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B-131210, Apr. 9, 1957

Number: B-131210

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TO MR. VINCENT W. LASINSKI:

LETTER DATED FEBRUARY 25, 1957, FROM YOUR ATTORNEY, C. DEAN VLASSIS, TO OUR OFFICE, CONCERNS YOUR INDEBTEDNESS TO THE UNITED STATES, AS REPORTED BY THE VETERANS ADMINISTRATION.

ON FEBRUARY 29, 1956, YOU WERE ADVISED BY THE VETERANS ADMINISTRATION THAT YOU WERE INDEBTED TO THE UNITED STATES IN THE SUM OF $2,143.96, PLUS INTEREST. THIS SUM CONSTITUTES THE AMOUNT OF A CLAIM THE VETERANS ADMINISTRATION PAID ON YOUR BEHALF IN ACCORDANCE WITH THE PROVISIONS OF SECTION 506 OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, 58 STAT. 284, AS AMENDED, 38 U.S.C. 694G, AS A RESULT OF YOUR FAILURE TO MAKE THE REQUIRED PAYMENTS ON YOUR GUARANTEED LOAN TO THE CARTHAGE SAVINGS AND LOAN ASSOCIATION, CARTHAGE, NEW YORK. YOU HAVE DENIED LIABILITY ON THE GROUND THAT A SUBSEQUENT PURCHASER OF THE PROPERTY, WHO HAD ASSUMED AND AGREED TO PAY THE MORTGAGE, WAS RELEASED OF PERSONAL LIABILITY AT THE TIME HE CONVEYED THE PROPERTY TO THE MORTGAGEE, WHICH CONVEYANCE WAS VOLUNTARILY MADE IN LIEU OF FORECLOSURE PROCEEDINGS, THE LOAN THEN BEING IN DEFAULT--- IT BEING YOUR CONTENTION THAT THE RELEASE OF THE SUBSEQUENT PURCHASER, IN EFFECT, ALSO RELEASED YOU FROM YOUR LIABILITY.

THE RECORD DISCLOSES THAT ON DECEMBER 9, 1949, YOU OBTAINED A LOAN IN THE AMOUNT OF $7,200 FROM THE CARTHAGE SAVINGS AND LOAN ASSOCIATION, WHICH LOAN WAS GUARANTEED BY THE VETERANS ADMINISTRATION PURSUANT TO THE PROVISIONS OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, 58 STAT. 284, AS AMENDED, 38 U.S.C. 694, ET SEQ. ON THE SAME DAY YOU EXECUTED A MORTGAGE TO THE ASSOCIATION AS SECURITY FOR THE LOAN.

SOME TIME AFTER DECEMBER 9, YOU CONVEYED THE PROPERTY TO A PURCHASER WHO ASSUMED THE MORTGAGE. AT THE TIME OF THIS CONVEYANCE THE MORTGAGE PAYMENTS WERE NOT IN ARREARS. THE PROPERTY WAS SUBSEQUENTLY CONVEYED TO VARIOUS PERSONS BY SEPARATE CONVEYANCES AND IN EACH INSTANCE THE PURCHASER ASSUMED THE INDEBTEDNESS. EVENTUALLY, THE LOAN BECAME IN DEFAULT AND THE THEN OWNER OF THE PROPERTY OFFERED TO CONVEY IT TO THE ASSOCIATION IN LIEU OF HAVING THE ASSOCIATION INSTITUTE FORECLOSURE PROCEEDINGS.

YOU WERE NOTIFIED OF THE DEFAULT AND ADVISED OF YOUR LIABILITY FOR A POSSIBLE DEFICIENCY. SUBSEQUENTLY, A CONFERENCE WAS HELD WHICH WAS ATTENDED BY YOU, MR. VLASSIS, AND REPRESENTATIVES OF THE VETERANS ADMINISTRATION. AT THAT CONFERENCE YOU WERE AGAIN ADVISED OF YOUR LIABILITY BUT YOU DECLINED TO TAKE ANY ACTION TO CURE THE DEFAULT. YOUR LIABILITY UNDER THE DOCTRINE OF INDEMNITY WAS EXPLAINED TO YOU AND YOU WERE ADVISED THAT IF A DEED IN LIEU OF FORECLOSURE WAS GIVEN YOU

WOULD REMAIN LIABLE TO THE GOVERNMENT FOR ANY AMOUNT PAID ON THE LOAN.

SOME TIME LATER, THE VETERANS ADMINISTRATION NOTIFIED THE ASSOCIATION THAT IT COULD ACCEPT A VOLUNTARY CONVEYANCE FROM THE THEN OWNER OF THE PROPERTY AND THAT THERE MAY BE INCLUDED IN THE DEED A RECITAL TO THE EFFECT THAT THE THEN OWNER WAS RELEASED FROM ALL PERSONAL LIABILITY ARISING OUT OF HIS ASSUMPTION OF THE MORTGAGE. THE PROPERTY WAS CONVEYED TO THE ASSOCIATION AND THEREAFTER BY THE ASSOCIATION TO THE ADMINISTRATOR OF VETERANS AFFAIRS. AFTER AUDIT OF THE ASSOCIATION'S CLAIM THE SUM OF $2,143.96 WAS PAID TO IT BY REASONS OF THE GUARANTY.

ASSUMING THAT THE ADMINISTRATOR OF VETERANS AFFAIRS MAY HAVE LOST HIS RIGHT TO ENFORCE PERSONAL LIABILITY BY WAY OF SUBROGATION WHEN HE CONSENTED TO THE RELEASE OF PERSONAL LIABILITY IN THE DEED TO THE ASSOCIATION, NEVERTHELESS, SEPARATE AND APART FROM ANY SUBROGATION RIGHT, WHICH MAY OR MAY NOT EXIST, THE ADMINISTRATOR HAS A RIGHT OF INDEMNITY WHICH HE MAY ENFORCE AGAINST YOU.

THE ADMINISTRATOR OF VETERANS AFFAIRS IS AUTHORIZED UNDER SECTION 694D (A) OF TITLE 38 OF THE U.S.C. TO PROMULGATE SUCH RULES AND REGULATIONS AS HE DEEMS NECESSARY FOR CARRYING OUT THE PROVISIONS OF THE ACT. SAID SECTION PROVIDES IN PART:

"THE ADMINISTRATOR IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS * * * AS ARE NECESSARY AND APPROPRIATE FOR CARRYING OUT THE PROVISIONS OF THIS SUBCHAPTER. * * *"

THE PERTINENT SECTION OF THE REGULATIONS ISSUED BY THE ADMINISTRATOR PURSUANT TO SAID SECTION 694C (A) IS SECTION 36.4323 (E) OF TITLE 38, OF THE CODE OF FEDERAL REGULATIONS, WHICH PROVIDES:

"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.'

AT THE TIME YOU SECURED THE GUARANTEE OF THE LOAN YOU EXECUTED V.A. FORM 4-1802,"APPLICATION FOR HOME LOAN GUARANTY OR INSURANCE," WHICH CONTAINED THE FOLLOWING LANGUAGE:

"THE UNDERSIGNED VETERAN AND LENDER HEREBY APPLY TO THE ADMINISTRATOR OF VETERAN'S AFFAIRS FOR

GUARANTY INSURANCE OF THE LOAN DESCRIBED HEREIN AND SEVERALLY AGREE THAT THE REGULATIONS PROMULGATED PURSUANT TO TITLE III, SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, AND IN EFFECT ON THE DATE SAID LOAN IS APPROVED FOR GUARANTY OR INSURANCE SHALL GOVERN THE RIGHTS, DUTIES AND LIABILITIES OF THE PARTIES HERETO.'

THUS, WHEN YOU EXECUTED THE ABOVE APPLICATION, UNDER THE PROVISIONS OF THE LAW AND REGULATIONS, YOU AGREED TO INDEMNIFY THE UNITED STATES AGAINST LOSS AND IT IS THIS INDEMNITY AGREEMENT UPON WHICH THE UNITED STATES BASES ITS CLAIM.

THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF IOWA, IN THE CASE OF UNITED STATES V. HENDERSON, 121 F.SUPP. 343, 344, HAS SAID:

"THE LANGUAGE OF THIS PROVISIONS (36.4323 (E) (IS CLEAR AND THERE CAN BE NO

QUESTION THEREFROM OF THE INTENT OF THE CONGRESS TO MAKE ANY PAYMENTS MADE BY THE GOVERNMENT UNDER THE GUARANTEE OF THE ACT AN ENFORCEABLE DEMAND UNTIL FULL SATISFACTION IS OBTAINED * * * DEFENDANTS LIABILITY CREATED WHEN HIS LOAN APPLICATION, MADE OUT AND THE NOTE AND MORTGAGE EXECUTED, REMAINS A DIRECT AND SUBSISTING OBLIGATION UNTIL THE GOVERNMENT HAS BEEN REPAID. * * *"

THE FACT THAT THE ASSOCIATION (OR ANY SUBROGEE OF THE ASSOCIATION) MAY HAVE, UNDER THE LAWS OF NEW YORK, PRECLUDED ITSELF FROM SUCCESSFULLY PROSECUTING ANY ACTION AGAINST YOU, BY ITS ACCEPTANCE OF THE DEED AND BY RELEASING THE THEN OWNER FROM PERSONAL LIABILITY, WOULD HAVE NO EFFECT ON THE RIGHTS OF THE GOVERNMENT.

THE RULE IS WELL 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 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. CF. 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.

THEREFORE, YOU ARE REQUESTED TO LIQUIDATE YOUR INDEBTEDNESS TO THE UNITED STATES WITHOUT FURTHER DELAY IN ORDER TO AVOID THE NECESSITY OF INSTITUTING FORMAL COLLECTION PROCEEDINGS.