DECISION

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

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FILE: B-186734 DATE: SEP 23 1976 97984

MATTER OF: Robert L. Armstrong - Reimbursement for real estate expenses

DIGEST:

1. The fact that transferred employee may have been incorrectly advised by his agency that 1% service charge or loan origination fee paid by him to secure mortgage for purchase of residence was not a finance charge provides no basis for reimbursement of fee since such payment is expressly precluded by Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973).

2. Closing costs may not be reimbursed to employee who pays such costs when selling residence at old duty station if local HUD office determines that it is customary for purchaser to pay such costs in that particular area as provided in Federal Travel Regulations (FPMR 101-7) para. 2-6.3c (May 1973).

3. Where employee has been reimbursed for one termite inspection in connection with sale of residence at old duty station, cost of second inspection may not be reimbursed.

4. The fact that transferred employee was incorrectly advised by his agency that certain real estate expenses incurred by him during transfer were reimbursable does not obligate the Government to reimburse such expenses.

This action is in response to the request of Mr. Robert L. Armstrong, a Veterans Administration employee, for reconsideration of our Claims Division settlement of March 23, 1976, which disallowed his claim for certain real estate expenses incurred by him incident to a permanent change of station.

The disallowance was for reimbursement of the $440 service charge he paid to secure a loan for his new residence, the $10 fee paid for a second termite inspection of his old residence, and the $279.30 closing costs paid in selling his old residence.

The two real estate transactions involved in this case were the result of Mr. Armstrong's permanent duty transfer from St. Petersburg, Florida to Roanoke, Virginia. Mr. Armstrong purchased his new home in Virginia in October 1974, paying a required 1% loan fee of $440 to the lending institution. Before selling his old residence in March 1975, Mr. Armstrong found it necessary to have two termite inspections since the first inspector, the Milliken Company, would not certify the home to be free of termites; so after paying Milliken $10, he then had a second inspection performed by the Orkin Company which certified the house termite free at a cost of $25. Moreover, in completing the sale of his old residence, Mr. Armstrong also paid the closing costs of $279.30.

When reimbursed for his real estate expenses under the authority of 5 U.S.C. § 5724a(a)(4) (1970), Mr. Armstrong was not reimbursed for either the service charge on his loan incident to the purchase of a residence at his new duty station or the closing costs on his old residence. Yet, he was reimbursed for the $25 Orkin termite inspection, although not for the $10 Milliken inspection.

Mr. Armstrong now argues that he is entitled to reimbursement for these expenses because the Assistant Loan Guaranty Officer at his agency verified the $440 service charge as reimbursable and the $279.30 closing costs were likewise verified reimbursable by the agency's Loan Guaranty Officer. He further argues that despite the Department of Housing and Urban Development's statement to the contrary, it is customary for the seller to pay the closing costs in the St. Petersburg, Florida area.

However, for the reasons setout below, we must sustain our Claims Division's disallowance of Mr. Armstrong's claim.

As mentioned above, the authority to reimburse a Government employee for expenses incurred in connection with real estate transactions upon official transfer of station is found in section 5724a of title 5 of the United States Code (1970). The governing regulations implementing this statute are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May, 1973.

Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May, 1973) provides in pertinent part that:

> "* * * no fee, cost, charge, or expense is reimburseable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

Section 106 of the Truth in Lending Act Title 1, Pub. L. 90-321 provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

> "(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:
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> "(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.
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> "(2) Service or carrying charge.
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> "(3) Loan fee, finder's fee, or similar charge.
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> "(4) Fee for an investigation or credit report.
>
> "(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss."

* * * * *

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

The service charge computed at 1% of the loan, claimed by Mr. Armstrong is also known as a loan origination fee, and its purpose is to cover the various administrative costs of processing and handling the loan. We have held in the past that this fee may be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See 54 Comp. Gen. 827 (1975); B-185621, April 27, 1976; B-183972, April 16, 1976; and cases cited. As such, there is no exception contained in section 106(e) of the Act for this fee which must then be considered a "finance charge" in accordance with section 106(a), and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the service charge paid by Mr. Armstrong.

The reimbursement of closing costs is authorized by FTR para. 2-6.2f provided that they are customarily paid by the seller of the old residence at the old duty station. However, the method to be used in determining what the local custom is in respect to closing costs in a particular area is setout in FTR para. 2-6.3c which provides in pertinent part as follows:

> "Assistance provided by local offices of the Department of Housing and Urban Development. * * * The local office will also furnish upon request information concerning local custom and practices with respect to charging of closing costs related to either a sale or purchase, including information as to whether such costs are customarily paid by the seller or purchaser * * *"

In the instant case, therefore, the local HUD office decided that in the St. Petersburg area closing costs are customarily paid by the purchaser rather than the seller. However, Mr. Armstrong contends that the local custom is and has been that the seller pays the closing costs. Yet, in the absence of evidence more substantial than Mr. Armstrong's personal beliefs, we must hold that the information provided by HUD is controlling and that Mr. Armstrong may not be reimbursed for the closing costs in question. See 54 Comp. Gen. 827, supra; B-175939, June 19, 1972; B-165202, September 30, 1968.

As to the disallowance of the $10 claim for the termite inspection, we must agree with our Claims Division that one inspection is sufficient to meet any reasonable sales requirement and a duplication of such charges cannot be reimbursed.

Regarding Mr. Armstrong's belief that the erroneous advice given by a Government employee is a fact that may warrant payment of his claim, it should first be noted that erroneous advice given by the Government's own agents and employees provides no basis for reimbursement of an expense that is otherwise prohibited. Where there is in fact no authority to use Government funds for payment of a particular expense, authority may not be created by an incorrect expression of opinion by a Government employee or agent that authority exists. The well established rule of law in this regard is that anyone entering into an arrangement with the Government takes

the risk of having ascertained that the agent with whom he deals and who purports to act for the Government stays within the limits of his authority, inasmuch as the Government can be neither bound nor estopped by the unauthorized acts of its agents. Wilber National Bank of Oneonta, Administrator v. United States, 294 U.S. 120 (1935); Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947). Thus, Mr. Armstrong is not entitled to reimbursement for expenses solely because certain Government employees erroneously purported to authorize reimbursement when they were in fact without authority to do so.

Accordingly, for the foregoing reasons, the disallowance of Mr. Armstrong's claim is sustained.

R.F.KELLER
Deputy] Comptroller General
of the United States