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B-124438, Jul. 26, 1955

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TO MR. LESTER H. THOMPSON, AUTHORIZED CERTIFYING OFFICER, FEDERAL HOUSING ADMINISTRATION:

REFERENCE IS MADE TO YOUR LETTER OF JUNE 16, 1955, TRANSMITTING TWO VOUCHERS AND REQUESTING ADVICE AS TO WHETHER THEY PROPERLY MAY BE CERTIFIED FOR PAYMENT. ONE VOUCHER IS STATED IN FAVOR OF THE PROVIDENT SAVINGS BANK AND TRUST COMPANY, SEVENTH AND VINE STREETS, CINCINNATI 2, OHIO, FOR $172.88 FOR REIMBURSEMENT OF LOSS SUSTAINED BY REASON OF DEFAULT IN PAYMENT OF A NOTE SIGNED BY W. A. CLARK AND FLORENCE CLARK. THE OTHER VOUCHER IS STATED IN FAVOR OF THE SOUTH CAROLINA NATIONAL BANK, 14 BROAD STREET, CHARLESTON, SOUTH CAROLINA, FOR $434.54 FOR REIMBURSEMENT OF LOSS SUSTAINED BY REASON OF DEFAULT IN PAYMENT OF A NOTE SIGNED BY JAMES ANDERSON AND ANNA ANDERSON. BOTH NOTES WERE REPORTED BY THE BANKS TO THE FEDERAL HOUSING ADMINISTRATION FOR INSURANCE UNDER TITLE I OF THE NATIONAL HOUSING ACT.

IN THE CLARK CASE, IT APPEARS THAT THE NOTE WAS PURCHASED BY THE BANK ON NOVEMBER 12, 1954. AT THAT TIME INSTALLMENTS DUE OCTOBER 1 AND NOVEMBER 1, 1954, ON A PRIOR LOAN WERE STILL UNPAID. IT IS STATED THAT FOR THAT REASON THE PURCHASE OF THE NOTE WAS IN VIOLATION OF REGULATION VI, SECTION 3, OF THE FHA REGULATIONS RELATING TO PROPERTY IMPROVEMENT LOANS, EFFECTIVE JULY 1, 1947, 24 CFR 201.6 (C). THAT REGULATION PROVIDED IN PART THAT THE PROCEEDS OF A LOAN SHALL NOT BE DISBURSED IF THE INSURED HAS KNOWLEDGE THAT THE BORROWER IS PAST DUE MORE THAN 15 DAYS AS TO EITHER PRINCIPAL OR INTEREST WITH RESPECT TO AN OBLIGATION OWING TO OR INSURED BY ANY AGENCY OF THE FEDERAL GOVERNMENT.

HOWEVER, IT APPEARS THAT THE BANK APPROVED THE BORROWERS' CREDIT APPLICATION ON SEPTEMBER 26, 1954, AND ISSUED A COMMITMENT ON THAT DATE TO ALSCO OF CINCINNATI--- PRESUMABLY THE CONTRACTOR FOR THE WORK TO BE DONE WITH THE PROCEEDS OF THE LOAN--- TO PURCHASE THE NOTE UPON COMPLETION OF THE WORK. IT ALSO APPEARS THAT AT THAT TIME NO INSTALLMENT ON THE PRIOR LOAN WAS DUE; THAT THE BORROWERS' CREDIT APPLICATION SHOWED THAT THEY HAD A SUBSTANTIAL EQUITY IN THE PROPERTY TO BE IMPROVED AND THE REPORT OF A CREDIT BUREAU WAS FAVORABLE AND CONTAINED NO ADVERSE INFORMATION; AND THAT ACTUALLY THE PAST DUE INSTALLMENTS ON THE PRIOR INSURED NOTE--- ONLY ONE OF WHICH WAS MORE THAN 15 DAYS IN DEFAULT WHEN THE NOTE WAS PURCHASED--- WERE PAID ON NOVEMBER 15, ONLY THREE DAYS AFTER THE PURCHASE OF THE NOTE.

IN THE ANDERSON CASE, IT APPEARS THAT THE BANK ADVANCED THE PROCEEDS OF THE LOAN DIRECTLY TO THE BORROWERS ON MARCH 28, 1953, AT WHICH TIME A PRIOR NOTE HELD BY THE BRANCH OF THE BANK IN COLUMBIA, SOUTH CAROLINA, WAS IN DEFAULT AS TO PART OF AN INSTALLMENT DUE JANUARY 10, 1953, AND AS TO INSTALLMENTS DUE FEBRUARY 10 AND

MARCH 10. THUS, THE ANDERSON CASE APPEARS TO INVOLVE A VIOLATION OF THE SAME REGULATION AS THAT INVOLVED IN THE CLARK CASE.

IT IS STATED THAT THE BORROWERS SHOWED THE PRIOR LOAN ON THEIR CREDIT APPLICATION BUT REPRESENTED THAT IT WAS CURRENT AND THAT THE CHARLESTON OFFICE OF THE BANK MAKING THE SECOND LOAN MADE A CAREFUL CREDIT CHECK OF LOCAL REFERENCES BUT FAILED TO CHECK WITH ITS COLUMBIA BRANCH. IT IS STATED BY THE BANK THAT SEVEN CREDIT REFERENCES WERE LISTED ON THE CREDIT APPLICATION, FIVE OF WHOM WERE CONTACTED, AND THAT THE RECORDS INDICATED THAT THE BORROWERS' PAYING HABITS WERE PROMPT. WITH REFERENCE TO THE FAILURE OF THE BANK TO CHECK ITS COLUMBIA BRANCH, THE FORMER STATES THAT THE LATTER IS 110 MILES DISTANT AND MAINTAINS ITS OWN RECORDS IN ITS OWN OFFICE AND THAT THE MAKING OF THE PRIOR LOAN BY THE COLUMBIA BRANCH INDICATED THAT ITS CREDIT INVESTIGATION WAS FAVORABLE AND THAT THE ANDERSONS WERE ENTITLED TO CREDIT. IT FURTHER APPEARS THAT THE PRIOR LOAN, WHICH WAS IN THE AMOUNT OF $1,355.62, WAS PAID IN FULL BEFORE MATURITY, AND THAT 19 OF THE 36 PAYMENTS ON THE LOAN HERE INVOLVED WERE PAID IN DUE COURSE.

IT APPEARS THAT IN EACH CASE THE FHA HAS FOUND THAT THE BANK HAS SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THE REGULATIONS IN GOOD FAITH, THAT A DENIAL OF THE CLAIMS WOULD BE UNJUST, AND THAT THE VIOLATION OF THE REGULATION HAS BEEN WAIVED BY THE FEDERAL HOUSING COMMISSIONER UNDER SECTION 2 (E) OF THE NATIONAL HOUSING ACT, 12 U.S.C. 1703 (E).

SINCE AT THE TIME OF THE COMMITMENT MADE TO ALSCO IN THE CLARK CASE NO INSTALLMENTS ON THE PRIOR LOAN WERE UNPAID AND THE TWO INSTALLMENTS IN DEFAULT AT THE TIME OF THE PURCHASE BY THE BANK OF THE SECOND NOTE WERE IN FACT PAID WITHIN THREE DAYS AFTER THE PURCHASE OF THAT NOTE, THE VIEW APPEARS JUSTIFIED THAT THE BANK WAS ACTING IN GOOD FAITH IN PURCHASING THE NOTE. ALSO, THERE IS NOTHING IN YOUR LETTER TO SUGGEST THAT THE BANK WAS NOT ACTING IN GOOD FAITH IN ACCEPTING THE BORROWERS' CREDIT APPLICATION UNDER THE REGULATION THEN IN EFFECT. 24 CFR 201.7 (C). ALSO, IN THE ANDERSON CASE, WHILE THE BANK FAILED TO MAKE INQUIRY OF ITS COLUMBIA BRANCH WITH RESPECT TO THE PRIOR LOAN, THE VIEW APPEARS JUSTIFIED, IN VIEW OF ALL THE CIRCUMSTANCES, THAT THE BANK WAS ACTING IN GOOD FAITH IN ACCEPTING THE BORROWERS' APPLICATION AND MAKING THE LOAN.

ACCORDINGLY, THE VOUCHERS MAY BE CERTIFIED FOR PAYMENT, IF OTHERWISE PROPER. THE VOUCHERS AND RELATED PAPERS ARE RETURNED HEREWITH.