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B-124724, Oct. 3, 1955

Number: B-124724

Date: 1955-10-03

B-124724, OCT. 3, 1955

TO DE BLIEUX AND MCKINNIS, ATTORNEYS AT LAW:

REFERENCE IS MADE TO YOUR LETTER OF FEBRUARY 23, 1955, AND PRIOR CORRESPONDENCE, CONCERNING THE INDEBTEDNESS TO THE UNITED STATES OF WILLIE A. ACHORD, 4812 MONARCH AVENUE, BATON ROUGE, LOUISIANA, BY REASON OF HIS DEFAULT ON LOAN NO. LH-10746-LAMO, WHICH WAS GUARANTEED BY THE VETERANS ADMINISTRATION UNDER THE PROVISIONS OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED.

IN CONNECTION WITH THE SALE OF THE PROPERTY INVOLVED TO SUBSEQUENT PURCHASERS WHO DEFAULTED IN PAYMENT OF THE LOAN, YOU INVITE OUR ATTENTION TO YOUR LETTER OF SEPTEMBER 14, 1954, IN WHICH YOU STATED IN PART AS FOLLOWS:

"WE SHOULD LIKE TO EMPHASIZE THAT THIS SALE WAS MADE WITHOUT APPRAISEMENT, AND THAT UNDER LA RS 13:4106, EVEN THOUGH THE PROCEEDS OF THE PROPERTY SO SOLD ARE INSUFFICIENT TO SATISFY THE DEBT FOR WHICH THE PROPERTY WAS SOLD, THE DEBT NEVERTHELESS STANDS FULLY SATISFIED AND DISCHARGED, AND SUCH MORTGAGEE OR OTHER CREDITOR CANNOT THEREAFTER PROCEED AGAINST THE DEBTOR OR ANY OTHER OF HIS PROPERTY FOR ANY SUCH DEFICIENCY, IN ANY MANNER WHATSOEVER. IT SHOULD ALSO BE NOTED THAT THIS SECTION IS DECLARED TO BE PUBLIC POLICY AND THAT ITS PROVISIONS CANNOT BE WAIVED BY A DEBTOR (LA RS 13:4107).

"WE CONSEQUENTLY FEEL THAT ANY DEBT WHICH MR. ACHORD MIGHT HAVE INCURRED IN CONNECTION HEREWITH HAS BEEN FULLY SATISFIED AND DISCHARGED. * * *"

ALTHOUGH OUR OFFICE ADVISED YOU BY LETTER OF DECEMBER 16, 1954, THAT A FURTHER REPORT FROM THE VETERANS ADMINISTRATION SHOWS THAT THE VETERANS ADMINISTRATION HAD THE PROPERTY APPRAISED, YOU STATE THAT UPON YOUR ADVICE THE DEBTOR WILL STAND UPON THE CITED LOUISIANA STATUTES AND REFUSE TO PAY THE DEBT UNLESS IT CAN BE SHOWN THAT THE STATUTES ARE NOT APPLICABLE TO THIS CASE.

YOU ALSO STATE THAT MR. ARCHORD HAD NO NOTICE "OF ANY DEFAULT IN THE PAYMENT OF THE LOAN" BY THE SUBSEQUENT PURCHASERS OF THE PROPERTY UNTIL HE RECEIVED SUCH INFORMATION IN A LETTER DATED SEPTEMBER 7, 1954, FROM OUR OFFICE.

YOU ARE ADVISED THAT MR. ACHORD'S INDEBTEDNESS DID NOT ARISE SOLELY BY VIRTUE OF THE SALE OF THE PROPERTY INVOLVED, NOR IS THE GOVERNMENT'S CLAIM FOUNDED UPON A "DEFICIENCY" GROWING OUT OF THE SALE OF THE PROPERTY AS YOU APPEAR TO BELIEVE. IN SECURING THE GUARANTEE OF THE LOAN MR. ACHORD EXECUTED VETERANS ADMINISTRATION FORM 4 1802,"APPLICATION FOR HOME LOAN GUARANTY," ON NOVEMBER 13, 1947, AND THEREBY AGREED THAT THE REGULATIONS ISSUED UNDER THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, WOULD GOVERN THE RIGHTS AND OBLIGATIONS OF

THE PARTIES TO THE LOAN. THE APPLICABLE VETERANS ADMINISTRATION REGULATIONS, TITLE 38, SEC. 36.4323/E) CODE OF FEDERAL REGULATIONS, PROVIDE THAT:

"ANY AMOUNTS PAID BY THE ADMINISTRATOR ON ACCOUNT OF THE LIABILITIES OF ANY VETERAN GUARANTEED OR INSURED UNDER THE PROVISIONS OF THE ACT SHALL CONSTITUTE A DEBT OWNING TO THE UNITED STATES BY SUCH VETERAN.'

IT IS THUS CLEAR THAT THE CLAIM AGAINST MR. ACHORD REPRESENTS AN INDEPENDENT DEBT WHICH IS DUE AND OWING TO THE UNITED STATES UNDER THE PROVISIONS OF THE STATUTE AND REGULATION. SEE UNITED STATES V. HENDERSON, 121 F.SUPP. 343.

CONCERNING YOUR STATEMENT THAT THE DEBTOR HAD NO NOTICE OF THE DEFAULT IN PAYMENT OF THE LOAN BY THE SUBSEQUENT PURCHASERS OF THE PROPERTY UNTIL HE RECEIVED OUR LETTER OF SEPTEMBER 7, 1954, YOU ARE ADVISED THAT THE RECORDS HERE SHOW THAT PRIOR NOTICES WERE MAILED TO THE DEBTOR AT 3865 DALTON STREET, BATON ROUGE, LOUISIANA (HIS THEN LATEST ADDRESS OF RECORD) BY BOTH THE VETERANS ADMINISTRATION AND OUR OFFICE, AND SUCH NOTICES ARE RETURNED UNCLAIMED.

IT IS THEREFORE REQUESTED THAT MR. ACHORD BE ADVISED ACCORDINGLY, AND THAT HE SHOULD UNDERTAKE LIQUIDATION OF HIS INDEBTEDNESS TO THE UNITED STATES WITHOUT FURTHER DELAY.