

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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October 21, 1998

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GSBCA 14492-RELO

In the Matter of ALBERT L. VAN TUINEN

Albert L. Van Tuinen, San Antonio, TX, Claimant.

Mark Slowiaczek, Associate Counsel, Defense Finance and Accounting Center, Denver, CO, appearing for Department of Defense.

**HYATT**, Board Judge.

Claimant, Albert L. Van Tuinen, an employee of the Defense Accounting Office at Goodfellow Air Force Base was transferred pursuant to permanent change of station (PCS) orders to the Defense Finance and Accounting Service (DFAS) in San Antonio, Texas. He has requested the Board's review of the agency's disallowance of certain items of expense incurred in connection with the sale of his former residence in San Angelo, Texas.

Background

Claimant transferred to San Antonio in October 1997 and sold his former residence in San Angelo in November 1997. The buyer of the house at the old official duty station financed the purchase through a Department of Veterans Affairs (VA) loan. Mr. Van Tuinen claimed expenses of \$8485.37 in connection with the sale of his former residence. DFAS allowed expenses in the amount of \$6129. Mr. Van Tuinen's initial request for review took issue with the denial of reimbursement of some seven items disallowed by the Air Force, in the amount of \$618.76. After receiving the agency's response, Mr. Van Tuinen has narrowed his claim for review to three items that he believes have improperly been disallowed by the agency:

Attorney Fee	\$160.00
Pest Inspection Fee	\$ 59.26
Appraisal Fee	<u>\$325.00</u>

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Total Claim:	\$544.26
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In support of his claim for reimbursement of these items, Mr. Van Tuinen has provided a letter from an escrow officer of the First Title Company in San Angelo. The letter states, in pertinent part:

There is some question as to the usual and customary charges in regard to a VA [Department of Veterans Affairs] closing in our area. It is normal for the seller to pay . . . the attorney fees, . . . the pest inspection fee, . . . and the appraisal fee.

Mr. Van Tuinen further elaborates that he paid the attorney fee because he was informed that this expense was for his benefit to ensure "a proper and legal contract, processing of paperwork, taxes, and escrow computation." He adds that the pest inspection was directed by his real estate agent, who told him that it was a requirement of state law and a seller expense. Finally, he says that the appraisal fee was paid outside of closing and was required by First Title to complete processing the loan. According to Mr. Van Tuinen, there were no negotiations between the buyer and seller with respect to this expense.

DFAS, in responding to Mr. Van Tuinen's claims, states that under applicable regulations the fees claimed may only be paid if customarily assumed by the seller in the locality of the old permanent duty station. According to DFAS, it consulted with the local HUD office and was informed that it was not customary for the seller to pay the items in issue here. DFAS also reports that, in a conversation with the escrow agent for the settlement company, the agency was informed that the buyer usually pays the appraisal fee, but in this instance the seller agreed to pay it. DFAS also obtained information concerning the VA's rules with respect to buyer payment of closing costs. The VA guidelines state that while the VA regulates closing costs that a veteran may be charged, reasonable closing costs may be paid to the lender. These would include "VA appraisal, credit report, survey, title evidence, recording fees, a 1 percent loan origination, and discount points." The VA guidelines submitted by DFAS also note that the payment of various closing costs may be negotiated with the seller.

### Discussion

The Federal Travel Regulation (FTR) and the Department of Defense's (DoD's) Joint Travel Regulations (JTR) specify the types of expenses incurred in connection with residence transactions that are reimbursable. 41 CFR 302-6.2 (1997); JTR C14002. Section 302-6.2(b) of the FTR permits reimbursement of the customary cost of an appraisal. Accord JTR C14002A.2. With respect to legal expenses, both the FTR and the JTR provide that certain expenses are reimbursable if customarily paid by the seller of a residence at the old official station. These include, inter alia, the costs of preparing conveyances, other instruments, and contracts and related notary fees, and similar expenses. 41 CFR 302-6.2(c); JTR C14002A.3. In addition, expenses incurred in connection with environmental testing and property inspection, if required by federal, state, or local law, are reimbursable if customarily paid by the seller. 41 CFR 302-6.2(d); accord JTR C14002A.4. In the event it is not clear what local customs and practices are, or whether the fee charged is reasonable and customary, the regulations advise that the local office of the Department of Housing and Urban Development (HUD) should be contacted for technical assistance. 41 CFR 302-6.3(c).

The attorney fee for preparation of loan and other legal documents related to the sale would be reimbursable if shown to be customarily paid by sellers in the local area. DFAS states that it was advised that the documents were prepared for the benefit of the buyer. The escrow agent's statement that it is "normal" for sellers to pay such costs suggests that it is a matter for negotiation and varies from sale to sale. The fact that a practice may be "common" or "normal" does not raise it to the status of a charge "customarily assumed" by the purchaser. Gerald Fediw, GSBCA 14256-RELO, 98-1 BCA ¶ 29,513; Brent T. Wahlquist, GSBCA 13721-RELO, 97-2 BCA ¶ 20,094. The escrow agent's statement does not suffice to establish that it is customary for the seller to assume this cost. It is not clear on the record before us that under a VA loan the buyer is precluded from paying the attorney fee, and that, in such circumstances, this fee is customarily paid by sellers in the area. Accordingly, we cannot conclude that this fee should be reimbursed by DFAS.

With respect to the appraisal, we note that both the FTR and JTR, in addition to permitting recovery of advertising costs and other selling expenses not already included in the broker's commission, expressly provide that customary costs of appraisal are reimbursable. 41 CFR 302-6.2(b); C14002A.2; see Dawn S. Daugherty, GSBCA 14065-RELO, 97-2 BCA ¶ 29,050. The qualification that these be expenses "customarily" paid by the seller is not set forth in this provision of the regulation. Rather, if the seller paid the cost, it is reimbursable. Under the clear terms of these regulations, Mr. Van Tuinen may recover the appraisal fee to the extent the amount is customary for this area.<sup>1</sup>

Finally, under the regulations, the pest inspection could be reimbursable if customarily paid by the seller and required by law or as a precondition to financing. See Paul D. Atkinson, 70 Comp. Gen. 362 (1991); Erwin E. Drossel, B-203009 (May 17, 1982). Although claimant states that the real estate agent represented that the inspection was required under state law, we have not located such a requirement in the Texas statutes. Even assuming, however, that there is a state or local requirement for such an inspection, claimant has not established that this cost is customarily paid by the seller. As stated above, the escrow agent's letter stating that it is normal for the seller to agree to pay such a charge does not prove that such a practice is customary, but merely suggests that the matter is negotiable. DFAS did consult with the local HUD office and determined that such costs are typically charged to the buyer. We have no evidence with respect to whether the VA precludes payment of such fees by the buyer or whether in VA loan transactions the seller typically pays such fees. As such, the fee for the pest inspection has not been shown to be reimbursable.

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CATHERINE B. HYATT  
Board Judge

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<sup>1</sup>DFAS has not argued that the amount paid is unreasonably high or not customary for the area.