Text as published on gao.gov, https://www.gao.gov/products/b-127243, archived 2026-07-12. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-127243, May 21, 1956

Number: B-127243

Date: 1956-05-21

B-127243, MAY 21, 1956

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

REFERENCE IS MADE TO YOUR LETTER OF MARCH 6, 1956, TRANSMITTING A VOUCHER --- TOGETHER WITH THE RELATED CLAIM FILE--- IN FAVOR OF ALLIED BUILDING CREDITS, INCORPORATED, LOS ANGELES, CALIFORNIA, IN THE AMOUNT OF $896.35. THE VOUCHER COVERS AN AMOUNT CLAIMED AS REIMBURSEMENT OF A LOSS SUSTAINED ON ACCOUNT OF DEFAULT IN THE PAYMENT OF A NOTE SIGNED BY RUTH S. AND STANLEY D. ROBISON, WHICH THE INSURED INSTITUTION (ALLIED) PURCHASED FROM LIEBER APPLIANCE SHOP, DOWAGIAC, MICHIGAN, AND REPORTED FOR INSURANCE UNDER ITS CONTRACT WITH THE FEDERAL HOUSING ADMINISTRATION ISSUED UNDER TITLE I OF THE NATIONAL HOUSING ACT. YOU REQUEST A DECISION AS TO WHETHER YOU MAY CERTIFY THE VOUCHER FOR PAYMENT.

IT IS REPORTED THAT THE INSURED, ALLIED BUILDING CREDITS, INCORPORATED, ADVANCED ON THE ABOVE REFERRED-TO NOTE THE SUM OF $2,525. THIS SUM EXCEEDED THE AMOUNT WHICH COULD BE INSURED BY YOUR ADMINISTRATION UNDER THE APPLICABLE ADMINISTRATIVE REGULATION, 24 CFR 201.3 (A), LIMITING INSURANCE OF THIS CLASS TO LOANS NOT IN EXCESS OF $2,500. THIS REGULATION IS IN ACCORDANCE WITH THE PROVISION OF SECTION 2/B) OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703 (B), WHICH PROVIDES, IN PART, AS FOLLOWS:

"NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION * * * IF THE AMOUNT OF SUCH LOAN, ADVANCE OF CREDIT, OR PURCHASE * * * EXCEEDS $2,500 * * * .'

YOU STATE IN THE LETTER THAT THE LOAN WAS MADE FOR THE PURPOSE OF FINANCING ELIGIBLE IMPROVEMENTS AND IN ALL OTHER PARTICULARS WAS ELIGIBILE FOR INSURANCE AND THAT MORE THAN $1,900 WAS PAID ON THE ACCOUNT. IT IS FURTHER REPORTED THAT, UNDER THE CIRCUMSTANCES, IT WAS ADMINISTRATIVELY DETERMINED THE LOAN SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THE REGULATIONS, THAT IT WAS MADE IN GOOD FAITH, AND THAT A DENIAL OF THE WHOLE OF THE INSURED'S CLAIM WOULD BE UNJUST. IT IS REPORTED THAT THE VIOLATION OF THE REGULATION WAS WAIVED AND PAYMENT IS PROPOSED IN THE AMOUNT OF THE CLAIM REDUCED BY THE $25 BY WHICH AMOUNT THE ORIGINAL ADVANCE EXCEEDED THE PERMISSIBLE MAXIMUM UNDER THE REGULATIONS. CONNECTION WITH THE INSTANT CLAIM YOU CALL OUR ATTENTION TO FERGUSON V. UNION NATIONAL BANK OF CLARKSBURG, 126 F.2D 753, AND FEDERAL HOUSING ADMINISTRATION V. MORRIS PLAN COMPANY OF CALIFORNIA, 211 F.2D 756, REHEARING, 214 F.2D 821.

WHILE SECTION 2/E) OF TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703/E), AUTHORIZES THE COMMISSIONER TO WAIVE COMPLIANCE, UNDER CERTAIN CONDITIONS, WITH THE REGULATIONS ISSUED BY HIM WITH RESPECT TO TERMS, CONDITIONS

AND RESTRICTIONS UNDER WHICH LOANS MAY BE INSURED, NEITHER THE SAID SECTION NOR ANY OTHER PART OF THE ACT VESTS ANY AUTHORITY IN THE COMMISSIONER TO WAIVE COMPLIANCE WITH THE ABOVE-QUOTED PORTION OF SECTION 2/B) OF THE ACT. THAT SECTION SPECIFICALLY PROHIBITS THE GRANTING OF INSURANCE AS TO LOANS OF THIS CLASS IF THE AMOUNT OF THE LOAN EXCEEDS IN OTHER WORDS, IF THE AMOUNT OF THE LOAN EXCEEDS $2500. NO PART OF THE LOAN MAY BE INSURED. HENCE, IT APPEARS THE LOAN WAS NOT VALIDLY INSURED AND THERE IS NO LIABILITY ON THE PART OF THE FEDERAL HOUSING ADMINISTRATION FOR THE LOSS SUSTAINED BY THE LENDER ON ACCOUNT OF THE DEFAULT ON THE NOTE.

CONCERNING THE COURT CASES CITED IN YOUR LETTER, IT IS OUR VIEW THAT THOSE CASES ARE DISTINGUISHABLE FROM THE INSTANT CASE. IN FERGUSON V. UNION NATIONAL BANK OF CLARKSBURG THERE APPEARED TO BE INVOLVED THE USE OF A PORTION OF A TITLE I LOAN BY THE BORROWER FOR INELIGIBLE PURPOSES. IS PRESUMED THAT AT THE TIME THIS LOAN WAS MADE AND REPORTED FOR INSURANCE THE LOAN WAS ELIGIBLE FOR INSURANCE BOTH UNDER THE ACT AND THE REGULATIONS. THE COURT EVIDENTLY FELT THAT THE FACT THE BORROWER SUBSEQUENTLY USED PART OF THE LOAN FOR WHAT WAS LATER DETERMINED TO BE INELIGIBLE PURPOSES SHOULD NOT PRECLUDE THE LENDER--- IN THE ABSENCE OF FRAUD--- FROM RECOVERING UNDER ITS INSURANCE CONTRACT THAT PORTION OF THE LOAN USED FOR ELIGIBLE PURPOSES. THE COURT INDICATED THAT THERE WAS INVOLVED IN THE CASE AN ADMINISTRATIVE INTERPRETATION OF THE NATIONAL HOUSING ACT AND THE REGULATIONS ISSUED THEREUNDER. IN THIS CONNECTION, NOTE THE FOLLOWING STATEMENT BY THE COURT, ON PAGE 757, OF THE OPINION:

"* * * WE HAVE HERE ANOTHER ADMINISTRATIVE INTERPRETATION OF THE ACT AND OF THE REGULATIONS ISSUED THEREUNDER. WHEN ADVISED OF THE STATUS OF THESE ITEMS (THE INELIGIBLE ITEMS), THE ACTION OF THE ADMINISTRATOR, AFTER FIRST ELIMINATING THE LOAN AS INSURED WAS TO RESTORE IT TO THE LIST OF INSURED LOANS AND TO ELIMINATE ONLY THE ITEMS THEMSELVES, LISTING THE REMAINDER OF THE LOAN AS INSURED. * * * WHERE A LOAN IS MADE IN GOOD FAITH FOR AN AUTHORIZED PURPOSE, AND IN RELIANCE UPON THE INSURANCE WHICH THE GOVERNMENT PROVIDES TO ENCOURAGE LOANS OF THIS CHARACTER, IT WOULD BE UNREASONABLE TO HOLD THAT INSURANCE AS TO THE ENTIRE LOAN IS FORFEITED BECAUSE SOME ITEMS ARE INCLUDED BY MISTAKE OR INADVERTENCE WHICH ARE NOT INSURABLE UNDER THE REGULATIONS.'

IN THE INSTANT CASE THE LOAN, AT THE TIME IT WAS MADE, CLEARLY WAS NOT ELIGIBLE FOR INSURANCE UNDER SECTION 2 OF THE NATIONAL HOUSING ACT -- AS DISTINGUISHED FROM THE REGULATIONS, COMPLIANCE WITH WHICH THE COMMISSIONER IS AUTHORIZED TO WAIVE--- SINCE THE PRINCIPAL AMOUNT OF THE LOAN EXCEEDED $2,500.

IN THE CASE OF FEDERAL HOUSING ADMINISTRATION V. MORRIS PLAN COMPANY OF CALIFORNIA, REPORTED IN 211 F.2D, THERE WAS INVOLVED A QUESTION OF SEPARATE LOANS MADE TO MR. AND MRS. OWENS OF $2,500 EACH FOR REMODELING THE SAME PIECE OF PROPERTY. THE COURT OF APPEALS HELD THAT THE LIMITATION CONTAINED IN SECTION 2/B) ESTABLISHES THE TOTAL AMOUNT THAT MAY BE LOANED FOR ONE STRUCTURE AND DOES NOT AUTHORIZE SUCCESSIVE LOANS IN SUCH AMOUNT. ALSO AS INDICATED IN YOUR LETTER, THE COURT OF APPEALS IN ITS FIRST OPINION IMPLIED THAT THE TAKING OF TWO NOTES AT THE SAME TIME FOR THE SAME IMPROVEMENT CONSTITUTED ONE LOAN UNDER THE STATUTE AND REGULATIONS, AT LEAST AS FAR AS ENTITLEMENT TO INSURANCE WAS CONCERNED. HOWEVER, THE COURT HELD ON REHEARING AS TO CERTAIN NOTES MADE TO MR. AND MRS. GOULD, NOT CONSIDERED IN ITS FIRST OPINION, AND WITHOUT SETTING FORTH THE FACTS AS TO THE GOULD NOTES, THAT A LENDER WHO MADE TWO SEPARATE LOANS OF $2,500 AND $2,000, RESPECTIVELY, TO THE SAME BORROWER FOR IMPROVEMENTS TO THE SAME PROPERTY, COULD RECOVER ON THE FIRST LOAN UNDER HIS INSURANCE CONTRACT BUT THAT THE SECOND LOAN WOULD BE INELIGIBLE FOR INSURANCE. THIS HOLDING DOES NOT APPEAR

CONSISTENT WITH THE FOLLOWING STATEMENT MADE BY THE COURT AT PAGE 759 OF THE OPINION HANDED DOWN BY IT AT THE FIRST HEARING:

"THUS, WHILE THE OWENS LOANS (TWO $2,500 LOANS) FAIL TO QUALIFY AS A CLASS-1 (A) LOAN BECAUSE IN EXCESS OF $2,500, THEY FULLY QUALIFY AS A CLASS-1 (B) LOAN * * *.'

HOWEVER, AS STATED ABOVE THE FACTS RELATIVE TO THE GOULD LOANS ARE NOT STATED AND IT MAY WELL BE THAT THE NOTES WERE GIVEN ON DIFFERENT DATES. IF THIS IS SO, SINCE EACH LOAN WHEN CONSIDERED SEPARATELY COMPLIED WITH THE $2,500 LIMITATION, RECOVERY AS TO THE FIRST IN POINT OF TIME WOULD APPEAR PROPER. WE DO NOT THINK THE COURT WOULD HAVE PERMITTED THE LENDER ANY RECOVERY HAD THERE BEEN INVOLVED ONE LOAN IN THE AMOUNT OF $4,500.

IN ANY EVENT, EVEN IF IT BE CONCEDED THAT THE CASES CITED ARE NOT DISTINGUISHABLE FROM THE INSTANT CASE, IT IS PROPER TO OBSERVE THAT WHILE IT IS OUR PRACTICE TO GIVE FULL AND DUE CONSIDERATION TO ALL PERTINENT COURT DECISIONS, IT IS NOT REGARDED THAT THE DECISIONS OF THE COURTS, OTHER THAN THOSE OF THE UNITED STATES SUPREME COURT, ARE NECESSARILY BINDING UPON THIS OFFICE AS PRECEDENTS IN THE DISPOSITION OF SIMILAR CLAIMS PROPERLY BEFORE THIS OFFICE.

THE VOUCHER IN QUESTION, WHICH IS RETURNED HEREWITH, TOGETHER WITH YOUR CLAIM FILE, FOR THE REASONS HEREINABOVE GIVEN, MAY NOT BE CERTIFIED FOR PAYMENT.