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B-127026, Mar. 27, 1956

Number: B-127026

Date: 1956-03-27

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

REFERENCE IS MADE TO YOUR LETTER OF FEBRUARY 9, 1956, TRANSMITTING A VOUCHER IN FAVOR OF THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE, 315 HEMPSTEAD TURNPIKE, FRANKLIN SQUARE, NEW YORK, FOR $1,051.85 AS REIMBURSEMENT OF LOSS SUSTAINED BY REASON OF DEFAULT IN PAYMENT OF A NOTE SIGNED BY PETER A. MERCADO AND PETRA L. MERCADO. THE BANK PURCHASED THE NOTE FROM LOCK-RITE STRUCTURES, C., AND REPORTED IT FOR INSURANCE UNDER ITS CONTRACT WITH THE FEDERAL HOUSING ADMINISTRATION UNDER TITLE I OF THE NATIONAL HOUSING ACT. YOU REQUEST ADVICE AS TO WHETHER THE VOUCHER PROPERLY MAY BE CERTIFIED FOR PAYMENT.

IT IS REPORTED THAT THE BORROWER ENTERED INTO A CONTRACT ON AUGUST 2, 1954, WITH THE DEALER, LOCK-RITE STRUCTURES, INC., FOR THE IMPROVEMENT OF HIS HOUSE. THE BANK STATES THAT ON AUGUST 24, 1954, IT APPROVED THE CREDIT OF THE BORROWER AND ISSUED A BINDING COMMITMENT TO THE BORROWER AND THE DEALER TO PURCHASE THE TRANSACTION. THE CREDIT APPLICATION ACCOMPANYING THE BANK'S CLAIM IS DATED SEPTEMBER 9, 1954, AND SHOWS THAT OF THAT DATE, THE BORROWER HAD OCCUPIED THE PREMISES FOR TWO MONTHS. UNDER THE REGULATIONS THEN IN EFFECT, THE LOAN WHEN CONSUMMATED WOULD HAVE BEEN ELIGIBLE FOR TITLE I INSURANCE. HOWEVER, EFFECTIVE OCTOBER 1, 1954, SECTION 2 (A) OF THE NATIONAL HOUSING ACT AND SECTION 201.1 (P) OF THE TITLE I REGULATIONS ADOPTED PURSUANT THERETO WERE AMENDED TO REQUIRE THAT A HOUSE BE COMPLETED AND OCCUPIED FOR AT LEAST SIX MONTHS BEFORE THE OWNER WOULD BE ELIGIBLE TO APPLY FOR A TITLE I INSURED LOAN TO IMPROVE SUCH HOUSE. THE NOTE WAS PURCHASED AND THE FUNDS DISBURSED BY THE BANK ON DECEMBER 7, 1954, AT WHICH TIME THE BORROWER HAD OCCUPIED THE PREMISES LESS THAN THE NEWLY REQUIRED SIX-MONTH PERIOD.

THE INSURED URGES THAT IT HAD APPROVED THE BORROWER'S CREDIT AND HAD MADE A COMMITMENT TO PURCHASE THIS NOTE ON AUGUST 24, 1954, BEFORE IT HAD ANY ACTUAL NOTICE OF THE AMENDMENT TO THE NATIONAL HOUSING ACT AND THE TITLE I REGULATIONS. IT URGES THAT THE REGULATIONS IN EFFECT AT THIS TIME WERE FULLY COMPLIED WITH AND THAT THE LOAN SHOULD BE GIVEN THE BENEFIT OF INSURANCE UNDER TITLE I.

IT IS STATED IN YOUR LETTER THAT, UNDER THE CIRCUMSTANCES, IT HAS BEEN DETERMINED THAT THE BANK HAS SUBSTANTIALLY COMPLIED WITH THE APPLICABLE PROVISIONS OF THE REGULATIONS OF THE FEDERAL HOUSING ADMINISTRATION IN GOOD FAITH AND THE VIOLATION OF THE REGULATIONS HAS BEEN WAIVED UNDER THE AUTHORITY GIVEN TO THE FEDERAL HOUSING COMMISSIONER BY SECTION 2 (E) OF THE NATIONAL HOUSING ACT ON THE GROUND THAT THE BANK, THE BORROWERS, AND THE DEALER HAD SUFFICIENTLY COMPLIED WITH THE REQUIREMENTS FOR MAKING A TITLE I LOAN PRIOR TO

OCTOBER 1, 1954, FOR THE ADMINISTRATION TO CONSIDER SUCH LOAN TO BE GOVERNED BY THE REQUIREMENTS OF THE REGULATIONS AND THE NATIONAL HOUSING ACT IN EFFECT PRIOR TO OCTOBER 1, 1954, AS TO THE SIX- MONTHS' OCCUPANCY REQUIREMENT.

WHILE COPIES OF GENERAL LETTERS TO ALL QUALIFIED TITLE I LENDING INSTITUTIONS OF AUGUST 26 AND SEPTEMBER 20, 1954, ENCLOSED WITH YOUR LETTER, INDICATE THAT NOTICE WAS GIVEN IN ADVANCE OF THE CHANGES EFFECTIVE OCTOBER 1, 1954, THE REQUIREMENTS OF REGULATIONS IN EFFECT AT THE TIME THE TRANSACTION ORIGINATED AND THE COMMITMENT WAS ISSUED BY THE BANK WERE FULLY MET. SINCE THERE IS NOTHING IN YOUR LETTER TO SUGGEST THAT THE BANK WAS NOT ACTING IN GOOD FAITH IN ACCEPTING THE BORROWER'S CREDIT APPLICATION AND ISSUING THE COMMITMENT UNDER THE REGULATIONS THEN IN EFFECT, THE VIEW APPEARS JUSTIFIED THAT THE BANK SUBSTANTIALLY COMPLIED WITH THE APPLICABLE REGULATIONS AND THAT THE LOAN BE CONSIDERED AS GOVERNED BY THE REGULATIONS IN EFFECT PRIOR TO OCTOBER 1, 1954, WITH RESPECT TO THE SIX MONTHS' OCCUPANCY REQUIREMENT.

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