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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218946

DATE: November 12, 1985

MATTER OF: Barry C. Nilson - Real Estate Expenses -
Loan Discount Fee

DIGEST:

A transferred employee who purchased a new residence paid a 1-1/2 percent loan fee and reimbursed the seller for an additional loan fee of 1-1/4 percent. Although the employee claimed both fees as "loan origination fees," the agency allowed only the 1-1/2 percent fee as an origination fee and denied reimbursement for the additional 1-1/4 percent. We sustain the agency's determination that the additional 1-1/4 percent fee must be disallowed, because the record shows that the fee constitutes a nonreimbursable loan discount.

The Assistant Director (Administration) of the Fish and Wildlife Service, United States Department of the Interior, requests our decision concerning Mr. Barry C. Nilson's claim for a 1-1/4 percent loan fee characterized by the employee as a "loan origination fee." For the reasons stated below, we hold that the 1-1/4 percent fee represents a loan discount and may not be reimbursed.

FACTS

Effective September 12, 1983, Mr. Nilson was transferred from Leadville, Colorado, to Newton Corner, Massachusetts. He purchased a new residence in Amherst, New Hampshire, and obtained financing from a local bank through a "mortgage loan purchase agreement" with the New Hampshire Housing Finance Authority ("Finance Authority"). The Finance Authority required Mr. Nilson to pay a 1-1/2 percent loan fee in the amount of \$755.25, described on the bank's settlement statement as a "loan origination fee." The seller was required to pay an additional 1-1/4 percent fee of \$629.38, identified on the settlement statement as a "loan discount" to be paid from the seller's funds.

Mr. Nilson reimbursed the seller for the additional 1-1/4 percent fee, apparently for the purpose of preserving

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the sales contract. The parties signed an agreement acknowledging the reimbursement, and Mr. Nilson claimed both the 1-1/2 percent and 1-1/4 percent fees as "loan origination fees." To support his characterization of the fees as "loan origination fees," Mr. Nilson submitted a letter from the Finance Authority explaining that, pursuant to its regulations, it had charged him a 1-1/2 percent "commitment fee" and that it had charged the seller an "origination fee" of 1-1/4 percent. Mr. Nilson also submitted a letter from the Manchester, New Hampshire, office of the Department of Housing and Urban Development (HUD), stating that "[t]he origination fees you paid are customary in home financing activities of the New Hampshire Housing Finance Authority * * *."

The Fish and Wildlife Service reimbursed Mr. Nilson for a loan origination fee of 1-1/2 percent, but disallowed reimbursement for the additional 1-1/4 percent fee based on its determination that the fee constituted a nonreimbursable loan discount. In reaching this determination, the agency noted that the settlement statement specifically identifies the 1-1/4 percent fee as a "loan discount," and that it had contacted the concerned lending institution to verify that the fee represented an interest expense rather than an administrative charge for loan origination. Additionally, the agency noted that the 1-1/4 percent fee is customarily an expense of the seller, not the buyer, in mortgage transactions which are handled by the Finance Authority.

Mr. Nilson reclaimed the disallowed 1-1/4 percent fee, renewing his contention that the fee must be regarded as a loan origination fee because it is characterized as such in letters from the Finance Authority and HUD. He also maintains that, had he obtained financing from a different bank which quoted a single "loan origination fee" of \$1,406 (approximately 2.8 percent), he would have been reimbursed for the entire amount. Finally, Mr. Nilson alleges that he paid the 1-1/4 percent fee in good faith, relying on the agency's advice that he would be entitled to reimbursement.

DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and/or purchasing a residence pursuant to a permanent change of

station. Effective October 1, 1982, the implementing regulations in para. 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 (1983) (FTR), were amended to permit reimbursement for loan origination fees. The relevant part of the amended regulation provides as follows:

"d. Miscellaneous expenses.

"(1) Reimbursable items. The expenses listed below are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station or by the purchaser of a residence at the new official station to the extent they do not exceed amounts customarily paid in the locality of the residence.

* * * * *

"(b) Loan origination fee;

* * * * *

"(2) Nonreimbursable items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable.

* * * * *

"(b) Interest on loans, points, and mortgage discounts; * * *"

In commentary accompanying the amended provisions of FTR para. 2-6.2d, the General Services Administration explained that the term "loan origination fee" refers to a lender's administrative expenses in processing a loan. 47 Fed. Reg. 44,566 (1982). Similarly, we have held that the term "loan origination fee," as used in FTR para. 2-6.2d(1)(b), refers to a fee which is assessed on a percentage-rate basis to compensate the lender for expenses of originating the loan, processing documents, and related work. See Robert E. Kigerl, 62 Comp. Gen. 534 (1983); and 62 Comp. Gen. 456 (1983).

In Roger J. Salem, 63 Comp. Gen. 456 (1984), we noted that a lending institution's designation of a particular fee as a "loan origination fee" is not controlling for purposes of FTR para. 2-6.2d(1)(b). We explained that the term "loan origination fee" has been used not only to refer to a charge covering administrative expenses, but also to a mortgage discount or "points." Simply stated, a mortgage discount represents prepaid interest and is intended to compensate the lender for the fact that the interest rate on the mortgage is lower than that available from alternative investment opportunities. In line with the long-standing policy which prohibits payment of interest expenses, the provisions of FTR para. 2-6.2d(2)(b) expressly preclude reimbursement for interest, "points," and mortgage discounts. Based on this specific prohibition, we have consistently disallowed reimbursement for any charge which represents a mortgage discount, whether it is paid by the purchaser or the seller. See, for example, Mark W. Spaulding, B-214757, September 5, 1984; and Clarence O. Stout, B-192186, October 23, 1978.

Applying the foregoing standards, we agree with the agency's determination that the 1-1/4 percent fee claimed by Mr. Nilson must be regarded as a loan discount rather than a loan origination fee. The settlement statement clearly identifies the 1-1/4 percent fee as a loan discount charged in addition to a loan origination fee, and the bank confirmed that the fee represents an interest expense. Under these circumstances, reimbursement for the 1-1/4 percent fee is prohibited by FTR para. 2-6.2d(2).

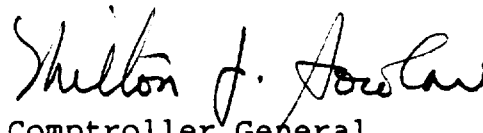
Furthermore, as noted by the agency, the 1-1/4 percent fee would not be reimbursable under FTR para. 2-6.2d(1) even if it could be regarded as a "loan origination fee" within the meaning of that regulation. The provisions of FTR para. 2-6.2d(1) allow reimbursement only for those fees which are customarily paid by a buyer in the locality of an employee's new residence, and we have interpreted the "customary expense" requirement as applying to the particular type of financing involved. See William I. Massengale, B-185863, August 25, 1976. The record indicates that it is customary in mortgage transactions handled by the Finance Authority for the seller to pay the 1-1/4 percent fee in question, and that this policy is codified in the Finance Authority's regulations. Accordingly, since the 1-1/4

percent fee assessed by the Finance Authority is not customarily paid by a purchaser, it is not an expense which may be reimbursed to the purchaser under FTR para. 2-6.2d(1).

Although Mr. Nilson has submitted a different lending institution's statement that it would have charged him a loan origination fee of 2.8 percent, this information does not have any bearing on the nature or purpose of the 1-1/4 percent fee he actually incurred. As indicated previously, each fee claimed as a "loan origination fee" must be examined in the context of the particular transaction. See Roger J. Salem, cited above. In any event, we do not agree with Mr. Nilson's contention that, had he obtained financing from the other bank, he would have been reimbursed for the entire 2.8 percent fee. The lender's fee schedule submitted for our review shows that payment of the 2.8 percent fee would have reduced the interest rate on the mortgage, one criterion for finding that a "loan origination fee" actually includes a mortgage discount. See Salem, above.

Finally, it is not material that Mr. Nilson may have relied on erroneous advice provided by agency officials. It is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See M. Reza Fassihi, 54 Comp. Gen. 747 (1975), and court cases cited therein.

Accordingly, for the reasons stated above, Mr. Nilson's claim for an additional 1-1/4 percent loan fee may not be allowed.

for 
Comptroller General
of the United States