

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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May 16, 2006

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GSBCA 16763-RELO

In the Matter of EDWARD D. ELLIS

Edward D. Ellis, Advance, NC, Claimant.

Susan Symonds, Travel and Relocation Branch Chief, Chief Financial Officer Accounting Center, Department of Housing and Urban Development, Fort Worth, TX, appearing for Department of Housing and Urban Development.

**HYATT**, Board Judge.

In August 2004, claimant, Edward D. Ellis, was selected to be the Field Office Director for the Department of Housing and Urban Development's (HUD's) Greensboro, North Carolina, field office. This required him to relocate to the Greensboro area from the Dallas/Fort Worth, Texas, field office, which was his official duty station at that time. In connection with the transfer, HUD authorized reimbursement of real estate transaction expenses.

Mr. Ellis purchased a home near Greensboro and submitted a claim for payment of expenses incurred in connection with the purchase. HUD disallowed certain of the costs claimed by Mr. Ellis and he has filed this claim, seeking the Board's review of HUD's actions. Specifically, HUD has declined to reimburse Mr. Ellis for the following fees:

Administrative Fee	\$ 200
Document Review Fee	\$ 175
Inspection Fee	\$ 75

Messenger Fees	\$ 90
Fax Copy Fee	\$ 50
Wire Fee	\$ 35

Mr. Ellis has submitted, in support of his claim, a letter from his lender, Ryland Mortgage Company,<sup>1</sup> addressing the disallowed items.

With respect to the administrative fee, the lender states that this fee was assessed by its building division, Ryland Homes, and is not in any way related to the one percent loan origination fee charged by the lender. The letter advises contacting Ryland Homes for any further explanation of what the fee covers.

The document review fee is described as a “fee [that] is charged on all loans originated and closed by Ryland Mortgage Company to assist the efforts of quality control when issuing loan documents for closing and ensuring Quality Assurance checks after the closing.” The letter adds that this fee is considered reasonable and customary for the area.

The letter advises that the \$75 inspection fee is “charged by the Appraiser on all appraisal property inspections that occurred prior to the completion of the home. The final inspection must be completed when required by the Appraiser to certify completion and final value.” The letter adds that this fee is considered reasonable and customary for the area.

With respect to the \$90 charge for messenger fees, the lender explains that \$25 of this amount is charged by the mortgage company to cover expenses for delivering documents to the borrower, the operations center, and the title company, and the fee is considered to be reasonable and customary for the area. The remaining \$65 is a fee charged by the Ryland Title Company to cover Federal Express and courier fees for delivering documents to the courthouse for recording.

The fax copy fee is charged by the Ryland Title Company “to offset the expense involved in funding the loan and delivering copies to the borrower, investor, etc.” Finally, the wire fee “is charged by Ryland Title Company and is used to offset the expense involved in receiving and sending wired funds related to this transaction.” The wire fee is, according to Ryland Mortgage Company, considered reasonable and customary within the title company industry.

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<sup>1</sup> Mr. Ellis purchased a newly built residence from Ryland Homes. In the process, he dealt with the Ryland Homes Greensboro Builder Division, Ryland Mortgage Company, and Ryland Title Company.

### Discussion

Mr. Ellis believes that the cost items disallowed by HUD should have been reimbursed. HUD responds that either these items are not allowed under the Federal Travel Regulation (FTR) or claimant has supplied insufficient information to justify a conclusion that the charges should be reimbursed. We address each item in turn.

#### Administrative Fee

The agency has properly disallowed the administrative fee. It is the claimant's burden to establish the purpose of the fee and that he is entitled under the applicable regulations to be reimbursed for it. *Rodney D. Hartlieb*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Jeffrey W. Rose, II*, GSBCA 16386-RELO, 04-2 BCA ¶ 32,723. The explanation provided by the mortgage company, that the fee is charged by the builder, does not describe what the fee covers or why it was imposed. Without a basis on which to evaluate whether this fee is permitted to be reimbursed, the agency cannot defray this cost.<sup>2</sup>

#### Document Review Fee

In general, real estate transaction charges which are paid incident to and as a prerequisite to the extension of credit are considered to be finance charges under the Federal Travel Regulation (FTR), the fundamental regulation governing benefits for federal civilian employees who are transferred from one permanent duty station to another. Finance charges imposed in connection with the purchase of a house are reimbursable only to the limited extent permitted under the FTR. 41 CFR 302-11.200(f)(2)(v) (2005); *Jeffrey W. Rose, II*; *Verna Pope*, GSBCA 15718-RELO, 02-1 BCA ¶ 31,822. Finance charges include any fees imposed directly or indirectly by the creditor as incident to or a condition of the extension of credit. Under the FTR, the principal finance charge that may be reimbursed is the loan origination fee, charged by the lender to defray administrative expenses incurred in connection with processing the loan, up to the amount of one percent of the mortgage loan amount unless a higher rate is customarily charged in the locality. In closing on the house, Mr. Ellis paid a loan origination fee of one percent of the loan amount.

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<sup>2</sup> We note that to the extent this fee is in fact charged by the builder and is duplicative of any fee charged by the lender, Ryland Mortgage Company, in connection with closing, it would not be reimbursable. 41 CFR 302-11.202(h) (2005); see *Timothy C. Lindquist*, GSBCA 16246-RELO, 04-1 BCA ¶ 32,524 (2003).

According to the mortgage company, the document review fee was charged to ensure the accuracy of loan documents at closing, was imposed by the lender for “quality control” purposes, and is considered to be “reasonable and customary for our area.” As this charge has been described, it appears to be the equivalent of a quality control fee, which has been addressed by the Board in *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625. In that case, we concluded that this type of fee is a type of charge that is similar to that covered by the loan origination fee, and is not reimbursable in addition to the loan origination fee, unless the claimant can establish that in this locality loan origination expenses customarily exceed one percent of the loan amount. The statement that the fee is considered customary and reasonable for the area does not establish that loan origination expenses in this locality customarily exceed one percent nor is any other information presented that might demonstrate that this is the case. Consequently, HUD properly disallowed this expense.

#### Inspection Fee

Based on the somewhat ambiguous description provided by Ryland Mortgage, this inspection was performed to verify that construction of the house had been satisfactorily completed and the lender states that it was required by the appraiser. There is no indication on the settlement statement that a separate appraisal fee was charged to claimant. This fee is listed on the settlement statement as the final inspection fee to be paid to Ryland Mortgage Company in connection with the loan.

Regardless of whether this fee represents a charge for an appraisal or a property inspection, it appears, based on the information provided, that the fee is properly reimbursable. The FTR authorizes reimbursement of the customary cost of an appraisal. 41 CFR 302-11.200(b). In addition, to the extent this charge was more in the nature of a property inspection fee, under the FTR such a fee is reimbursable as a miscellaneous expense to the extent it is normally paid by the purchaser in the locality, the amount charged is customary for the locality, and the inspection is “required by Federal, state or local law, or by the lender as a precondition to sale or purchase.” 41 CFR 302-11.200(f)(11); *Kevin M. Fahey*, GSBCA 16622-RELO, 05-2 BCA ¶ 33,008; *David C. Litt*, GSBCA 16556-RELO, 05-2 BCA ¶ 33,001. HUD argues that claimant has not established that this inspection was required by the lender as a precondition to purchase. We disagree -- the mortgage company’s statement suffices to show the charge was required by the lender in connection with the purchase. In addition, the letter states that the fee charged is considered reasonable and customary for the area. This evidence is sufficient to establish a case for reimbursement unless the agency has contrary information. HUD has not claimed that the fee is not customarily paid by the purchaser nor has it asserted that the amount is not customary in the area. Thus, whether viewed as an appraisal fee or as a property inspection fee, this expense is reimbursable.

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Messenger Fees, Fax Copy Fee, Wire Fee

These fees essentially represent costs of delivering the requisite paperwork needed for closing to the various entities involved in the process. With respect to courier charges, the Board has previously concluded that these charges, if reasonable, may be reimbursed if the claimant can demonstrate that use of the courier was prompted by more than considerations of personal convenience and when it is clear that the fee was incurred either by claimant or someone working on his or her behalf, and not by the creditor. *See Martha V. Hooks*, GSBCA 16754-RELO, 06-1 BCA ¶ 33,198; *Monika Mayr*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106; *Douglas Tastad*, GSBCA 16543-RELO, 05-1 BCA ¶ 32,957. When such fees are incurred by the lender, they are regarded as part of the finance charge and are not reimbursable. *Rodney D. Hartlieb*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003); *Larry W. Poole*, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776.

Based on this standard, the \$25 messenger fee charged by Ryland Mortgage Company is not reimbursable. The remainder of the fees may be reimbursable, but claimant needs to provide more detail to justify recovery. For example, the \$65 in overnight delivery and courier fees charged by Ryland Title Company to deliver documents to the courthouse may be reimbursable, but more information, showing that the use of overnight services and couriers was necessary to meet time deadlines and not simply for considerations of personal convenience, is needed. Similarly, if the \$35 wire fee was necessary to satisfy a requirement that funds be dispersed at settlement it should be reimbursed, but we do not have sufficient information in the record to determine that this was the case. *Hartlieb; accord Andrew Perez*, GSBCA 16764-RELO, 06-1 BCA ¶ 33,206. Finally, the fax copy fee, as described, sounds as if it is an indirect finance charge that would not be reimbursable. Unless claimant can provide further clarification showing that it is properly reimbursable, the agency has properly disallowed this fee.

Decision

To conclude, the agency properly disallowed the administrative fee, the document review fee, and a portion of the messenger fees. The inspection fee should be reimbursed. The remainder of the messenger fees, wire fee, and fax copy fee may be reimbursable if claimant can provide appropriate additional information.

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CATHERINE B. HYATT  
Board Judge