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B-134523, Mar. 19, 1958

Number: B-134523

Date: 1958-03-19

B-134523, MAR. 19, 1958

TO MR. EDWARD J. RYAN:

YOUR LETTER POSTMARKED OCTOBER 22, 1957, WRITTEN IN BEHALF OF MR. ROLAND G. GAUTHIER, CONCERNS THE CLAIM OF THE UNITED STATES AGAINST MR. GAUTHIER IN THE PRINCIPAL AMOUNT OF $1,025.52, PLUS INTEREST, ARISING BY REASON OF HIS DEFAULT ON GUARANTY LOAN NO. LHC-160101-MASS. THE FACTS OF THIS CLAIM WERE SET FORTH IN OFFICE LETTER TO YOU DATED SEPTEMBER 18, 1957.

YOU STATE IN YOUR RECENT LETTER THAT THERE IS NO CASE AGAINST MR. GAUTHIER FOR THE FOLLOWING REASONS:

"1. NO NOTICE OF A CLAIM FOR DEFICIENCY WAS EVER SERVED, UNDER CHAPTER 244, OF THE LAWS OF MASSACHUSETTS, SECTION 17B.

"2. THE STATUTE OF LIMITATIONS OF TWO YEARS, UNDER CHAPTER 244, SECTION 17A, OF THE LAWS OF MASSACHUSETTS; HAS RUN AGAINST THE CLAIM.

"3. YOUR TRUSTED AGENT, THE BANK RESOLD THE PROPERTY, AND MADE UP THIS DEFICIENCY, AND SHOULD NOT BE UNJUSTLY ENRICHED, BY THE RESALE, AND NOW ATTEMPTING TO HOLD THE VETERAN ON A DEFICIENCY. IF YOU HAVE A SHORTAGE OF $1,025.00, YOU SHOULD OBTAIN IT FROM YOUR TRUSTEE, THE BANK. THEY HAVE NO RIGHT TO HOLD THIS SECRET PROFIT, AT THE EXPENSE OF THE VETERAN.'

UPON RECEIPT OF YOUR LETTER A COPY WAS FORWARDED TO THE VETERANS ADMINISTRATION REGIONAL OFFICE, BOSTON, MASSACHUSETTS, FOR A REPORT ON THE ALLEGATIONS MADE BY YOU. THE VETERANS ADMINISTRATION HAS RECENTLY REPORTED THAT THE LAW GOVERNING DEFICIENCY JUDGMENTS IN MASSACHUSETTS WAS WELL KNOWN AND THE FAILURE TO ASK FOR THE LENDER TO PRESERVE THE PERSONAL LIABILITY OF THE VETERAN WAS BASED ON AN ADMINISTRATIVE DETERMINATION. WAS DECIDED TO ABANDON THE GOVERNMENT'S RIGHT OF SUBROGATION UNDER THE FORECLOSURE PROCEEDINGS AND THE SUBSEQUENT PURCHASE OF THE PROPERTY AND MORTGAGE NOTE BY THE VETERANS ADMINISTRATION AND TO RELY INSTEAD ON THE GOVERNMENT'S RIGHT OF INDEMNITY. AS YOU WERE ADVISED IN OFFICE LETTER OF SEPTEMBER 18, 1957, THE CLAIM AGAINST MR. GAUTHIER IS BASED UPON THE VETERANS ADMINISTRATOR'S COMMON LAW RIGHT OF INDEMNITY AS SET FORTH IN SECTION 36.4323 (E) OF TITLE 38, CODE OF FEDERAL REGULATIONS ISSUED PURSUANT TO SECTION 504 OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, 38 U.S.C. 694D. THIS REGULATION PROVIDES AS FOLLOWS:

"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.'

REGULATIONS PROMULGATED BY THE ADMINISTRATOR OF VETERANS' AFFAIRS, IF WITHIN HIS AUTHORITY, HAVE THE FORCE AND EFFECT OF LAW. COWANDA COOPERATIVE SAVINGS AND LOAN ASSN. V. CRAY, 183 F.2D 367. ALSO, IN LOAN GUARANTEED BY THE GOVERNMENT UNDER THE SERVICEMEN'S READJUSTMENT ACT OF 1944, IS CONTROLLED ENTIRELY BY THAT ACT AND STATE LAWS AND STATE DECISIONS ARE INAPPLICABLE. THE COURT IN HOLDING FOR THE GOVERNMENT IN THAT CASE RELIED CHIEFLY UPON THE REGULATION OF THE VETERANS ADMINISTRATION QUOTED ABOVE.

SINCE THE GOVERNMENT DECIDED TO PROCEED AGAINST MR. GAUTHIER UNDER THE RIGHT OF INDEMNITY, THE PROVISIONS OF CHAPTER 244 OF THE LAWS OF MASSACHUSETTS, PARTICULARLY SECTION 17B, CONCERNING NOTICE, AND SECTION 17A, CONCERNING THE PERIOD OF LIMITATION WHEN SUIT CAN BE BROUGHT, WHICH WERE SET FORTH AS A BASIS FOR DEFENSE UNDER ALLEGATIONS 1 AND 2 OF YOUR LETTER, WOULD HAVE NO APPLICATION UNDER THE COURT RULINGS CITED ABOVE. FURTHER, ON THE QUESTION OF THE STATUTE OF LIMITATIONS, THE RULE IS THAT THE UNITED STATES IS IMMUNE, AS A SOVEREIGN, FROM THE DEFENSE OF THE STATUTE OF LIMITATIONS UNLESS THAT IMMUNITY IS EXPRESSLY WAIVED. UNITED STATES V. SUMMERLIN, 310 U.S. 414, 84 L.ED. 1283.

AS TO THE THIRD ALLEGATION IN YOUR LETTER IN WHICH YOU STATE THAT THE BANK RESOLD AND MADE UP THE DEFICIENCY CHARGED TO THE DEBTOR, INFORMATION RECEIVED FROM THE VETERANS ADMINISTRATION SHOWS THAT THE TOTAL INDEBTEDNESS AT THE TIME OF THE FORECLOSURE SALE INCLUDING ACCRUED INTEREST AND FORECLOSURE COSTS WAS $10,525.52; AND THAT THE LENDER BANK BOUGHT THE PROPERTY AT THE FORECLOSURE SALE FOR $9,500 AND THEREAFTER ELECTED TO CONVEY TITLE TO THE ADMINISTRATOR OF VETERANS' AFFAIRS FOR THAT SAME AMOUNT. THE AMOUNT OF $9,500 WAS CREDITED TO THE VETERANS' ACCOUNT AND THE DEFICIT OF $1,025.52 WAS PAID TO THE BANK BY THE VETERANS ADMINISTRATION PURSUANT TO THE GUARANTY AGREEMENT WHICH AMOUNT THE GOVERNMENT NOW MAKES CLAIM FOR AGAINST MR. GAUTHIER UNDER THE PROVISIONS IN THE VETERANS ADMINISTRATION REGULATION QUOTED ABOVE. HENCE, UNDER THESE CIRCUMSTANCES, THERE IS NO BASIS FOR THE ASSERTION THAT THE LENDING BANK HAS MADE ANY PROFIT AT THE EXPENSE OF THE VETERAN.

IN VIEW OF THE FOREGOING, IT IS SUGGESTED THAT PAYMENT OF THE AMOUNT OF THE INDEBTEDNESS BE MADE AS PROMPTLY AS POSSIBLE IN ORDER TO AVOID FURTHER INTEREST CHARGES AND COURT COSTS IN THE EVENT SUIT IS INSTITUTED.