

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 4, 2004

GSBCA 16421-RELO

In the Matter of RODNEY D. HARTLEIB

Rodney D. Hartleib, Waldorf, MD, Claimant.

Capt. Elaine D. Ho, Assistant Staff Judge Advocate, Department of the Air Force, Bolling Air Force Base, Washington, DC, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant, Mr. Rodney D. Hartleib, is a civilian employee of the Department of the Air Force (Air Force). He has asked that we review the Air Force's final ruling denying certain claims he made for reimbursement of costs encountered in the sale of his residence at his prior permanent duty station and in the purchase of a residence at his new duty station. For the reasons given below, we uphold the Air Force's ruling on all but one of these claims.

Background

In December 2003, Mr. Hartleib was transferred from Fort Snelling, Minnesota, to Bolling Air Force Base in the District of Columbia. As a result of his transfer, Mr. Hartleib sold his residence in Farmington, Minnesota, and purchased a residence in Waldorf, Maryland, near his new permanent duty station.

Following this change in residence, Mr. Hartleib submitted a claim for reimbursement of real estate expenses encountered in connection with the sale and purchase of the two residences. The Air Force denied several of his claims for reimbursement. Among the claims denied for expenses associated with the sale of his residence were the following:

Early closing fee	\$ 350.00
Commission paid at settlement	\$17,444.00
Deposit retained by broker	\$ 1,000.00
Compliance fee for document storage	\$ 189.00
Courier fee	\$ 25.00
Settlement/closing fee	\$ 250.00

City/county tax stamps	\$ 813.45
Recording service fee	\$ 75.00

Among the claims denied for reimbursement of expenses associated with purchase of the residence in Maryland were the following:

Express loan document fee	\$ 50.00
Survey fee	\$ 175.00
Document preparation fee by realtor	\$ 195.00
Processing fee to First Republic	\$ 245.00
Commitment fee	\$ 400.00
Tax service fee	\$ 79.00
50% of city/county tax stamps	\$ 1,725.00
50% of state tax stamps	\$ 862.50

In seeking our review of the agency's rulings on these claims, Mr. Hartleib submitted to the Board additional documentation not previously provided to the Air Force. Based upon a review of this additional material and after correction of errors made in its additional analysis, the Air Force agreed to pay several of the contested claims. There remain in dispute only seven -- two with regard to the sale of Mr. Hartleib's residence in Minnesota and five with regard to the purchase of his new residence in Maryland near Bolling Air Force Base.

Discussion

We turn first to the remaining items relating to the sale of claimant's home in Minnesota.

Compliance fee for document storage (\$189)

This item was listed on the settlement sheet simply as an "administrative fee." In denying this claim, the Air Force acknowledged that, under the Federal Travel Regulation (FTR), an agency may pay "other miscellaneous expenses in connection with the sale . . . provided they are normally paid by the seller . . . to the extent that . . . the amounts [are] customarily paid in the locality of the residence." 41 CFR 302-11.200(f) (2003) (FTR 302-11.200(f)). It was precisely because the claimant provided no information regarding payment of this charge in the locality, however, that the Air Force denied the claim.

In reply to the Air Force's denial, Mr. Hartleib provided a letter from his realtor explaining that the charge in question is one covering the increased cost of storing customers' files. The letter explains that realtors were previously required to retain these files for three years. A change in the state law a few years ago, however, increased the storage period from three to seven years. The purpose of the administrative charge is to cover the increase in storage cost occasioned by this change in the state law.

The explanation provided by claimant's realtor still does not speak to the requirement that the charge in question is one customarily paid by sellers of a residence in the locality.

This may well be a standard charge made by this realtor for all its customers since passage of the new law requiring retention of files for seven years. Nevertheless, there has been no showing that other realtors in the locality charge a similar fee. We, therefore, affirm the agency's denial of this claim.

Courier fee (\$25)

Citing our decisions in Charles A. Peters, GSBCA 13643-RELO, 97-1 BCA ¶ 28,689 (1996) and Daniel H. Coney, GSBCA 15506-RELO, 01-2 BCA ¶ 31,610, the Air Force correctly noted that an amount paid for the expedited delivery of documents is reimbursable provided two requirements are met. First, the cost must have been incurred for services procured by the employee or someone working with the employee (rather than the lender, so as to avoid characterization of the cost as a finance charge). Second, the service must have been necessary for the sale of the residence (rather than having been secured merely for personal convenience). In the absence of a showing that these requirements were met, the agency denied this item.

Mr. Hartleib contends that the service was required in conjunction with the preparation of documentation for closing and refers us to a paragraph in his realtor's letter which allegedly supports this contention. We are unpersuaded by the paragraph referenced. It speaks only in the most general terms of settlement or closing fees and makes no mention of the circumstances leading to the incurrence of the \$25 courier fee. We, therefore, affirm the agency's denial of this claim.

This brings us to the disputed items relating to the purchase of claimant's home in Maryland.

Express loan documentation fee/wire fee (\$50)

Unlike the claim for reimbursement of a courier fee incurred in conjunction with the sale of his residence, Mr. Hartleib has provided useful detail regarding this charge for expedited delivery. In a letter written to him by his title company, a company representative explains the nature of this charge. There are, in fact, two charges -- each for \$25. The first is a charge for the express mailing of loan documents from the title company to the lender. The title company explains that state law requires that this documentation be provided to the lender within twenty-four hours of closing. Otherwise, a penalty is imposed and, on occasion, it can be over \$500. The second charge is a fee incurred by the lender for wiring funds to the title company at the time of closing. The title company explains that this is necessary because, in Maryland, state law requires that funds be dispersed at the settlement table.

Given the circumstances outlined by the title company, we conclude that the first cost was incurred by the title company working on Mr. Hartleib's behalf and was certainly required for the purchase of his residence. It is, therefore, reimbursable. The second charge, however, was incurred by the lender and should be denied since it can be readily characterized as a finance charge. Kathy D. Peter, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003); Larry W. Poole, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776; Coney.

Commitment fee (\$400)

Relying on our decision in David P. Brockelman, GSBCA 14604-RELO, 98-2 BCA ¶ 29,971, the Air Force has denied this portion of Mr. Hartleib's claim. The agency is correct. As we have previously noted in Brockelman and other cases, e.g., Jeffrey W. Rose, II, GSBCA 16386-RELO (Aug. 4, 2004); Jack E. Hudson, GSBCA 16053-RELO, 03-2 BCA ¶ 32,351, this fee normally is imposed by the lender in order to set aside funds for the borrower, or as a "lock-in" fee that a consumer pays to bind the lender to make the mortgage. We have determined such fees to be unallowable finance charges.

Mr. Hartleib contends that this fee is allowed under FTR 302-11.200(f)(6). He overlooks, however, the fact that this same provision expressly states that the fees and charges otherwise payable under this provision cannot be paid if prohibited in FTR 302-11.202. Because the latter provision expressly prohibits payment of "any fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act," reliance on FTR 302-11.200(f)(6) as justification for payment of the commitment fee is misplaced.

Tax service fee (\$79)

A similar problem exists with regard to Mr. Hartleib's claim for reimbursement of a tax service fee. The Air Force correctly notes that, under decisions of this Board, the tax service fee is considered to be an unallowable part of the finance fee. E.g., George W. Keck, GSBCA 16171-RELO, 04-1 BCA ¶ 32,433 (2003); Hudson; Terry L. Hood, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314; Coney. Accordingly, Mr. Hartleib's argument that payment of this fee is justified under FTR 302-11.200(f)(6) likewise fails for the same reason it fails with regard to payment of the commitment fee.

Fifty percent of state tax stamps (\$862.50) and Fifty percent of city/county tax stamps (\$1725)

Because these last two items present a common issue, we treat them together. The settlement sheet for purchase of claimant's new residence in Maryland shows that, under transfer charges, Mr. Hartleib was required to pay \$3450 for city/county tax stamps and \$1725 for state tax stamps. Although claimant sought reimbursement for both these expenses, the Air Force reimbursed him for only fifty percent of these charges. The reason given for this limited reimbursement was that, under section 14-104 of the Maryland Code, unless otherwise negotiated by the parties, the costs of any recordation tax or any state or local transfer tax shall be presumed to be shared equally between the grantor and the grantee.

In limiting Mr. Hartleib's reimbursement of these charges, the Air Force relied on our decision in Robert J. Szerszynski, GSBCA 14350-RELO, 98-2 BCA ¶ 29,984. In that decision we specifically addressed the above-cited provision of Maryland law. We held that, in the absence of a showing that for the locality in question the seller's portion of the cost was customarily shifted to the buyer, the total cost was not recoverable by the buyer even if the buyer actually paid the entire amount. Our reason for holding as we did was that it is

fundamental to reimbursement of expenses relating to residence transactions that the expenses being reimbursed be customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official station. FTR 302-11.200; accord JTR C14002-A.4.a. Since the statute suggests that the normal custom is that these fees are split evenly between buyer and seller, a persuasive showing must first be made that, for the locality in question, the opposite custom exists before an employee may recover the entire amount.

In this case, claimant contends that, at the time he purchased his house in Waldorf, Maryland, it was normal for the buyer to pay all of the city/county and state tax because the housing market required it. A letter provided for the record by a settlement officer belonging to claimant's title service acknowledges that the payment of the transfer costs is subject to negotiation between the parties and that, in this particular case, claimant agreed to pay them in their entirety. This settlement officer also writes that in "most settlements" the majority of the home buyers agree to pay for all of the transfer and recordation costs. We find these statements less than supportive of Mr. Hartleib's position. Payment of transfer costs clearly remains a negotiable item, although the existence of adverse market conditions has weakened, for the present, a buyer's negotiation position on these costs. This situation, however, does not in our judgment support a conclusion that it is now established custom in the Waldorf, Maryland, area that home buyers pay all transfer and recordation costs notwithstanding a contrary presumption of Maryland law. Given the circumstances of this case, we find the agency acted reasonably in declining to reimburse Mr. Hartleib for these costs in their entirety.

Decision

The agency's decision to deny the costs discussed above is affirmed with the exception of the denial of the \$25 courier fee incurred on the claimant's behalf by his title company when he purchased his residence in Maryland. This cost may be paid.

EDWIN B. NEILL
Board Judge