement for the HOA fee.

Underwriting Fee

Underwriting fees have been held to be charges paid incident to and as a prerequisite to the extension of credit, and are thus not reimbursable. As stated in *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722, “The FTR establishes as a general rule, ‘Any 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.” *Id.* at 161,881 (quoting 41 CFR 302-11.202(g) (2003)).

The FTR’s exception to this general rule states that 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). Mr. Mattson argues that his underwriting fee fulfills this exception, because it served as a loan origination fee. He cites 12 CFR 226.4(c), which states that application fees charged to all applicants for credit, whether or not credit is actually extended, are not finance charges. He asserts that “the Underwriting Fee in this

case is part of the application fees charged in the same manner as loan origination fees are for other credit providers and should not be considered part of the finance charges.” Mr. Mattson's HUD-1 Settlement Statement lists the underwriting fee in the amount of \$375 as item 808 under Section 800, Items Payable in Connection with Loan. The first item in that section is “801. Loan Origination Fee,” and there is no indication on the form that a loan origination fee was paid by Mr. Mattson.

However, the question of whether an underwriting fee can substitute for a loan origination fee for the purposes of reimbursement has been addressed in *Shane Douthitt*, GSBCA 16819-RELO, 06-1 BCA ¶ 33,262. The board in *Douthitt* noted that an underwriting fee is considered to be part of the finance charge, and consequently is not reimbursable, citing *Lockett*. As the board continued,

Moreover, such a fee, which is “generally charged by a lender to cover the cost of having a loan underwritten,” [*Craig A.*] *Czuchna*, [GSBCA 15799-RELO, 02-2 BCA ¶ 31,898,] has traditionally been treated as a charge which is neither similar to, nor an element of, a loan origination fee. *See Lockett; Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625.

Id. at 164,842. Therefore, Mr. Mattson is likewise not entitled to reimbursement of the underwriting fee.

For the reasons stated above, the determinations of Mr. Mattson’s agency regarding his claim are affirmed.

CANDIDA S. STEEL
Board Judge