The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Constant B. Chevalier - Loan Origination Fee and Loan Application Fee

File: B-221541

Date: September 3, 1987

DIGEST

1. Transferred employee who purchased a residence at his new duty station may not be reimbursed for the full amount of a loan origination fee of 3 percent. Although he has demonstrated by a Federal Home Loan Bank's survey of local lenders that a fee of 3 percent was customary in the locality for the conventional financing involved, the "fees" reflected in the survey include not only loan origination fees but also points and discounts which are not reimbursable expenses. Steven C. Krems, B-220756, March 28, 1986, 65 Comp. Gen. 447, overruled in part.

2. Employee who paid a loan application fee of $250 may be reimbursed for that fee, as well as a loan origination fee, since he has demonstrated that $250 is the customary fee charged for taking of loan applications in the locality of his new residence. Since a loan application fee is charged to all applicants, it is not a finance charge and it may be reimbursed under FTR, para. 2-6.2d(1)(f) as a fee "similar" to an FHA or VA loan application fee.

DECISION

An employee who purchased a residence at his new duty station was charged a loan application fee of $250 and a 3 percent loan origination fee in the amount of $2,760. He has been reimbursed by his agency for an amount of the loan origination fee equal to 1 percent of the loan or $920.1/ For the following reasons, the employee may be reimbursed the $250 loan application fee but not the additional $1,840 amount of the loan origination fee.

1/ An authorized certifying officer with the Department of Agriculture has requested an advance decision whether Mr. Constant B. Chevalier may be reimbursed for both a $250 loan application fee and a 3 percent loan origination fee.

BACKGROUND

Mr. Constant B. Chevalier, an employee of the Department of Agriculture, was transferred from Washington, D.C., to Chicago, Illinois, under a travel authorization dated October 3, 1984. He purchased a residence at his new duty station which he financed by a conventional mortgage obtained from Great American Federal Savings. He paid an application fee of $250 at the time he applied for the loan and a 3 percent loan origination fee in the amount of $2,760 at closing. Although he claimed reimbursement for the full amount of the loan origination fee, the agency reimbursed him only $920, an amount equal to a 1 percent loan origination fee, in reliance on our decision, Roger J. Salem, 63 Comp. Gen. 456 (1984). The agency declined to reimburse him for the loan application fee, citing our decision, Mark W. Spaulding, B-214757, September 5, 1984.

Mr. Chevalier has appealed from the agency's partial disallowance of the claim and seeks reimbursement for the remainder of the 3 percent loan origination fee and for the $250 loan application fee. The agency questions whether the documentation he has submitted in support of his claim for the loan origination fee is sufficient to establish his entitlement to reimbursement for an amount in excess of 1 percent of the loan amount. It also questions whether a loan application fee may be reimbursed where the employee has been reimbursed for a loan origination fee covering the lender's administrative expenses in processing the loan.

In support of his claim, Mr. Chevalier relies on a letter dated December 4, 1985, from the Chief of Mortgage Credit for the Chicago Area Office of the Department of Housing and Urban Development which advised him that:

> "A loan origination fee of 3% of the mortgage amount is a reasonable charge on a conventional loan in the Chicago market area. In addition, a $250.00 application fee is reasonable and acceptable."

To further substantiate his claim for both fees, Mr. Chevalier has submitted an October 16, 1985 letter from an official of the local HUD office advising a fellow Department of Agriculture employee that, for conventional financing, the customary loan origination fee since 1983 in Chicago has been "in the range of a maximum of 2-1/2 to 3% plus up to a $250 application fee."

In addition, Mr. Chevalier has furnished the results of two surveys of area lenders. One is based on a survey of more than 80 lending institutions conducted by the Federal Home Loan Bank of Chicago for the month of October 1984. The survey results list "fees" customarily charged by area lenders according to the type of mortgage and the specific financing terms involved. The other is a compilation of mortgage data collected from 55 lenders that serve the area of Mr. Chevalier's new duty station. It lists the specific terms offered by each lender together with the amount of the loan application fee and the number of points charged for the particular type of loan involved.

DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in paragraph 2-6.2d(1) of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1983), were amended to permit reimbursement for loan origination fees and similar charges which are not specifically disallowed by FTR, para. 2-6.2d(2). At that time, FTR, para. 2-6.2d(2), was amended to specifically disallow "[i]nterest on loans, points and mortgage discounts." See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). Under FTR, para. 2-6.2d(1), reimbursement for a loan origination fee is limited to the amount customarily charged for loan origination fees in the locality of the employee's new residence. See Patricia A. Grablin, B-211310, October 4, 1983.

Interpreting the "customary charge" limitation stated in FTR, para. 2-6.2d(1), we held in Gary A. Clark, B-213740, February 15, 1984, that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee in a given locality. In that case, which involved the Seattle area, the HUD area office advised that the customary loan origination fee for commercial loans was 2 percent. We stated that this information supplied by HUD creates a rebuttable presumption as to the prevailing loan origination fee charged in the area and is controlling in the absence of evidence overcoming that presumption. Applying evidentiary standards developed in the context of real estate brokers' commissions, we suggested that an employee may be able to demonstrate through a survey of local lending institutions that the prevailing loan origination fee is higher than that quoted by HUD.

In this case, the Chicago area office of HUD has advised Mr. Chevalier that it does not formally monitor loan origination fees charged in connection with conventional loans. This is consistent with earlier advice from the same office indicating that its monitoring responsibilities extend only to FHA-insured loans. By regulation, the loan origination fee that may be charged in connection with FHA-insured loans is limited to 1 percent of the loan amount. 24 C.F.R. § 203.27; Steven C. Krems, B-220756, March 28, 1986, 65 Comp. Gen. 447.

HUD officials, however, have furnished Mr. Chevalier with information indicating that for conventional financing, a 3 percent loan origination fee is a "reasonable charge" and that the loan origination fee in Chicago has been in the range of a "maximum of 2-1/2 to 3%." We do not view that information as establishing 3 percent as the customary charge for loan origination fees in the Chicago area. At best, it indicates that a 3 percent fee defines the maximum range of fees charged for loan origination. A showing that a fee is within a range of fees charged in the locality does not establish that fee as the customary charge. Gary A. Clark, B-213740, supra. Under the regulations cited above, the fee that may be reimbursed is limited to the dominant or prevailing fee within that range or maximum. James F. Trusley III, et al., B-219076, November 25, 1985.

Where, as here, the information furnished by HUD does not establish any particular rate as the prevailing or customary rate, we have recognized that it is appropriate for the agency involved to limit reimbursement to the 1 percent loan origination fee charged for FHA-insured loans, unless the employee is able to furnish other information establishing a higher rate as customary. James F. Trusley III, et al., B-219076, supra.

Mr. Chevalier has furnished information from two sources other than HUD on which he relies in claiming that 3 percent is the customary loan origination fee in the locality of his new residence. One of these, the information developed by the Midwest Mortgage Monitor as the result of a survey of 55 area lenders, does not in fact make any reference to loan origination fees. It lists costs other than the loan application fee as "PTS," a common abbreviation for the terms "points." As noted above, reimbursement for points is specifically precluded by FTR, para. 2-6.2d(2). For this reason the particular survey is unhelpful in establishing the amount of the customary loan origination fee.

The other information presented by Mr. Chevalier is the Monthly Mortgage Interest Rate Survey prepared by the Federal Home Loan Bank of Chicago for the month of October 1984. For adjustable rate loans of the type secured by Mr. Chevalier, the survey lists "fees" of 3.065 percent as the typical charge by area savings and loans offering that type of financing. This particular survey was presented by an Internal Revenue Service employee in support of his claim for a 3 percent loan origination fee which he incurred in 1985 in connection with his purchase of residence in the Chicago area. In Steven C. Krems, B-220756, supra, we accepted the figure stated for "fees" as establishing the average and, thus, the customary loan origination fee for the Chicago area for the type of financing secured by that employee. In further examining the survey, however, we find that the figure stated for "fees" does not represent the loan origination fee but the sum of a number of fees charged by area savings and loans.

As noted above, the Federal Home Loan Bank survey is based on information collected from more than 80 area lenders. As to the fee information provided, the instructions to lenders state:

> "**COLUMN E** (Fees, Commissions, etc.): Enter as a percent of loan principal the fees, commissions, discounts and 'points' to be paid by the borrower or seller to your institution in order to obtain the loan. * * *"

We have been advised by the responsible Federal Home Loan Bank official that it is the composite of this information which is reflected as "fees" in the survey results. The 3.065 percent figure that appears in the survey for October 1984, therefore, includes not only the loan origination fee, but discounts and points, two items which are specifically disallowed by FTR, para. 2-6.2d(2). For this reason, our decision in Steven C. Krems, B-220756, supra, is overruled insofar as it appears to sanction reliance on the Federal Home Loan Bank survey determination of "fees" to establish the customary loan origination fee.

While Mr. Chevalier has not provided evidence to support his claim for reimbursement of any additional amount as a loan origination fee, the documentation he has furnished does establish that $250 is the amount customarily charged as a loan application fee in the Chicago area for the type of financing he secured. The agency has disallowed his claim for this $250 fee on the basis that FTR para. 2-6.2d(1)(a) only authorizes reimbursement for FHA and VA loan application fees. Although subparagraph 2-6.2d(1)(a) only lists the two types of loan application fees, subparagraph 2-6.2d(1)(f) authorizes reimbursement of "fees and charges similar in nature to those listed" in subparagraph 2-6.2d(1)(a). On this basis we have held that loan application fees customarily charged to applicants for conventional financing may be reimbursed. See Mark W. Spaulding, B-214757, supra, in which we authorized reimbursement of a 1 percent loan origination fee and a $200 loan application fee. A loan application fee is to be distinguished from a loan origination fee. The latter is intended to cover the lender's costs of processing the loan. In contrast, the loan application fee is charged to all applicants for financing regardless of whether the lending institution ultimately processes a loan in the applicant's favor. As such, it is not a finance charge and may be reimbursed on the basis that it is similar to a VA or FHA loan application fee. William R. Bigby, B-221162, June 10, 1986.

For the reasons stated, Mr. Chevalier's claim for the $250 loan application fee may be allowed. His claim for additional amounts as part of the loan origination fee is disallowed.

Milton J. Socolar

for Comptroller General
of the United States