Text as published on gao.gov, https://www.gao.gov/products/b-148816, archived 2026-07-11. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-148816, May 21, 1962

Number: B-148816

Date: 1962-05-21

B-148816, MAY 21, 1962

TO AUTHORIZED CERTIFYING OFFICER, OFFICE OF THE ASSISTANT COMMISSIONER-COMPTROLLER, FEDERAL HOUSING ADMINISTRATION:

BY LETTER OF APRIL 27, 1962, YOU REQUESTED AN OPINION AS TO WHETHER YOU MIGHT PROPERLY CERTIFY FOR PAYMENT THE ENCLOSED VOUCHER DRAWN PAYMENT TO THE CLAYTON BANK, CLAYTON, MISSOURI, IN THE AMOUNT OF $2,231.86 COVERING THE BANK'S CLAIM FOR REIMBURSEMENT OF LOSS INCURRED ON ACCOUNT OF DEFAULT IN PAYMENT OF A NOTE REPORTED FOR ISSUANCE UNDER ITS CONTRACT AUTHORIZED BY TITLE I OF THE NATIONAL HOUSING ACT.

THE NOTE, WHEN REPORTED FOR INSURANCE UNDER TITLE I, COMPLIED WITH THE REQUIREMENTS OF THE NATIONAL HOUSING ACT AND APPLICABLE REGULATIONS. YOUR QUESTION CONCERNS WHETHER AN AGREEMENT, LATER SIGNED BY THE BANK AND THE BORROWER, EXTENDING PAYMENT DATES UNDER THE NOTE MAY ALSO BE SAID TO COMPLY WITH PROVISIONS OF THE ACT.

THE ORIGINAL NOTE, DATED AUGUST 27, 1959, IN THE AMOUNT OF $4,317.41, CALLED FOR 60 CONSECUTIVE MONTHLY PAYMENTS OF $71.96 COMMENCING THE 16TH DAY OF OCTOBER, 1959. THE EXTENSION AGREEMENT, ENTERED INTO ON AUGUST 30, 1961, PROVIDED:

TABLE

"EXTENSION AGREEMENT

"LOAN NO. 30-47-40-16. DATE AUG. 30 1961

"DATE OF LOAN 8/28 1959

"IN CONSIDERATION OF $8.00 PAID BY THE UNDERSIGNED BORROWER AS ADDITIONAL INTEREST FOR AN EXTENSION, COMPUTED ON THE AMOUNT OF THE UNPAID PRINCIPAL BALANCE OF THE ABOVE NUMBERED LOAN AT A RATE NOT IN EXCESS OF THE RATES STATED IN BORROWER'S NOTE EVIDENCING SAID LOAN, THE UNDERSIGNED LENDER HEREBY EXTENDS FOR 2 MONTH/S) THE DATE OF PAYMENT OF EACH OF THE REMAINING 39 FULL INSTALLMENTS OF WHICH THE FIRST 39 INSTALLMENTS ARE NOW DUE AND UNPAID; AND BORROWER AGREES TO PAY SAID EXTENDED INSTALLMENTS IN CONSECUTIVE MONTHLY INSTALLMENTS COMMENCING OCT 16 1961, AND THE FINAL INSTALLMENT ON NOV 16, 1961, SAID NOTE REMAINS IN FULL FORCE AND EFFECT EXCEPT AS THE TIMES OF PAYMENT ARE EXTENDED HEREBY.

"BORROWER ACKNOWLEDGES RECEIPTS OF AN EXECUTED COPY OF THIS AGREEMENT.

" (SIGNED)

" (BORROWER

" (SIGNED)

" (MANAGER"

SUBSECTION 2 (6) 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 * * * WITH RESPECT TO ANY OBLIGATION * * * IF SUCH OBLIGATION HAS A MATURITY IN EXCESS OF THREE YEARS AND THIRTY-TWO DAYS, EXCEPT THAT THE COMMISSIONER MAY INCREASE SUCH MAXIMUM LIMITATION TO FIVE 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.'

RECOGNIZING THE AMBIGUITY IN THE TERMS OF THE EXTENSION AGREEMENT QUOTED ABOVE--- IN THAT RESUMPTION OF 39 REMAINING MONTHLY INSTALLMENTS IS SET FOR OCTOBER 16, 1961, AND PAYMENT OF THE FINAL INSTALLMENT IS SET FOR NOVEMBER 16, 1961--- THE ADMINISTRATION HAS CONSTRUED THE EXTENSION AS VIOLATING THE FIVE YEAR AND THIRTY-TWO DAY MAXIMUM LIMITATION PROMULGATED BY THE COMMISSIONER PURSUANT TO SECTION 2 (B) OF THE ACT, AS AMENDED, AND HAS REJECTED THE CLAIM ON THE BASIS OF OUR DECISION OF JULY 17, 1957, B- 131963. IN THAT DECISION WE HELD THAT A FINANCIAL INSTITUTION MAY EXTEND THE TIME FOR PAYING A NOTE BEYOND THE MAXIMUM TIME LIMITATION ONLY IF IT REFINANCES THE LOAN, THAT IS, IF A NEW NOTE IS EXECUTED.

THE NOTE HERE INVOLVED WAS DATED AUGUST 27, 1959, AND PAYMENTS THEREUNDER WERE TO BE COMPLETED SEPTEMBER 16, 1964, A TOTAL PERIOD OF 5 YEARS AND 20 DAYS. THE BANK HAS APPEALED REJECTION OF ITS CLAIM, STATING THAT IT WAS NEITHER THE BANK'S INTENTION NOR THE BORROWER'S TO EXTEND THE TOTAL TERM OF THE LOAN, BUT THAT THE TWO MONTHLY PAYMENTS WOULD BE MADE BY THE BORROWER ON OR BEFORE NOVEMBER 16, 1961, AND THERE WAS NO UNDERSTANDING THAT THESE TWO PAYMENTS WERE TO CONTINUE TO CARRY UNTIL AFTER THE TERM OF THE ORIGINAL NOTE.

WE CANNOT AGREE WITH THE BANK'S INTERPRETATION OF THE EXTENSION AGREEMENT. WHILE IT IS TRUE THAT THE AGREEMENT REFERS TO NOVEMBER 16, 1961, AS THE DUE DATE FOR THE FINAL INSTALLMENT THEREUNDER, IT APPEARS, IN VIEW OF THE OTHER TERMS CONTAINED IN THE AGREEMENT THAT INSERTION OF THE DATE NOVEMBER 16, 1961, RATHER THAN 1964 WAS AN INADVERTENT ERROR. THE EXTENSION RELATES TO EACH OF 39 INSTALLMENTS DUE AND PAYABLE AND THE AMOUNT OF INTEREST CHARGED, $8, COULD NOT BE SAID TO BE AT ALL REASONABLE IF RELATED ONLY TO A TWO MONTH EXTENSION OF PAYMENT DATE FOR EACH OF TWO $71.96 PAYMENTS. THEREFORE, WE MUST CONCLUDE THAT THE FINAL MATURITY DATE OF THE INITIAL OBLIGATION WAS EXTENDED FOR TWO MONTHS MAKING A TOTAL PAYMENT PERIOD OF 5 YEARS AND 81 DAYS, OR 49 DAYS IN EXCESS OF THE MAXIMUM AUTHORIZED UNDER THE STATE.

ACCORDINGLY, SINCE THE EXTENSION OF MATURITY DATE WAS GRANTED WITHOUT REFINANCING THE ORIGINAL NOTE, OUR DECISION OF JULY 17, REFERRED TO ABOVE, IS APPLICABLE, AND THE VOUCHER IN QUESTION, WHICH TOGETHER WITH THE CLAIM FILE FORWARDED BY YOU IS RETURNED, MAY NOT BE CERTIFIED FOR PAYMENT.