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

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April 28, 2004

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GSBCA 16277-RELO

In the Matter of VIRGINIA WENSLEY KOCH

Virginia Wensley Koch, Loveland, CO, Claimant.

Jeanne DiGange, Certifying Officer, National Finance Center, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

DeGRAFF, Board Judge.

In mid-2002, the United States Department of Agriculture (USDA) transferred Virginia Wensley Koch from California to Colorado, and authorized her to incur reimbursable real estate transaction expenses in connection with the transfer. Dr. Koch sold her home in California, purchased a new home in Colorado, and asked USDA to reimburse her sales and purchase transaction expenses. USDA decided not to reimburse some of Dr. Koch's claimed expenses, and Dr. Koch asked us to review USDA's decision. Because USDA correctly decided not to reimburse the cost of a home warranty and several finance charges, we deny the claim.

Home warranty

When Dr. Koch sold her home in California, she purchased a home warranty at a cost of $330. In Dr. Koch's experience, the purchase of such warranties by sellers had been the custom in the area for at least twelve years. Although USDA does not disagree with Dr. Koch's conclusion that it was customary for sellers in the area of Dr. Koch's old home to pay for home warranties, USDA denied Dr. Koch's claim for reimbursement of this expense.

USDA based its decision upon Raymond P. Keenan, 64 Comp. Gen. 296 (1985).[1] In Keenan, the Comptroller General considered a claim for reimbursement of the cost of a home warranty that protected a seller against liability to the purchaser for the cost of replacement

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[1] USDA cited the decision as B-216203 (Feb. 22, 1985).

or repair upon the discovery of any latent defects in the home. The Comptroller General reasoned such a warranty was in the nature of insurance and denied the claim because the Federal Travel Regulation (FTR) in effect at the time did not allow reimbursement of the cost of insurance against property loss or damage. We reached a similar conclusion in Juanita L. Nason, GSBCA 15746-RELO, 02-2 BCA ¶ 31,890. There, a seller purchased a warranty to provide for the cost of repairs if major appliances failed. We concluded the cost of the warranty was not reimbursable because it amounted to insurance, and the applicable regulations said insurance against property loss or damage was not reimbursable.

Like the regulations that applied in Keenan and Nason, the regulations that apply to Dr. Koch do not permit reimbursement of the cost of insurance against property loss or damage. 41 CFR 302-11.202(c) (2002). The regulations, our precedent, and the Comptroller General precedent lead to the conclusion that USDA correctly denied Dr. Koch's claim for reimbursement. Dr. Koch says, however, her claim should be allowed. She explains she sold her house "as is" and, therefore, had no need for any insurance protection. In addition, Dr. Koch points out, the insurance costs made non-reimbursable by the FTR are costs of purchasing or owning a home, not costs of selling a home.

USDA correctly decided to deny Dr. Koch's claim for reimbursement of $330 for the cost of a home warranty. The FTR contains a list of reimbursable real estate transaction expenses and a list of non-reimbursable real estate transaction expenses. 41 CFR 302-11.200, -11.202. The list of reimbursable expenses includes mortgage title insurance and owner's title insurance, and no other types of insurance. The list does not include the cost of a home warranty. The FTR lists insurance against loss or damage to property as a non-reimbursable expense and, as we concluded in Nason, a home warranty amounts to insurance against loss or damage to property. Dr. Koch says the warranty she purchased did not amount to an insurance policy, because the "as is" sale provided her with all the protection she needed from liability to the purchaser of her home. Even if the warranty does not insure Dr. Koch against loss, it provides insurance to the purchaser of her home in the event latent defects result in loss or damage to the property. Although the insurance costs made non-reimbursable by the FTR are usually costs associated with purchasing or owning a home, the intent of the FTR is to make such costs non-reimbursable regardless of who pays them. Alan R. Fetter, B-218955 (Oct. 30, 1985); John D. Garrity, B-193578 (Aug. 20, 1979). We recognized this implicitly in Nason, when we applied the regulation to deny a claim made by a seller.

Regardless of whether the purchase of a home warranty was customary and no matter by whom the warranty was purchased, it amounts to a type of insurance expense for which the FTR does not allow reimbursement. Thus, USDA correctly decided to deny Dr. Koch's claim for reimbursement of the home warranty expense.

Finance charges

When Dr. Koch purchased her home in Colorado, she paid her mortgage company a loan origination fee of one percent of the amount of her loan, plus a $395 administration fee, a $310 processing fee, and a $175 quality control review fee. In addition, she paid a $175 document preparation fee to a subcontractor of the mortgage company and a $350 underwriting fee to a bank. Dr. Koch says all of these charges are customarily paid by purchasers in her locality. USDA reimbursed Dr. Koch for her loan origination fee, and denied her claim for reimbursement of the other expenses.

USDA correctly decided to deny the claim for reimbursement. Finance charges are non-reimbursable expenses except to the extent the FTR makes them reimbursable. 41 CFR 302-11.202(g). A finance charge includes any charge imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. 12 CFR 226.4(a) (2002). A loan origination fee and similar charges assessed in lieu of a loan origination fee are reimbursable expenses, even though they are finance charges. 41 CFR 302-11.200(f)(2). The administration fee, the processing fee, the quality control review fee, and the document preparation fee are charges similar to those covered by the loan origination fee. Terry L. Hood, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314; Gary C. Duell, GSBCA 15812-RELO, 02-2 BCA ¶ 32,034; April K. Hunt, GSBCA 15785-RELO, 02-2 BCA ¶ 31,995; Larry W. Poole, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776; Waymon T. Saxon, Jr., GSBCA 15419-RELO, 01-1 BCA ¶ 31,209 (2000).

The FTR limits reimbursement of a loan origination fee and similar charges made in lieu of the loan origination fee to one percent of the loan amount, unless a higher rate is customarily charged in the locality and unless the rate excludes prepaid interest, points, and a mortgage discount. 41 CFR 302-11.200(f)(2), -11.201. Although purchasers in the area of Dr. Koch's home might routinely pay fees in addition to the one percent loan origination fee, the regulation does not provide for reimbursement of charges for services similar to those covered by a loan origination fee in addition to a one percent loan origination fee. The administration fee, the processing fee, the quality control review fee, and the document preparation fee are non-reimbursable finance charges.

The underwriting fee is not reimbursable because such fees are charges paid incident to and as a prerequisite to the extension of credit and are, therefore, treated like finance charges. Clarence Hester, Jr., GSBCA 16253-RELO, 04-1 BCA ¶ 32,460 (2003); Duell.

USDA correctly decided to deny Dr. Koch's claim for reimbursement of the administration fee, the processing fee, the quality control review fee, the document preparation fee, and the underwriting fee because these fees constitute non-reimbursable finance charges.

MARTHA H. DeGRAFF
Board Judge