

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 27, 2005

GSBCA 16715-RELO

In the Matter of NADAB O. BYNUM

Nadab O. Bynum, Wilmington, DE, Claimant.

Otis Jones, Director, Payments and Collections Division, CFO Accounting Center, Department of Housing and Urban Development, Ft. Worth, TX, appearing for Department of Housing and Urban Development.

NEILL, Board Judge.

At the request of claimant, Nadab O. Bynum, the Department of Housing and Urban Development has forwarded to us for review a ruling by the agency that Mr. Bynum, one of its employees, is not entitled to reimbursement for the cost of an owner's title insurance policy. The insurance was obtained by claimant on the occasion of his purchasing a residence near his new permanent duty station. We concur in the agency's current determination that the record for this case, as it now stands, does not support payment of the claim. Nevertheless, the record does indicate that claimant may be entitled to reimbursement of at least some of the money he has expended for title insurance if he can provide his agency with additional information regarding the cost of lender's title insurance.

Background

The agency's *National Relocation Center Guide* states that an employee relocating in the interest of the Government is entitled to reimbursement of the cost of title insurance obtained in connection with the purchase of a residence in the vicinity of his or her new duty station, provided the policy is obtained for the benefit of the lender. The cost of the owner's coverage is not reimbursable unless it can be documented that the purchase of the owner's coverage was a prerequisite to financing or transfer of the property in question.

In seeking reimbursement for various real estate expenses incurred in purchasing a residence at his new duty station, Mr. Bynum requested reimbursement of \$2639.20, the cost of title insurance purchased for the benefit of both himself and his lender. Mr. Bynum submitted two pieces of documentation to show that the purchase of owner's coverage was a prerequisite to financing the property in question. The first was a mortgage loan commitment letter from his mortgage corporation, which, among other requirements, states that he must provide a "Mortgage Title Guarantee Policy" issued from a "firm or source, and in a form acceptable to Lender."

The second piece of documentation provided by Mr. Bynum was a letter from the mortgage corporation stating that the lender, Wells Fargo Home Mortgage Company, required that the borrower, Mr. Bynum, "have Title Insurance under his mortgage loan." The letter continues: "As a result of the requirement, the Borrower was required to pay the cost of \$2,639.20 for the Owner's Title Insurance policy at the time of settlement."

The agency found this documentation inadequate to support claimant's contention that he was required to purchase owner's coverage as a prerequisite to financing or transfer of the property in question. The settlement sheet for the purchase of Mr. Bynum's residence lists two separate costs for title insurance. The first cost is \$25 and is for lender's coverage in an amount equal to the principal amount of Mr. Bynum's loan, namely, \$677,050. The second cost is listed as \$2614.20 and is said to be for the owner's coverage and is for an amount of coverage equal to the purchase price of the house, namely, \$846,332. In view of these two separate and distinct entries on the settlement sheet, the agency remains unconvinced that Mr. Bynum's purchase of owner's coverage was an absolute condition to obtaining financing. Although not citing any specific Board decisions either to Mr. Bynum in denying his claim or to us in its presentation of Mr. Bynum's request for our review, the agency states that it denied the claim based on its review of "several GSA Decisions."

Mr. Bynum complains that the agency has acted inconsistently in this matter. He explains that, before submitting his claim, he sent to the agency's National Relocation Center copies of the two documents he planned to use to show that his purchase of owner's title insurance was required as a prerequisite for financing. He claims to have been told that the documents "more than adequately met the reimbursement requirements." However, after formal submission of his claim to the agency, he was advised that the supporting documentation was not sufficient and that he would also have to submit evidence that he was required under state law to purchase owner's title insurance.

Discussion

The guidance provided to HUD employees in the agency's *National Relocation Center Guide* regarding reimbursement for the cost of title insurance is an accurate implementation of the corresponding provision of the Federal Travel Regulation (FTR). When Mr. Bynum reported to his new duty station on October 15, 2003, the FTR provided, as it does today, that, except for an owner's title insurance policy, the cost of title insurance on property being purchased by a transferred employee at a new duty station is reimbursable. 41 CFR 302-11.200(d) (2003) (FTR 302-11.200(d)). The cost of *owner's* title insurance, however, is not reimbursable unless it can be demonstrated that the purchase of this insurance was a prerequisite to financing or the transfer of property being purchased or unless the cost of the owner's policy is inseparable from the cost of other insurance which is a prerequisite to financing or transfer of the property. *Id.* (f)(9).

The agency is correct in stating that there are several decisions of this Board that deny a claim for reimbursement for the cost of owner's title insurance. *E.g., Jeanette H. Walsh*, GSBCA 16394-RELO, 04-2 BCA ¶ 32,694. Furthermore, the agency's reluctance to accept the documentation provided by Mr. Bynum as evidence that he was required to purchase an owner's policy as a prerequisite to financing or transfer appears to us to be reasonable under the circumstances.

Turning first to the letter of commitment, we note that, although it indicates that a policy was required, it does not specify whether this was a policy purchased for the benefit of the lender or for the benefit of the new owner. As to the letter from the mortgage corporation, it is terse in the extreme. It simply states that the lender required Mr. Bynum to "have Title Insurance under his mortgage loan." This, in itself, is not remarkable in the least if what the letter refers to is the requirement that title insurance be purchased by the new owner to cover the lender's interest. However, the letter then abruptly concludes without further explanation: "As a result of the requirement, the Borrower was required to pay the cost of \$2639.20 for the Owner's Title Insurance policy at the time of settlement." In the absence of some further explanation of why the total expenditure of \$2639.20 was a prerequisite to financing, we cannot fault the agency for denying Mr. Bynum's request for reimbursement of that amount. We agree that this showing is not sufficient in and of itself to demonstrate that payment of \$2639.20 was a prerequisite to financing or transfer of the property.

As stated earlier, Mr. Bynum alleges that the agency has imposed as a condition for reimbursement of the cost of owner's title insurance that he demonstrate that this insurance is required under the law of the state in which the property is located. If the agency did, in fact, impose such a condition, there is nothing in its report to us on this claim to suggest that the agency continues to believe that this is a condition which must be met before an

employee can be reimbursed for the cost of owner's title insurance. Certainly we are aware of no such condition under statute or regulation.

Indeed, based upon evidence contained in the record for this case, we are persuaded that, upon submission of additional information regarding the cost of lender's title insurance, claimant may be entitled to reimbursement of more than the \$25 shown on the settlement sheet as the cost of title insurance coverage for the lender. In their review of Board decisions regarding owner's title insurance, the agency and claimant apparently have overlooked one of our decisions of particular relevance to this case. In *Thomas Gene Gallogly*, GSBCA 15891-RELO, 03-1 BCA ¶ 32,091 (2002), we encountered a similar situation where, from the entries on the settlement sheet, it was obvious that the cost of the title insurance purchased for the lender was deeply discounted when compared to the cost of the title insurance purchased by the new owner to protect his own interest. A total of \$2153 was expended by Mr. Gallogly for title insurance. Of this amount, only \$175 was said to represent the cost of the lender's coverage while the remainder was said to represent the cost of the owner's coverage. In the present case, where only \$25 of the total \$2639.20 expended is said to represent the cost of the lender's coverage, the disparity in costs is even greater.

Such disparity in the prices of title insurance for the new owner and the lender does occur on occasion. In *Gallogly*, we addressed the issue and noted that it had also been addressed previously by our predecessor in deciding relocation claims, the General Accounting Office (GAO) (now the Government Accountability Office).

In these situations, the transferred employee elects to take advantage of a typical offer by the insurer to sell two title insurance policies, one covering the lender's interest and another covering the employee's interest. When, however, the insurer shifts a disproportionate number of the costs associated with the two policies from the lender's policy to the owner's policy by significantly discounting the price of the policy covering the lender's interest and increasing the price of the new owner's policy, the transferred employee stands to lose much of his or her relocation benefit if reimbursement for the cost of lender's title insurance is held to the amount of the discounted price shown on the settlement sheet. Of course this result can be avoided if the employee simply declines the insurer's offer to provide a second policy covering the employee's interest. As we noted in *Gallogly*, however, this is hardly a practice to be encouraged. The purchase of owner's title insurance could well be in the transferred employee's interest, and the decision to purchase it should not result in the partial forfeiture of a benefit to which the employee would otherwise be entitled.

The GAO's solution to this problem was to approve reimbursement of the employee up to, but not in excess of, the cost of the lender's title insurance *if the coverage had been purchased separately* -- regardless of how the cost of the policies might be apportioned on

the settlement sheet. In *Gallogly*, we concluded that this approach was both practical and sensible and adopted it as our own. For purposes of this case, therefore, claimant's reimbursement of the cost of title insurance for the lender may be increased from \$25 up to but not in excess of what the cost of the lender's title insurance would have been if the coverage had been purchased separately. It is, of course, the responsibility of the claimant to provide this information if he wishes to be reimbursed for more than the discounted price of the lender's policy shown on the settlement sheet.

EDWIN B. NEILL
Board Judge