



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Donald R. Mitchell - Loan Origination Fee
File: B-229443
Date: December 9, 1988

DIGEST

An Air Force employee claimed reimbursement of a loan origination fee of 2 percent. The agency's determination to limit reimbursement to 1 percent was based on data showing that 1 percent was the dominant fee in the area of the employee's new duty station. The employee contends that the data shows a range of fees from 1 to 3 percent and that the 2 percent claimed is reasonably within that range. The Air Force, however, properly limited reimbursement to 1 percent since the law and implementing regulations limit reimbursement to the "customary" charge in the area for loan origination fees, and the dominant fee represents the customary charge.

DECISION

This responds to a request for a decision as to whether an Air Force civilian employee should be reimbursed the full 2 percent he claims as a loan origination fee. For the following reasons, we conclude that the Air Force properly limited reimbursement to 1 percent.^{1/}

BACKGROUND

Donald R. Mitchell, who was transferred in June 1986, presented a claim for reimbursement of a loan origination fee of 2 percent of the amount of a conventional mortgage loan he obtained to purchase a residence in the vicinity of his new official duty station, Wright-Patterson Air Force

^{1/} The request was made by the Chief, Accounting and Finance Branch, Headquarters 2750th Air Base Wing (AFLC), Wright-Patterson AFB, Ohio. The request was approved by the Per Diem, Travel and Transportation Allowance Committee and assigned Control No. 87-24.

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Base (AFB), near Dayton, Ohio. The Air Force limited reimbursement to 1 percent on the premise that the amount claimed in excess of 1 percent exceeded the amount "customarily" charged in the area. The employee disputes the method the Air Force used to determine the customary fee.

The Air Force based its determination, that 1 percent was the customary fee in the Wright-Patterson AFB area, on three sources of information: (1) the agency's telephone survey of 12 lending institutions showing that 8 of the 12 charged 1 percent; (2) the agency's review of the installation's real estate claims files showing that 21 of 33 involved a 1 percent fee; and (3) an informal report from the Department of Housing and Urban Development (HUD) that the customary charge was 1 percent. Mr. Mitchell, however, concluded that there was a range of from 1 to 3 percent and that his claim for 2 percent reasonably was within the range. His conclusion was based on the first two sources, which imply that about one-third of the institutions surveyed or transactions reviewed applied a fee of more than 1 percent (some were as high as 3 percent), and on a newspaper article showing that a single bank, that apparently had nearly one-fourth the residential mortgage market, charged 3 percent. In addition he indicates that the 1 percent fee information furnished by HUD applies to FHA and VA loans, while he obtained a conventional loan.

The Air Force believes that its method of basing the customary charge on the dominant fee is correct; however, there was doubt as to whether our decision in Steven C. Krems, 65 Comp. Gen. 447 (1986), supported the claimant's method of determining "customary" charge within a range of fees.

DISCUSSION

In Krems the authorization for the Internal Revenue Service to pay a 3 percent loan origination fee was based on the holding that the rate was presumably within a range of fees charged, averaging 2.8 percent, that were contained in a comprehensive survey presented by the claimant. The Krems holding, which should be limited to the unusual facts of that case, neither controls the result of this case nor disturbs the general rules that we have applied consistently before and after the Krems decision.

The law and implementing regulations expressly limit reimbursement of loan origination fees (and other real estate purchase expenses) to those that are "customarily charged" in the locality of the employee's new duty station.

See 5 U.S.C. § 5724a(a)(4) (1982) and paragraph 2-6.2d(1) of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1985). We point out that, unlike the usual case, the only relevant evidence of "customary" charge known at the time the Krems decision was rendered, was a survey presented by the claimant; the agency's evidence was not considered controlling since it was based only on FHA financing, while a conventional loan was involved. Krems was partially overruled in Constant B. Chevalier, 66 Comp. Gen. 627 (1987), insofar as Krems sanctioned reliance on a survey determination of "fees" that contained other than reimbursable expenses.

Chevalier, in fact, reaffirmed the general rules stated in two decisions rendered prior to Krems. A showing that a range of fees was charged does not provide a basis to reimburse any fees within that range other than the dominant or prevailing fee charged. See James F. Trusley III and James A. Patton, B-219076, B-219123, Nov. 25, 1985, and cases cited therein. A showing that a fee is within a range of fees charged in a locality does not establish that fee as the customary charge. Gary A. Clark, B-213740, Feb. 15, 1984.

As is indicated above, in the present case the Air Force's telephone survey and results of its claim files review show that about two-thirds applied a 1 percent loan origination fee. Thus, whether or not the HUD information applied only to FHA and VA loans, or that one large lender charged more, the Air Force's determination that 1 percent was the customary (dominant) fee is well supported. See James F. Trusley III and James A. Patton, B-219076, supra. The fact that Mr. Mitchell's 2 percent fee may have been within the range of 1 to 3 percent charged by lending institutions does not make it the "customary" charge within the meaning of the law and regulations.

Accordingly, Mr. Mitchell's claim for the additional 1 percent fee he incurred may not be allowed.

for 
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