

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 31, 2006

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GSBCA 16815-RELO

In the Matter of IOAN V. SERE

Ioan V. Sere, Redondo Beach, CA.

Robert Cooke, Chief, Fiscal Services Branch, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC, appearing for United States Department of Agriculture.

**HYATT**, Board Judge.

Dr. Ioan V. Sere, a supervisory veterinarian employed by the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS), was transferred from Dillon, South Carolina, to Redondo Beach, California, in January 2005. In connection with this permanent change of station, Dr. Sere was authorized reimbursement of allowable residence transaction expenses. This claim seeks review of the agency's disallowance of a large portion of the real estate transaction expenses claimed by Dr. Sere in connection with his purchase of a residence in Redondo Beach.

## Background

After closing on his new residence in Redondo Beach in February 2005, Dr. Sere submitted a claim for expenses incurred at settlement, based upon the paperwork he received from the escrow company, which included the Department of Housing and Urban Development (HUD) settlement statement and the closing company's own summary of buyer's closing costs. He applied for reimbursement of the expenses he incurred by listing

them on a form provided by FSIS for this purpose. He filled out the form, which contained the listed categories, as follows:

Appraisal Fee	\$ 360.00
Loan Origination Fee	\$ 1,554.00
Settlement Fee	\$ 3,203.75
Attorney Fee	\$ 80.00
Title Insurance Policy	\$ 777.00
Certifications	\$ 77.50
Loan Application Fee	\$ 840.00
State Revenue Stamps	\$ 60.00
Credit Report	\$ 35.00
Recording Fees and Recording Taxes	\$ 1,904.52
Survey	\$ 355.00
Other Incidental Expenses <sup>1</sup>	\$ 4,890.72

Dr. Sere requested, in submitting his application for reimbursement, that USDA pay him in accordance with an internal regulation, FSIS Directive 3820.1, under which a transferred employee may be reimbursed as much five percent of the real estate transaction costs incurred in purchasing a home at the new permanent duty station up to a maximum amount of \$11,534.<sup>2</sup> Five percent of the purchase price of his home exceeded the amount

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<sup>1</sup> The amount for incidental charges is the total for three separate categories that Dr. Sere included in this section of the USDA's form:

Total Loan Charges (First Loan)	\$ 3,372.74
Total Loan Charges (Second Loan)	\$ 883.98
Countrywide Insurance Services (Annual Premium)	<u>\$ 634.00</u>
TOTAL	\$ 4,890.72

These charges were derived from the final closing statement provided by the escrow company.

<sup>2</sup> Dr. Sere attached a copy of this directive to his request for our review. Based on this copy, the ceiling amount for reimbursement of expenses was last adjusted in 1997. USDA's National Finance Center (NFC) advised in its response to the claim that this directive is outdated and was not applied in evaluating Dr. Sere's submission. NFC also

of \$11,534. Since the reimbursable expenses on the form exceeded the amount of \$11,534, Dr. Sere requested reimbursement in that amount.

The agency, in reviewing Dr. Sere's request, scrutinized the information provided by Dr. Sere, which principally included the HUD settlement statement and the summary of the buyer's closing costs prepared by the escrow company retained for closing. USDA's review identified nearly \$9000 in expenses that it deemed not reimbursable under pertinent regulations, duplicative, or insufficiently documented to allow the agency to determine that they may be appropriately paid. USDA concluded that, based on the information it had, it could only approve payment of \$5159.75. The agency provided its determination to Dr. Sere and encouraged him to submit additional documentation to support payment of amounts that had been questioned.

The analysis provided by USDA in its response to the claim submitted to the Board addressed each element of Dr. Sere's voucher as follows:

<u>Expense</u>	<u>Claimed</u>	<u>Allowed</u>
Appraisal Fee	\$ 360.00	\$ 360.00
Loan Origination Fee	\$ 1,554.00	\$ 1,554.00
Settlement Fee	\$ 3,203.75	\$ 1,534.75
Attorney Fee	\$ 80.00	\$ 80.00
Title Insurance Policy	\$ 777.00	\$ 770.00
Certifications	\$ 77.50	\$ 26.00
Loan Application Fee	\$ 840.00	\$ 640.00
State Revenue Stamps	\$ 60.00	\$ 0.00
Credit Report	\$ 35.00	\$ 35.00
Recording Fees and Recording Taxes	\$ 1,904.52	\$ 142.00
Survey	\$ 355.00	\$ 0.00
Other Incidental Expenses	\$ 4,890.72	\$ 0.00

Dr. Sere, who still believes he should be reimbursed up to the amount of \$11,534, asked the Board to review the agency's actions and approve reimbursement of real estate expenses in that amount.

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noted that the form on which Dr. Sere submitted his claim is similarly outdated, thus no doubt contributing to claimant's misunderstanding of his reimbursement entitlements.

### Discussion

Although the agency informed Dr. Sere that he could provide documentation to support recovery of additional expenses, the record does not reflect that he was given clear guidance as to what elements were not recoverable and what elements of his claim might be payable should he be able to show that the expenses were customary and reasonable. For that reason, we will review the items of expense that were questioned by USDA and attempt to provide guidance as to whether, with additional documentation from knowledgeable real estate professionals in the locality, Dr. Sere might be entitled to additional reimbursement.

When an agency transfers an employee from one permanent duty station to another within the United States and the transfer is in the agency's interest, federal law requires the agency to pay the employee's real estate purchase transaction expenses. 5 U.S.C. § 5724a(d) (2000). The extent of the agency's obligation is set out in the Federal Travel Regulation (FTR), which applies to civilian employees of the Federal Government. The FTR is published in the Code of Federal Regulations and the pertinent provisions are contained in 41 CFR pt. 302-11 (2004).

Many of the expenses for which the FTR permits reimbursement are payable on the condition that the claimant show that the cost incurred is customarily incurred by the purchaser of property in the locality of the new residence, or that it was required as a condition of financing. In addition, it is the purchaser's burden to demonstrate that the fee charged was reimbursable, reasonable, and not in excess of the amount generally assessed in that locality. *E.g.*, *Edward D. Ellis*, GSBCA 16763-RELO, 06-2 BCA ¶ 33,304; *Timothy R. Defoggi*, GSBCA 16496-RELO, 05-1 BCA ¶ 32,907. When a charge has been questioned by the agency, this burden is usually met by furnishing statements from knowledgeable real estate and mortgage company professionals who are familiar with the prevailing customs in the locality of the new residence, and able to explain the nature of a particular fee.

### Loan Charges as Reflected in Dr. Sere's Submission

The loan charges claimed by Dr. Sere were incurred with respect to two mortgage loans he took out to purchase the house. The first loan was in the amount of \$621,600. The second loan was in the amount of \$77,000. Each loan generated separate charges, thus explaining why Dr. Sere included two distinct categories of loan charges in his claim. In his claim, Dr. Sere listed the loan origination fee, appraisal, and certifications as individual items as set forth on the form and then included as "incidental expenses" the loan charges which has been separately grouped in the escrow company's statement. The first set of loan charges claimed by Dr. Sere as "incidental expenses" pertained to the primary loan and reflected loan costs in the amount of \$3372.74. The second set of loan charges, totaling \$883.98, related to the second loan taken by claimant.

Real estate transaction charges which are paid incident to and as a prerequisite to the extension of credit in connection with the purchase of a residence are generally considered to be finance charges under the FTR. Such charges are reimbursable only to the limited extent permitted under the FTR. 41 CFR 302-11.200(f)(2)(v). Finance charges include any fees imposed directly or indirectly by the creditor as incident to or a condition of the extension of credit. Under the FTR, the principal finance charge that may be reimbursed is the loan origination fee, charged by the lender to defray administrative expenses incurred in connection with processing the loan, up to the amount of one percent of the mortgage loan amount unless a higher rate is customarily charged in the locality. *Id.*; *Edward D. Ellis*.

We address the loan charges for the primary loan first. On the escrow company's summary of final closing costs, this category includes, inter alia, the loan origination fee, the appraisal fee, and the credit report fee, all of which were itemized separately by claimant in his submission and allowed separately by the agency. In addition, claimant itemized certifications and it appears that USDA separately approved the flood certification fee of \$26, which also was included in the escrow company's loan charges attributable to the primary loan. Thus, these amounts are duplicate charges, are not recoverable a second time, and were properly disallowed by the agency.

The remaining items under loan charges grouped together by the escrow company are the tax service fee, document fees, a loan processing fee, an underwriting fee, and interest on the loan.

The tax service fee of \$60 and the underwriting fee of \$250 are not reimbursable. As the Board has previously observed: “[u]nderwriting and tax service fees have both been held many times to be charges paid incident to and as a prerequisite to the extension of credit, and they are consequently not reimbursable.” *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722 (citations omitted).

The loan processing fee and document fees may be reimbursable. The loan processing fee, of \$390, is similar to a loan origination fee. The Board has recognized that, in situations where the formal loan origination fee is less than one percent of the loan, as is the case here, additional administrative-type fees, similar to those allowed under the penumbra of the term “loan origination fee,” may be recouped. Since the loan origination fee is far less than one percent of the loan amount in this case, the loan processing fee may also be recoverable. Similarly, to the extent the document fees are administrative in nature and part of the cost of processing the loan, this charge of \$200 may also be reimbursed. *See Floyd C. Freeman*, GSBCA 16648-RELO, 05-2 BCA ¶ 33,044. If this is the case, Dr. Sere should provide USDA with confirmation that these costs cover administrative expenses associated with processing the mortgage to be eligible for reimbursement.

The remaining charge in this first loan category is interest at \$91.54 per day from the date of closing to the end of the month. Interest amounts paid on a mortgage loan are not reimbursable. 41 CFR 302-11.202(d); *Martha V. Hooks*, GSBCA 16754-RELO, 06-1 BCA ¶ 33,198.

The second set of loan charges consist of a loan discount of \$777 and interest from closing through the end of the month totaling \$106.98. As stated above, interest is not a reimbursable expense. In general, a loan discount is also not reimbursable because it usually represents points or some type of nonreimbursable interest expense. See *David L. Malone*, GSBCA 15817-RELO, 02-2 BCA ¶ 31,991; *Paula K. Fowler*, GSBCA 15384-RELO, 01-1 BCA ¶ 131,281. To the extent Dr. Sere believes that the term “loan discount” was not used by the mortgage company in its customary sense, but rather denotes some administrative expenses of processing the loan, he must provide written verification from the mortgage company explaining the actual nature of this charge. *Richard A. Poisel*, GSBCA 15330-RELO, 01-1 BCA ¶ 31,284. To the extent these are similar to loan origination charges, and the total amount paid does not exceed one percent of the loan amount, the expenses are recoverable. *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625.

#### Closing or Settlement Fees

Both the closing company’s summary of buyer’s closing costs and the HUD settlement statement reflect a closing or settlement fee of \$1,534.75 (referred to as the escrow fee on the closing company’s summary). This amount was properly allowed by the agency. Dr. Sere claimed the total amount of \$3,203.75 for settlement fees, however. The additional \$1669 claimed by Dr. Sere reflects fees grouped by the escrow company as either “Title Charges” or “Escrow Charges” on its summary. If Dr. Sere believes he is entitled to some of the fees charged in these categories, he needs to identify the specific elements claimed and explain the nature of the charges. We note that USDA has already separately approved the amount of \$777 for lender’s title insurance and the amount of \$142 for the costs of recording deeds, two categories included in the \$3,203.75. Other fees in these categories include a “sub escrow fee” of \$62.50, a fee of \$100 for “other policy,” a messenger fee charge of \$51.50, a “loan tie-in” fee of \$300, a wire fee of \$25 and an “e-mail/[document copying] fee if required” of \$150. Dr. Sere should consult with the escrow company and the mortgage company to determine the nature of these charges so as to be able to assess whether they are reimbursable at all and, if so, the degree to which buyers in this locality are required to pay fees of this nature and what the customary fees are.<sup>3</sup>

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<sup>3</sup> For example, wire fees, faxing fees, and messenger fees ordinarily represent costs of delivering the requisite paperwork needed for closing to the various entities involved in the process. With respect to courier charges, the Board has previously concluded that these

### The Survey Expense

NFC's disallowance of the survey fee is presumably based on the fact that neither the HUD settlement statement nor the final closing statement prepared by the escrow company reflect that claimant was charged the cost of a survey. *See Terence L. Lynch*, GSBCA 16678-RELO, 06-1 BCA ¶ 33,153. If Dr. Sere in fact incurred this cost, he has the burden to show how and where the fee is reflected in these statements. Applicable regulation permits the reimbursement of the cost of making surveys when required for legal or financing purposes, if two conditions are met: the costs are customarily paid by the purchaser of a residence at the new duty station and the amount does not exceed that customarily charged in the locality of the residence. 41 CFR 302-11.200(d); *Cecilia McNicoll*, GSBCA 15377-RELO, 02-1 BCA ¶ 31,746; *accord Dale W. Stakes*, GSBCA 14613-RELO, 98-2 BCA ¶ 29,976. The Board observed in *John L. Pipes*, GSBCA 16640-RELO, 05-2 BCA ¶ 33,055, that survey costs are generally recognized as a typical mortgage-related cost, and thus it should not be difficult to sustain this burden. If Dr. Sere can verify that he actually paid for a survey and that the survey was required by the lender, is customarily paid by the buyer of property in the locality, and the amount charged does not exceed the usual charge in that locality, he should be reimbursed for this expense.

### Other

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charges, if reasonable, may be reimbursed if the claimant can demonstrate that use of the courier was prompted by more than considerations of personal convenience and when it is clear that the fee was incurred either by claimant or someone working on his or her behalf, and not by the creditor. *See Martha V. Hooks*, GSBCA 16754-RELO, 06-1 BCA ¶ 33,198; *Monika Mayr*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106; *Douglas Tastad*, GSBCA 16543-RELO, 05-1 BCA ¶ 32,957. When such fees are incurred by the lender, they are regarded as part of the finance charge and are not reimbursable. *Rodney D. Hartlieb*, GSBCA 16421-RELO, 05-1 BCA ¶ 32,812 (2004); *Kathy D. Peter*, GSBCA 16114-RELO, 04-1 BCA ¶ 32,424 (2003); *Larry W. Poole*, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776. *See also Edward D. Ellis*.

Similarly, the if the wire fee was necessary to satisfy a requirement that funds be dispersed at settlement it should be reimbursed; claimant must provide sufficient information to enable the agency to determine whether this was the case. *Ellis; Hartlieb; accord Andrew Perez*, GSBCA 16764-RELO, 06-1 BCA ¶ 33,206. The e-mail/document copying fee must similarly be explained and assessed to determine if it is prohibited as a finance charge or not.

With respect to the amount of \$1904.52, itemized by Dr. Sere as recording fees and taxes, the agency determined from reviewing the closing documentation that this charge was actually for county taxes, which are not reimbursable under the FTR. *See Terry L. Hood*, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314; 41 CFR 302-11.202(e).

State revenue stamps are considered to be a reimbursable “miscellaneous expense” under the FTR, provided that the claimant shows that this expense is normally paid by purchasers in the locality of the new residence and that the amount actually paid does not exceed what is customarily paid in the locality. *See Monica Alexander*, GSBCA 15615-RELO, 01-2 BCA ¶ 31,606. Apparently USDA requires verification of this nature from claimant before it will approve payment of this expense.

The agency also disallowed the claimed expense for Countrywide Insurance Services’s annual insurance premium. It is not clear what this insurance premium is for; however, there is no authority under the FTR to reimburse insurance expenses other than those attributable to a title insurance policy.. The FTR explicitly provides that insurance against loss or damage to property is not reimbursable. 41 CFR 302-11.202(d); *George W. Keck*, GSBCA16171-RELO, 04-1 BCA ¶ 32,433 (2003); *Terry L. Hood*, GSBCA 16061-RELO, 03-2 BCA ¶ 32,314.

We note that the HUD settlement statement and the summary of buyer’s closing costs both reflect an \$80 charge for notary expenses. This type of charge is generally allowable under the FTR to the extent it is not already included in other fees and is not in excess of amounts customarily charged in the locality. *See Elizabeth L. Atkeson*, GSBCA 14223-RELO, 98-1 BCA ¶ 29,396 (1997); 41 CFR 302-11.200(d).

Finally, we note that the agency reduced reimbursement for the loan application fee by \$200, without explaining the basis for this action. It also limited the claimed certification amount of \$77.50 to the \$26 flood certification fee. If Dr. Sere contends that there is justification for an additional \$200 for a loan application fee, or that there is another certification fee for which he should be reimbursed he should identify it specifically and explain why it is allowable under the FTR.

### Decision

The claimant and agency should work together to determine the proper amount of Dr. Sere’s claim following the guidance provided above. If Dr. Sere has documentation to justify the expenses that have not been allowed, he should submit that information to the agency for its review. If the agency still does not believe a particular expense item is allowable, it should inform Dr. Sere of the basis for its position.



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CATHERINE B. HYATT  
Board Judge