



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William K. Dickinson - Residence Purchase -
Attorney Fees - Loan Discount Fee

File: B-229322

Date: December 8, 1988

DIGEST

1. When the employee purchased a residence at his new duty station, the mortgage lender charged the employee a "loan discount fee" in addition to a "loan origination fee." The latter was reimbursed by the employing agency, and the employee asserts that the "loan discount fee" should also be reimbursed since it was actually a second "loan origination fee" charged for processing the loan rather than lending money. We hold that the "loan discount fee" may not be reimbursed since it appears to be a finance charge. Moreover, when added to the first "loan origination fee," it would exceed the customary cost of such fees in the local area of the residence.

2. In purchasing a home at the new duty station, the employee's attorney fees were incurred for legal services necessary to transfer clear title and, therefore, are reimbursable. Although the bankruptcy court had to approve the purchase, the house was not the subject of a foreclosure proceeding, and the fees were not litigation costs.

DECISION

This decision^{1/} upholds the employing agency's denial of a "loan discount fee" incurred by Mr. William K. Dickinson, an employee of the National Park Service, Department of the Interior, incident to his purchase of a residence at his new duty station. The attorney fees he incurred, however, may be reimbursed.

^{1/} Mr. Foon C. Lee, Authorized Certifying Officer, National Park Service, Western Region, requested our decision.

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BACKGROUND

Mr. Dickinson was transferred from Grand Canyon, Arizona, to Honolulu, Hawaii, on September 1, 1985. He purchased a house in the vicinity of Honolulu on March 27, 1986. Included in the closing costs paid by Mr. Dickinson were a "loan discount fee" of \$1,600, as well as a "loan origination fee" of \$1,600 each charged by the mortgage lender at 1 percent of Mr. Dickinson's loan. Mr. Dickinson also paid attorney fees for a lawyer representing him. He retained the attorney before settlement because the seller was involved in bankruptcy proceedings and the court had to approve the sale.

The authorized certifying officer disallowed the loan discount fee. He considered it a loan commitment fee for the extension of credit and therefore a finance charge which is not reimbursable. He allowed the loan origination fee based on information obtained from the local office of the United States Department of Housing and Urban Development (HUD) in Honolulu. Mr. Dickinson states that he had no alternative other than to pay the 1 percent loan discount fee and the payment did not reduce his interest payable on the loan. He, therefore, considers it also to be a reimbursable loan origination fee.

The attorney fees were disallowed because the expense of obtaining a lawyer representing the purchaser was not shown on the schedule of typical closing costs furnished by the HUD loan office in Honolulu. Further, the administrative staff of the National Park Service, Pacific Area Office in Honolulu, advised that it was not customary to require the services of an attorney for bankruptcy sales of real estate. Mr. Dickinson states that it was not a foreclosure sale, but that the attorney representation was necessary as a legitimate part of the closing process since court approval of the sale was required.

OPINION

Loan Discount Fee

An employee may be reimbursed the expenses of purchasing a residence at the new duty station under the authority of 5 U.S.C. § 5724a(a)(4). By regulation a loan origination fee and similar charges not specifically disallowed are reimbursable. See Federal Travel Regulations (FTR), para. 2-6.2d(1), FPMR 101-7 (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1987). The term "loan origination fee" as used in FTR, para. 2-6.2d(1), refers to a lender's fee for administrative expenses,

including costs of originating the loan, processing documents, and related work. See Veterans Administration, 62 Comp. Gen. 456 (1983). Reimbursement of a loan origination fee is limited by statute to the amount customarily charged in the locality of the employee's new residence.

In accordance with the well-established policy prohibiting payment of interest expenses, FTR, para. 2-6.2d(2)(b) prohibits reimbursement for interest, points, and mortgage discounts, and FTR, para. 2-6.2d(2)(e) prohibits fees determined to be a finance charge under the Truth in Lending Act. We, therefore, have disallowed reimbursement of any charge that represents a mortgage discount. See, for example, Roger J. Salem, 63 Comp. Gen. 456 (1984); Constant B. Chevalier, B-221541, Sept. 3, 1987.

In the present case, the fact that the lender has charged a \$1,600 "loan discount fee" in addition to what the lender declares to be a "loan origination fee" of \$1,600 appears to mean that the "loan discount fee" is a charge for the extension of credit rather than the lender's expense in processing the loan. However, even if a purely administrative expense is involved so that the loan discount fee is actually a second loan origination fee, the combined fee totalling \$3,200 would exceed the customary charge for a loan origination fee in the local area. The estimated typical cost charged by lenders and listed on the HUD schedule of costs as an "initial service charge" in the amount of 1 percent of the loan amount, is to be used as a guideline in determining the customary loan origination fee in the local area of the residence. It is presumed to reflect the prevailing cost of processing the loan in the absence of more specific evidence of the customary loan origination fee. See FTR, para. 2-6.3c. Roger J. Salem, 63 Comp. Gen. 456, at 458. No such evidence has been presented in this case.

Consequently, the National Park Service properly limited reimbursement to the loan origination fee of \$1,600.

Attorney Fees

Unless they are incurred in litigation, attorney fees are reimbursable real estate costs if customarily paid by the purchaser in the local area of the residence, but reimbursement may not exceed the customary amount paid for the services performed. See FTR, para. 2-6.2c, which expressly prohibits litigation costs. Litigation costs are expenses for "a contest in a court of law to enforce a right, a judicial controversy, a suit at law." See 61 Comp. Gen. 112 (1981). As discussed in that decision, for example, we

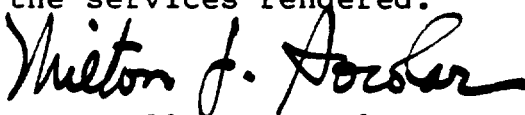
have disallowed reimbursement of attorney fees incurred in foreclosure proceedings involving litigation and resulting in a court-ordered sale of the employee's home at the old duty station. Litigation costs are for services incident to a court action, including filing suit and negotiating a settlement agreement, as well as appearances in court. See Barbara H. Burr, B-223907, Mar. 9, 1987.

Where litigation expenses are not involved, we have held that the expenses of advisory and representational services of an attorney may be allowed, as well as attorney expenses of title searching, document processing, and other services involved in the settlement of the home sale. See George W. Lay, 56 Comp. Gen. 561 (1977). In certain cases, advisory and representational services are virtually mandatory because particular legal problems connected with the sale require an attorney to facilitate transfer of clear title. Since legal services are necessary for title transfer in those cases, we have allowed reimbursement of the attorney fees paid by the transferred employee. See, for example, Philip G. Simonski, B-193945, Apr. 29, 1980; Reid T. Stone, B-210604, Aug. 24, 1983; John C. Bisbee, 65 Comp. Gen. 473 (1986).

The evidence shows that the attorney fees Mr. Dickinson incurred were not for litigation, but were for advisory and representational services and for services he needed to receive clear title. The itemized bills of the attorney show that the services included a letter and several telephone calls to other attorneys, research at the bankruptcy court, and one appearance before the court. There is no indication that pleadings were filed or that the attorney participated in litigation.

We may reasonably conclude from the foregoing that Mr. Dickinson was not directly involved in litigation concerning his house purchase. Instead, because the sale of the house had to be approved by the Bankruptcy Court, the services of an attorney were necessary in order to assure Mr. Dickinson of a clear title, free from potential claims by bankruptcy creditors.

Accordingly, the attorney fees in question may be reimbursed to the extent the agency determines that the fees do not exceed those customarily charged in the Honolulu area for the services rendered.

for 
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of the United States