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B-126500, Feb. 3, 1956

Number: B-126500

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B-126500, FEB. 3, 1956

TO DICKINSON, THROCKMORTON, PARKER, MANNHEIMER AND RAIFE, ATTORNEYS AND COUNSELLORS AT LAW:

REFERENCE IS MADE TO YOUR LETTER OF NOVEMBER 1, 1955, CONCERNING THE INDEBTEDNESS TO THE UNITED STATES OF RICHARD J. SIEPMANN, 2010 FIRST AVENUE, N.E., CEDAR RAPIDS, IOWA, BY REASON OF HIS DEFAULT ON LOAN NO. LHG 28535-IA, WHICH WAS GUARANTEED BY THE VETERANS ADMINISTRATION UNDER THE PROVISIONS OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED.

YOU STATE THAT THE DEBTOR WAS ONLY 19 YEARS OF AGE AT THE TIME THE LOAN WAS MADE AND THE PROPERTY FOR WHICH THE LOAN WAS MADE WAS SOLD TO ANOTHER PARTY WHO LATER DEFAULTED IN HIS PAYMENTS AND THE FORECLOSURE OF THE MORTGAGE RESULTED. IT APPEARS TO BE YOUR CONTENTION THAT THE DEBTOR IS NOT LIABLE INASMUCH AS CONTRACTS OF MINORS ARE VOIDABLE UNDER IOWA LAW.

AS TO THE LAWS OF THE STATE OF IOWA RELATING TO MINORS, YOUR ATTENTION IS INVITED TO 39 IOWA CODE ANNOTATED 599.5, WHICH PROVIDES AS FOLLOWS:

"THE DISABILITY OF MINORITY OF ANY PERSON OTHERWISE ELIGIBLE FOR GUARANTY OR INSURANCE OF A LOAN PURSUANT TO THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED (38 U.S.C.A. 694, ET SEQ.) AND OF THE MINOR SPOUSE OF ANY ELIGIBLE VETERAN, IRRESPECTIVE OF HIS OR HER AGE, IN CONNECTION WITH ANY TRANSACTION ENTERED INTO PURSUANT TO SAID ACT, AS AMENDED, IS HEREBY REMOVED FOR ALL PURPOSES IN CONNECTION WITH SUCH TRANSACTION, INCLUDING, BUT NOT LIMITED TO, INCURRING OF INDEBTEDNESS OR OBLIGATIONS, AND ACQUIRING, ENCUMBERING, SELLING, RELEASING OR CONVEYING PROPERTY OR ANY INTEREST THEREIN, AND LITIGATING OR SETTLING CONTROVERSIES ARISING THEREFROM, IF ALL OR PART OF ANY OBLIGATIONS INCIDENT TO SUCH TRANSACTION BE GUARANTEED OR INSURED BY THE ADMINISTRATOR OF VETERANS AFFAIRS PURSUANT TO SUCH ACT; PROVIDED, NEVERTHELESS, THAT THIS ACT SHALL NOT BE CONSTRUED TO IMPOSE ANY OTHER OR GREATER RIGHTS OR LIABILITIES THAN WOULD EXIST IF SUCH PERSON AND SUCH SPOUSE WERE UNDER NO SUCH DISABILITY. ACTS 1947 (52 G.A.) CH. 280, SEC. 1.'

IT APPEARS TO BE YOUR OPINION THAT THE DEBTOR WAS DISCHARGED WHEN THE GOVERNMENT FAILED TO TAKE ACTION ON THE JUDGMENT WITHIN THE TWO YEAR PERIOD PRESCRIBED IN 41 IOWA CODE ANNOTATED 615.1. YOU ARE ADVISED THAT MR. SIEPMANN'S INDEBTEDNESS DID NOT ARISE SOLELY BY VIRTUE OF THE SALE OF THE PROPERTY INVOLVED, NOR IS THE GOVERNMENT'S CLAIM NECESSARILY FOUNDED ON THE JUDGMENT GROWING OUT OF THE FORECLOSURE. IN SECURING THE GUARANTEE OF THE LOAN MR. SIEPMANN EXECUTED A VETERANS ADMINISTRATION LOAN FORM 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 OWING TO THE UNITED STATES BY SUCH VETERAN.'

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

THE GUARANTY AGREEMENT ENTERED INTO BETWEEN MR. SIEPMANN AND THE VETERANS ADMINISTRATION IS, IN EFFECT, AN AGREEMENT TO INDEMNIFY THE UNITED STATES AGAINST LOSS. IT IS UPON THAT AGREEMENT THAT THE GOVERNMENT BASES ITS CLAIM RATHER THAN UPON ITS RIGHT OF SUBROGATION TO THE LENDER'S RIGHT WHICH POSSIBLY MAY BE LIMITED BY STATE LAW. THE RULE IS FIRMLY ESTABLISHED THAT WHERE THE UNITED STATES ACTS WITHIN THE PERMITTED SCOPE OF ITS GOVERNMENTAL AUTHORITY THE QUESTION OF THE CREATION OR NEGATION OF AN EXPRESS OR IMPLIED LIABILITY OF AN INDIVIDUAL TO THE UNITED STATES IS TO BE DETERMINED BY FEDERAL LAW. FURTHER, IN THE ABSENCE OF A FEDERAL STATUTE TO THE CONTRARY, THE RIGHT OF THE UNITED STATES TO ENFORCE IN A FEDERAL COURT SUCH A LIABILITY MAY NOT BE DEFEATED OR LIMITED BY STATE LAW. SEE CLEAR FIELD TRUST CO. V. UNITED STATES, 318 U.S. 363; UNITED STATES V. STANDARD OIL CO., 332 U.S. 301; UNITED STATES V. INDEPENDENT SCHOOL DISTRICT NO. 1 OF OKMULGEE COUNTY, OKLAHOMA, 209 F.2D 578.

IN VIEW OF THE FOREGOING, IT IS REQUESTED THAT MR. SIEPMANN BE ADVISED TO LIQUIDATE HIS INDEBTEDNESS TO THE UNITED STATES WITHOUT FURTHER DELAY IN ORDER TO AVOID THE NECESSITY OF INSTITUTING FORMAL COLLECTION PROCEEDINGS.