



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gary A. Ditch - Loan Origination Fee
File: B-228691
Date: September 21, 1988

DIGEST

A transferred employee who purchased a residence in December 1986 at his new duty station claims reimbursement for a 3 percent loan origination fee. The employing agency disallowed the entire fee on the ground it was a nonreimbursable finance charge. Since the loan origination fee includes points and a discount, we agree that the full 3 percent may not be reimbursed, but we allow a 1 percent fee as a customary charge in the area.

DECISION

Mr. Joseph N. Smith, Finance and Accounting Officer, Corps of Engineers, Department of the Army, has requested an advance decision as to whether a \$3,024 fee, representing 3 percent of the amount of a mortgage, paid by Mr. Gary A. Ditch, an employee of the agency, may be reimbursed as a loan origination fee. For the reasons stated in this decision, reimbursement for this fee may be authorized only for 1 percent of the mortgage amount.

BACKGROUND

In December 1986, Mr. Gary A. Ditch submitted a final voucher to the Corps of Engineers in connection with a permanent change of station from St. Paul, Minnesota, to Chicago, Illinois. The voucher included a request for reimbursement of a \$3,024 fee associated with the mortgage on his new residence in Naperville, Illinois, a suburb of Chicago. The real estate closing was held December 5, 1986. The fee represented 3 percent of a conventional loan of \$100,800. The settlement statement for the loan lists the \$3,024 as a "loan origination fee." However, in a letter dated December 18, 1986, an officer of the lending institution stated that the \$3,024 represented a "commitment fee" and was used to "commit the rate for 75 days" and also "to adjust the yield on the loan." In light of this, the agency

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did not allow Mr. Ditch's claim for reimbursement of this fee, because it concluded the fee was a finance charge, and therefore not reimbursable.

In requesting our decision, the Finance and Accounting Officer states the following:

"This Command is aware that Mr. Ditch is entitled to payment of 1 percent of the Loan Origination Fee, based on HUD's advice that a 1 percent loan origination fee is customary for this local area. The payment of 1 percent of the Loan Origination Fee would represent, according to FTR para 2-6.2d(1)(b), a fee which is assessed on a percentage basis to compensate the lender for expenses of originating the loan, processing documents, and related work. Mr. Ditch was reimbursed \$1,058.50 for administrative cost incurred in the purchase of his home (see attached DD Form 1705)."

Mr. Ditch contends that he is legally entitled to reimbursement of the entire 3 percent fee. He states that the fee is a "loan origination fee," which is reimbursable, and that the customary loan origination fee rate in the suburbs of Chicago is 3 percent of the loan amount.

OPINION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses incurred in the sale and/or purchase of a residence incident to a permanent change of station. Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR), authorizes reimbursement of loan origination fees and similar charges which are not specifically disallowed by FTR, para. 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). Paragraph 2-6.2d(2) precludes reimbursement of interest on loans, points, mortgage discounts or any finance charge. The term "loan origination fee," as used in FTR, para. 2-6.2d(1), refers to a fee to compensate the lender for expenses incurred in originating the loan, processing documents, and related work. See Veterans Administration, 62 Comp. Gen. 456 (1983). Reimbursement for a loan origination fee is limited by statute to the amount customarily charged in the locality of the employee's new residence. See 5 U.S.C. § 5724a(a)(4) (1982), as implemented by FTR, para. 2-6.2d(1).

The fee that Mr. Ditch paid included charges for a "commitment fee" and "to adjust the yield on the loan." These charges are in the nature of finance charges and do not qualify as administrative expenses contemplated by the term "loan origination fee" used in the regulations. In very similar circumstances, we disallowed an employee's claim for a 3 percent loan origination fee paid in connection with a transfer to Chicago authorized in October 1984. Constant B. Chevalier, B-221541, Sept. 3, 1987, 66 Comp. Gen. 627. In that case, as here, we found that the 3 percent fee included points and loan discounts which are not reimbursable expenses. However, we allowed a 1 percent fee based on our decision in Roger J. Salem, 63 Comp. Gen. 456 (1984). In Salem, we denied a claim for the full 5 percent loan origination fee for a house purchase in Chicago, but upheld the agency's reimbursement of 1 percent as customary in the Chicago area.

Also, in two very recent decisions, we held that, absent a definitive showing that the customary loan origination fee in the area is greater than 1 percent, we would limit reimbursement to 1 percent.1/ R. Lawrence Heller, B-229352, Aug. 22, 1988; Abbas M. ShaKir, B-226876, Aug. 22, 1988.

As quoted above, the Corps of Engineers recognizes that a 1 percent fee is normally allowed, but it states that Mr. Ditch has already been reimbursed \$1,058.50 for administrative cost incurred in the purchase of his home. However, our examination of his application for reimbursement of expenses (DD Form 1705) shows that those costs were for document preparation, closing fee, title insurance, attorney's fees, recording fees, and tax stamps, and not for a loan origination fee. Those costs are reimbursable under other provisions of the FTR and do not preclude payment for a loan origination fee.

1/ Recently, the General Services Administration amended FTR, para. 1-6.2d(1)(b) to establish a general limitation of 1 percent on loan origination fees absent clear and convincing evidence that a higher rate was customary. FTR Supp. 26, Dec. 21, 1987 (effective Oct. 1, 1987).

Accordingly, Mr. Ditch may not be reimbursed for the full 3 percent loan origination fee he paid, but he is entitled to be reimbursed for a 1 percent fee.

for James T. Finckwa
Comptroller General
of the United States