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B-131963, Jul. 17, 1957

Number: B-131963

Date: 1957-07-17

B-131963, JUL. 17, 1957

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

ON MAY 22, 1957, YOU TRANSMITTED HERE A VOUCHER--- TOGETHER WITH THE RELATED CLAIM FILE--- IN FAVOR OF THE PUGET SOUND NATIONAL BANK OF TACOMA, WASHINGTON, FOR $260.25. THE VOUCHER COVERS A CLAIM FOR REIMBURSEMENT FOR A LOSS SUSTAINED ON ACCOUNT OF DEFAULT IN THE PAYMENT OF A NOTE SIGNED BY ARNOLD L. AND ANN SHINSTINE, WHICH THE INSURED INSTITUTION PURCHASED FROM SPENCER'S HARDWARE AND APPLIANCES, TACOMA, WASHINGTON, AND REPORTED FOR INSURANCE UNDER ITS CONTRACT WITH THE FEDERAL HOUSING ADMINISTRATION UNDER TITLE I OF THE NATIONAL HOUSING ACT. YOU REQUEST OUR DECISION AS TO WHETHER YOU MAY CERTIFY THE VOUCHER FOR PAYMENT.

THE NOTE, WHEN REPORTED TO THE FEDERAL HOUSING ADMINISTRATION BY THE BANK FOR INSURANCE UNDER TITLE I, COMPLIED WITH THE REQUIREMENTS OF THE NATIONAL HOUSING ACT AND APPLICABLE REGULATIONS. HOWEVER, ABOUT TWO YEARS AFTER THE NOTE WAS EXECUTED THE BANK AGREED IN WRITING TO EXTEND THE TIME FOR PAYMENT, AS SPECIFIED IN THE NOTE, FOR 90 DAYS.

THE FEDERAL HOUSING ADMINISTRATION REGULATIONS REFERRED TO IN YOUR LETTER (24 C.F.R. 201.9 (E) (PERMIT EXTENSION AGREEMENTS (DEFERRED PAYMENTS) ONLY IF THE FINAL MATURITY OF THE NOTE IS NOT EXTENDED. SECTION 201.9 (A) OF THE SAME REGULATIONS PERMITS LOANS TO BE REFINANCED BUT REQUIRES THAT SUCH REFINANCING BE EVIDENCED BY NEW NOTES AND BE REPORTED FOR INSURANCE WITH INSURANCE PREMIUMS PAID FOR THE ADDITIONAL TERM. YOU SAY THAT THE AGREEMENT IN THIS CASE DID NOT COMPLY WITH THE REQUIREMENTS FOR EITHER A NEW REFINANCED NOTE OR FOR AN EXTENSION, BUT THAT EXCEPT FOR A SLIGHT ADDITIONAL INSURANCE PREMIUM AND A SLIGHT INTEREST OVERCHARGE THE EFFECT OF THE AGREEMENT WAS THE SAME AS THE EFFECT OF THE TAKING OF A NEW NOTE AND REFINANCING THE TRANSACTION.

YOUR LETTER CONTINUES IN PART:

"IT WAS FELT THAT THE EXTENSION OF TIME FOR PAYMENT OF THE NOTE, WHILE VIOLATING CERTAIN TECHNICAL REQUIREMENTS OF THE REGULATIONS, DID NOT VIOLATE THE LIMITATION OF THE LAST PROVISO OF SECTION 2 (B) OF THE NATIONAL HOUSING ACT. THE COMPLIANCE COMMITTEE, WHICH WAS ESTABLISHED BY THE COMMISSIONER TO EXERCISE HIS AUTHORITY TO WAIVE TECHNICAL VIOLATIONS OF HIS REGULATIONS AS AUTHORIZED UNDER SECTION 2 (E) OF THE ACT, HAS DETERMINED THAT THE REGULATIONS HAVE BEEN SUBSTANTIALLY COMPLIED WITH IN GOOD FAITH BY OUR INSURED AND HAS WAIVED THE VIOLATIONS ON CONDITION THAT ANY OVERCHARGE BE CREDITED TO THE NOTE AND ANY ADDITIONAL INSURANCE PREMIUM BE PAID.'

SECTION 2 (B) OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703 (B), PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION * * * IF SUCH OBLIGATION HAS A MATURITY IN EXCESS OF THREE YEARS AND THIRTY-TWO DAYS * * * PROVIDED FURTHER, THAT ANY OBLIGATION WITH RESPECT TO WHICH INSURANCE IS GRANTED UNDER THIS SECTION ON OR AFTER JULY 1, 1939, MAY BE REFINANCED AND EXTENDED IN ACCORDANCE WITH SUCH TERMS AND CONDITIONS AS THE COMMISSIONER MAY PRESCRIBE, BUT IN NO EVENT FOR AN ADDITIONAL AMOUNT OR TERM IN EXCESS OF THE MAXIMUM PROVIDED FOR IN THIS SUBSECTION.'

OUR VIEW IS THAT UNDER THE QUOTED SECTION A FINANCIAL INSTITUTION MAY EXTEND THE TIME FOR PAYING A NOTE BEYOND THE THREE YEARS AND 32 DAYS FIXED BY THE STATUTE ONLY IF IT REFINANCES THE LOAN, THAT IS, IF A NEW NOTE IS EXECUTED. THE NOTE INVOLVED HERE WAS DATED JULY 6, 1954, AND MATURED JULY 15, 1957. WHILE THE TIME FOR PAYMENT AS SPECIFIED IN THE NOTE WAS EXTENDED OR DEFERRED BY THE BANK FOR 90 DAYS BEYOND THE MATURITY DATE OF THE NOTE AND 69 DAYS BEYOND THE MATURITY PERIOD FIXED BY THE NATIONAL HOUSING ACT, THE NOTE WAS NOT, IN FACT, REFINANCED. THUS, IT DOES NOT APPEAR THAT THE BANK COMPLIED WITH THE REFINANCING PROVISO QUOTED ABOVE. IN FACT, UPON EXECUTION OF THE DEFERRED PAYMENT AGREEMENT THE ORIGINAL OBLIGATION (NOTE) HAD A MATURITY DATE IN EXCESS OF THE STATUTORY LIMIT OF THREE YEARS AND 32 DAYS.

MOREOVER, ALTHOUGH SECTION 2 (E) OF TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703 (C) AUTHORIZES THE COMMISSIONER TO WAIVE COMPLIANCE WITH REGULATIONS PRESCRIBED BY HIM, NEITHER THAT SECTION NOR ANY OTHER PART OF THE ACTS VESTS ANY AUTHORITY IN THE COMMISSIONER TO WAIVE COMPLIANCE WITH THE ABOVE-QUOTED STATUTORY REFINANCING PROVISO. THEREFORE, SINCE THE EXTENSION OF TIME FOR PAYMENT OF THE NOTE WITHOUT REFINANCING THE LOAN WAS NOT IN COMPLIANCE WITH THE STATUTORY PROVISO, THE COMMISSIONER'S WAIVER AUTHORITY WOULD NOT APPLY.

IN VIEW OF WHAT HAS BEEN STATED ABOVE, THE SUBMITTED VOUCHER, WHICH IS RETURNED TOGETHER WITH YOUR CLAIM FILE, MAY NOT BE CERTIFIED FOR PAYMENT.