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DECISION

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

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FILE: B-201061 DATE: JUN 16 1981

MATTER OF: Ronald S. Taylor - Real Estate Expenses - Finance Charges

DIGEST: Employee may not be reimbursed for lump-sum payment to third-party lending institution which prepared financial documents ultimately used by loan originating institution for conditioned purpose of extending credit to finance employee's purchase of home. Since fee paid to third party lending institution was stated as lump-sum payment for expenses and overhead and is finance charge within the meaning of Regulation Z (12 C.F.R. Part 226), reimbursement is precluded absent itemization to show items excluded by 12 C.F.R. § 226.4(e) from the definition of finance charge.

This action is in response to a request from Mr. John Gregg, an authorized certifying officer with the General Services Administration (GSA), regarding the propriety of certifying for payment an item on a travel voucher for real estate expenses in the amount of $926.50 in favor of Mr. Ronald S. Taylor, a GSA employee who was officially transferred from Atlanta, Georgia, to Washington, D.C., effective October 21, 1979. Pursuant to the analysis which follows, we conclude that the $926.50 amount in question may not be certified for payment since it is a finance charge, and does not qualify as a incidental expense as contended by Mr. Taylor.

BACKGROUND

Briefly, the agency reports that Mr. Taylor sought mortgage financing from the Metropolitan Mortgage Fund on or about March 12, 1980, in connection with the purchase of his residence at the new official duty station. Around April 21, 1980, he was notified that this loan had been approved. During the interval, the VA mortgage rate ceiling was raised to 12% and then 14%. Due to the high interest rate, Mr. Taylor contacted Guild Mortgage Company which

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offered him a VA loan with a guaranteed 13% interest rate. Guild Mortgage Company pointed out that they could not meet the agreed upon closing date of April 28, 1980, unless Metropolitan Mortgage would release the documents they had acquired to Guild Mortgage. Metropolitan Mortgage agreed to release the documents to Guild only if Mr. Taylor paid them for their expenses and overhead for assembling the documents, in an amount equivalent to the loan origination fee which would have been charged had the loan been made by Metropolitan Mortgage. In this regard the record contains a photostated copy of Mr. Taylor's personal check in the amount of $926.50 payable to the Metropolitan Mortgage Fund, and showing the memo notation "1% origination fee" on the face of the check.

Mr. Taylor's voucher for real estate expenses totaled $2,239.87, of which amount, $1,013.20 was reimbursed by the agency. The charge for $926.50 - representing the payment to Metropolitan Mortgage Fund - is apparently the only unresolved issue and is the subject of our decision here.

The agency's doubt concerning the $926.50 payment is expressed in the record before us as follows:

> "Existing regulations (paragraph 2-6.2d, Part 6, FPMR 101-7) do not allow for reimbursement of charges or expenses determined to be a part of a finance charge under the Truth and Lending Act or Regulation Z issued thereunder. The loan origination fee of $926.50 shown as a part of Item 6, GSA Form 2494 covers the lender's overhead expenses in preparation of documents and considered part of the finance charge. Although, Metropolitan Mortgage Fund, Inc. prepared the documents and received the $926.50 for that service the documents were transferred to the ultimate lender, Guild Mortgage Company in order to grant the mortgage. The origination fee of $926.50 may not be reimbursed since the lender's overhead expenses are costs incident to the extension of credit and are part of the finance charges under Regulation Z."

In support of his claim Mr. Taylor counters the agency's reasoning contending as follows:

"At no time during these proceedings was there ever a direct connection between Guild Mortgage Company and Metropolitan Mortgage Fund. Since no loan was obtained from Metropolitan Mortgage Fund, the amount paid to them cannot be considered a finance charge or any form of interest by any legal or other definition of the term. While it is true that Guild Mortgage Company found the file prepared by Metropolitan to be adequate to approve the loan and therefore did not charge me a loan origination fee, that fact cannot have any bearing on the characterization of the payment made to Metropolitan Mortgage Fund. Furthermore, if the payment could be considered a finance charge it would have to be itemized on the truth-in-lending statement provided at closing. An examination of that statement shows no such charge."

ANALYSIS AND DECISION

Paragraph 2-6.2d of the Federal Travel Regulations (FPMR 101-7, May 1973) (FTR), defining which miscellaneous expenses are reimbursable in connection with the purchase and sale of residences provides, in pertinent part, that:

"* * * no fee, cost, charge, or expense is reimbursable 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. * * *"

The pertinent part of Regulation Z, 12 C.F.R. Part 226, states:

"226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all

> charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:
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> * * * * *
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> "(2) Service, transaction, activity, or carrying charge.
>
> "(3) Loan fee, points, finder's fee, or similar charge." (Emphasis added).

As a result, in determining whether or not a particular payment is a finance charge, the statements of creditor-lending institutions just like those of borrower-home buyers cannot simply be accepted as a final legal characterization of the payment. Rather, agency reviewing officials must examine the item in light of Regulation Z, 12 C.F.R. § 226.4 (1980), and decisions of this Office. See Kenneth De Fazio, B-191038, November 28, 1978.

Regulation Z makes it clear that payments to third parties - such as Metropolitan Mortgage Fund in this case - for services and charges incident to the extension of credit for a specific real estate transaction are to be included in determining the total of all finance charges for that transaction. We believe it is correspondingly clear in the present case that Guild Mortgage would not have extended credit - within the meaning of Regulation Z - without the documents compiled in Mr. Taylor's case by Metropolitan Mortgage Fund. This follows from the fact that the documents assembled and prepared by Metropolitan Mortgage Fund were ultimately delivered to and used by Guild Mortgage as a condition of and incident to extending credit to Mr. Taylor. Thus, in the circumstances presented and in view of the fact that Guild Mortgage did not charge for a loan origination fee because they were able to utilize Metropolitan Mortgage Funds documents, we conclude that Mr. Taylor's payment in the amount of $926.50 to Metropolitan Mortgage Fund represents a finance charge within the meaning of Regulation Z and therefore may not be reimbursed.

One additional observation attaches to this part of the analysis of Mr. Taylor's claim. We have stated that a finance charge - within the meaning of Regulation Z - is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale regardless of whether credit is sought or obtained. Only the latter may be reimbursed under the governing law, 5 U.S.C. § 5724a(a)(4), and the aforementioned implementing regulation, FTR 2-6.2d. Accordingly, we have held that there may be no reimbursement of a lump-sum loan origination fee. However, if the lump sum fee includes specific charges which would otherwise be reimbursable there must be a specific list of the services and an allocation of the charges that comprise the lump sum amount, and only those items that are specifically excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e) (1980), may be reimbursed. Anthony J. Vrana, B-189639, March 24, 1978.

In the instant case, the record does not contain any listings or other explanation of the services or charges that comprise the lump-sum amount of $926.50. Although Metropolitan Mortgage Fund stated that the charge is to cover various expenses and overhead, those costs are not listed and it cannot be determined whether or not they are excluded from the definition of a finance charge. In that connection it is noted that many of the items listed in subsection 226.4(e), as not comprising finance charges, were paid by Mr. Taylor in addition to the lump-sum payment to Metropolitan Mortgage Fund and where appropriate have been reimbursed to him.

Thus we believe that it is clear that the lump-sum payment to Metropolitan Mortgage fund represents a finance charge within the meaning of Regulation Z (12 C.F.R. § 226.4(a)), no part of which is reimbursable absent itemization to show items excluded by 12 C.F.R. § 226.4(e) from the definition of finance charge.

Finally, although we believe that Mr. Taylor's claim has been dispositively precluded by our analysis in regard to paragraph 2-6.2d of the Federal Travel Regulations, in order to completely address Mr. Taylor's contentions we would also point out that the $926.50 payment in question does not qualify as an "incidental expense" reimbursable under the following provision of paragraph 2-6.2 of the Federal Travel Regulations:

"f. Other expenses of sale and purchase of residences. Incidental charges made for required services in selling and purchasing residences may be reimbursable if they are customarily paid by * * * the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence. (Emphasis added).

As distinguished from finance charges imposed as part of the cost of obtaining credit, incidental residence transaction expenses are generally charges imposed for services rendered in connection with a purchase or sale. Thus for example, we have held that where a termite inspection or a roof inspection was required as a condition for obtaining financing on the purchase of a residence, such inspection fees are reimbursable as a required service customarily paid by the purchaser as contemplated by paragraph 2-6.2f of the Federal Travel Regulations. See Robert E. Grant, B-194887, August 17, 1979. However, in the present case Mr. Taylor seeks reimbursement for unitemized expenses incurred by a third party lending institution in preparing documents which we find were clearly related to and which all available evidence tends to show were instrumental in his obtaining financing for his new home. As a result, we are unable to conclude that the $926.50 payment to Metropolitan Mortgage Fund was for a "required service" which was "customary" in the locality of the new residence. Therefore, the payment in question is not reimbursable as an "incidental expense" under paragraph 2-6.2f of the Federal Travel Regulations.

In accordance with our decision here, Mr. Taylor's reclaim voucher in the amount of $926.50 may not be certified for payment.

MILTON J. SOCOLAR
Acting Comptroller General
of the United States