



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R. Lawrence Heller - Loan Origination Fee

File: B-229352

Date: August 22, 1988

DIGEST

A transferred employee claimed a loan origination fee of 3 percent, but the agency limited reimbursement to 1 percent. Absent a definitive showing that the customary charge in the area was greater, our decisions have limited reimbursement to 1 percent. Since the employee has not submitted sufficient evidence to satisfy this requirement, he may not be reimbursed for the additional 2 percent charged.

DECISION

This decision is in response to a request from an Authorized Certifying Officer, Central Region, Internal Revenue Service (IRS), Department of the Treasury. It concerns the entitlement of one of its employees to be reimbursed a 3 percent loan origination fee incident to a permanent change of station in October 1985. We conclude that the employee is limited to reimbursement equal to 1 percent of the loan for the following reasons.

Mr. R. Lawrence Heller, an employee of the IRS, was transferred from Terra Haute, Indiana, to Indianapolis, Indiana, and he purchased a residence in the Indianapolis area. He requested reimbursement for a 3 percent loan origination fee (\$1,800), but the agency allowed only 1 percent based on information received from the Department of Housing and Urban Development (HUD) servicing the Indianapolis area and on our decision in Roger J. Salem, 63 Comp. Gen. 456 (1984). The agency notes, however, that the HUD information was based upon the customary charges in the area for FHA/VA mortgages, not conventional rates, since HUD does not maintain those statistics.

Mr. Heller contends that the agency regulations provide that a loan origination fee is payable if customarily paid in the locality of the residence. Further, he states that he made contact with over 15 lending institutions in the

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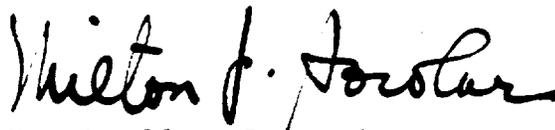
Indianapolis area and that loan origination fees for conventional loans consistently exceed the 1 percent rate.

The laws and regulations governing reimbursement for real estate expenses incident to a transfer of duty station are contained in 5 U.S.C. § 5724a (1982) and part 6 of chapter 2, Federal Travel Regulations (Supp. 4, Aug. 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1983).

Paragraph 2-6.2d of the FTR provides that a loan origination fee may be reimbursed if customarily paid by the purchaser to the extent it does not exceed an amount customarily paid in the locality of the residence. In our decision Roger J. Salem, 63 Comp. Gen. 456, supra, we discussed reimbursement of loan origination fees in detail and stated that a lending institution's statement that a particular charge represents a loan origination fee cannot be accepted as the final legal characterization of the charge made. See also Constant B. Chevalier, B-221541, Sept. 3, 1987, 66 Comp. Gen. _____. Therefore, in the absence of specific guidelines from the General Services Administration (GSA), we stated in Salem that we would examine such fees on a case-by-case basis in light of FTR para. 2-6.2d. We concluded by saying that in the absence of a definitive showing that the customary charge in the area was greater, reimbursement was limited to 1 percent.^{1/}

In the present case, Mr. Heller asserts that he performed a survey and determined that loan origination fee charges exceeded the 1 percent reported by HUD. However, he has not provided any documentation of his findings and, thus, has not overcome the rebuttable presumption that 1 percent was the prevailing fee in the area. Chevalier, supra; Trusley and Patton, B-219076, B-219123, Nov. 25, 1985.

Accordingly, based on the present record, Mr. Heller may not be reimbursed for the additional 2 percent loan origination fee charged him.

for 
Comptroller General
of the United States

^{1/} Recently, GSA amended FTR para. 2-6.2d(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).