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B-149800, Sep. 28, 1962

Number: B-149800

Date: 1962-09-28

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

ON AUGUST 24, 1962, YOU TRANSMITTED HERE A VOUCHER IN FAVOR OF THE FIRST NATIONAL BANK, MINERAL WELLS, TEXAS, IN THE AMOUNT OF $219.59. THE VOUCHER COVERS A CLAIM FOR REIMBURSEMENT FOR A LOSS SUSTAINED ON ACCOUNT OF DEFAULT IN THE PAYMENT OF A NOTE SIGNED BY CLARENCE V. BOTKINS AND PEARL BOTKINS, IN CONNECTION WITH A LOAN MADE TO THEM BY THE SAID BANK AND BY THE BANK REPORTED FOR INSURANCE UNDER ITS CONTRACT AUTHORIZED BY TITLE I OF THE NATIONAL HOUSING ACT.

THE NOTE WAS EXECUTED ON APRIL 22, 1959. IT WAS IN THE FACE AMOUNT OF $684.13 AND WAS BASED UPON AN ADVANCE OF $595. THE FINANCE CHARGE OF $89.13 WAS INCLUDED WITHIN THE FACE AMOUNT. THE NOTE WHICH WAS DRAWN TO MATURE ON MAY 5, 1962, COMPLIED WITH THE REQUIREMENTS OF THE NATIONAL HOUSING ACT AND APPLICABLE REGULATIONS WHEN REPORTED TO THE FEDERAL HOUSING ADMINISTRATION BY THE BANK FOR INSURANCE UNDER TITLE I.

ON MARCH 15, 1960, HOWEVER, THE LENDING INSTITUTION FOR A FEE OF $1.85 AGREED IN WRITING WITH THE BORROWERS THAT "THE STIPULATED DUE DATE OF THE NOTE IS EXTENDED 60 DAYS.' ON AUGUST 28, 1961, FOR AN ADDITIONAL FEE OF $3.75 THERE WAS A FURTHER AGREEMENT THAT "THE STIPULATED DUE DATE OF THE NOTE IS EXTENDED 180 DAYS.' THE NOTE THUS AS EXTENDED HAD A TERM OF APPROXIMATELY THREE YEARS AND EIGHT MONTHS.

24 CFR 201.9 (E) OF THE FEDERAL HOUSING ADMINISTRATION REGULATIONS PERMITS EXTENSION AGREEMENTS (DEFERRED PAYMENTS) PROVIDED THAT:

"/3) SUCH AGREEMENT SHALL NOT EXTEND THE FINAL MATURITY OF THE OBLIGATION BEYOND THE MATURITY DATE OF THE OBLIGATION AS PROVIDED BY ITS ORIGINAL TERMS.'

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. THE AGREEMENTS IN THIS CASE DID NOT COMPLY WITH THE REQUIREMENTS FOR EITHER A NEW REFINANCED NOTE OR FOR AN EXTENSION.

SECTION 2 (B) OF THE NATIONAL HOUSING ACT, AS AMENDED, AUGUST 7, 1956 (12 U.S.C. 1703 (B) (, PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION * * * (2) 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 IF HE DETERMINES SUCH INCREASE TO BE IN THE PUBLIC INTEREST * * *.'

24 CFR 201.2 (D) (2) (I) AS AMENDED ON AUGUST 8, 1956, PROVIDED THAT THE MAXIMUM PERMISSIBLE MATURITY OF A NOTE HAVING A PRINCIPAL AMOUNT, EXCLUSIVE OF FINANCING CHARGES, OF MORE THAN $600 WOULD BE 5 YEARS AND 32 DAYS FROM THE DATE OF THE NOTE. THE THEN STATUTORY MAXIMUM PERMISSIBLE MATURITY OF A NOTE HAVING A PRINCIPAL AMOUNT, EXCLUSIVE OF FINANCING CHARGES OF LESS THAN $600 OF 3 YEARS AND 32 DAYS REMAINED UNCHANGED. THIS REGULATION WAS AMENDED ON SEPTEMBER 13, 1961, TO MAKE THE MAXIMUM PERMISSIBLE MATURITY 5 YEARS AND 32 DAYS ON ALL SUBJECT LOANS REGARDLESS OF AMOUNT. THUS AT THE TIME THE LOAN WAS MADE TO THE BOTKINSES THE MAXIMUM PERMISSIBLE MATURITY FOR SUCH LOAN UNDER THE STATUTE AND REGULATION WAS 3 YEARS AND 32 DAYS.

YOU POINT OUT THAT THE ABOVE-MENTIONED EXTENSIONS OF THE TERM OF THE NOTE INCREASED ITS MATURITY TO A DATE PAST 3 YEARS AND 32 DAYS FROM THE DATE OF EXECUTION, BUT TO ONE WHICH IS WITHIN THE 5 YEAR AND 32 DAY LIMITATION NOW AUTHORIZED BY THE REGULATION AND THAT UNDER OUR DECISION OF JULY 17, 1957, B-131963, THE VIOLATION OF A STATUTORY PROVISION MAY NOT BE WAIVED UNDER THE AUTHORITY CONFERRED UPON THE COMMISSIONER BY 12 U.S.C. 1703 (E).

YOUR LETTER CONTINUES IN PART AS FOLLOWS:

"THE CRITICAL QUESTION IS WHETHER THE OPTION FOR INCREASE OF MATURITY GRANTED BY SECTION 1703 (B) MUST BE EXERCISED BEFORE THERE COMES INTO EFFECT THE AUTHORITY FOR WAIVER OF COMPLIANCE GRANTED BY SECTION 1703 (E). CLEARLY ANY PROVISION FOR MATURITY IN EXCESS OF FIVE YEARS AND THIRTY-TWO DAYS VIOLATES THE STATUTE, FOR THE COMMISSIONER HAS NO AUTHORITY TO INCREASE THAT LIMITATION. THE LOAN NOW CONSIDERED LACKED ONLY $5.01 OF QUALIFYING AB INITIO FOR THE LONGER MATURITY AND WOULD QUALIFY UNDER REGULATIONS EFFECTIVE SINCE SEPTEMBER 13, 1961.

"IT IS NOT APPARENT THAT THE ABOVE MENTIONED EXTENSIONS MATERIALLY SIZE ON THE ONLY GROUND WHICH CAN BE ASSERTED LEADS TO CHARGES OF INSISTENCE UPON TECHNICAL NICETY. SINCE THE LENDING INSTITUTION COULD HAVE ACCOMPLISHED THE DESIRED RESULT BY FORMAL REFINANCING OR BY CARRYING THE ACCOUNT IN DEFAULT UNDER AN EXTENSION OF THE CLAIM PERIOD WHICH THE COMMISSIONER ORDINARILY WOULD HAVE GRANTED, REFUTATION OF SUCH CHARGE IS DIFFICULT.'

12 U.S.C. 1703 (E) TO WHICH YOU REFER PROVIDES AS FOLLOWS:

"/E) THE COMMISSIONER IS AUTHORIZED TO WAIVE COMPLIANCE WITH REGULATIONS HERETOFORE OR HEREAFTER PRESCRIBED BY HIM WITH RESPECT TO THE INTEREST AND MATURITY OF AND THE TERMS, CONDITIONS, AND RESTRICTIONS UNDER WHICH LOANS, ADVANCES OF CREDIT, AND PURCHASES MAY BE INSURED UNDER THIS SECTION AND SECTION 1706 (A) OF THIS TITLE, IF IN HIS JUDGMENT THE ENFORCEMENT OF SUCH REGULATIONS WOULD IMPOSE AN INJUSTICE UPON AN INSURED INSTITUTION WHICH HAS SUBSTANTIALLY COMPLIED WITH SUCH REGULATIONS IN GOOD FAITH AND REFUNDED OR CREDITED ANY EXCESS CHARGE MADE, AND WHERE SUCH WAIVER DOES NOT INVOLVE AN INCREASE OF THE OBLIGATION OF THE COMMISSIONER BEYOND THE OBLIGATION WHICH WOULD HAVE BEEN INVOLVED IF THE REGULATIONS HAD BEEN FULLY COMPLIED WITH.'

OUR DECISION OF JULY 17, 1957, INVOLVED A NOTE EXECUTED JULY 6, 1954, AT WHICH TIME SECTION 2 (B) OF THE NATIONAL HOUSING ACT PROVIDED THAT NO INSURANCE SHOULD BE GRANTED UNDER THE APPLICABLE SECTION IF SUCH A STATUTORY LIMITATION AND WE HELD THAT WHILE 12 U.S.C. 1703 (E) AUTHORIZES THE COMMISSIONER TO WAIVE

COMPLIANCE WITH REGULATIONS PRESCRIBED BY HIM, IT DOES NOT AUTHORIZE HIM TO WAIVE COMPLIANCE WITH A STATUTORY PROVISION.

WITH RESPECT TO THE INSTANT CASE, THE LAW AS AMENDED AUTHORIZED THE COMMISSIONER TO EXTEND THE MATURITY PERIOD TO 5 YEARS AND 32 DAYS, IF HE DETERMINED SUCH INCREASE TO BE IN THE PUBLIC INTEREST. HE DID, IN FACT, EXERCISE SUCH AUTHORITY ON AUGUST 8, 1956, WITH RESPECT TO LOANS HAVING A PRINCIPAL AMOUNT, EXCLUSIVE OF FINANCING CHARGES, IN EXCESS OF $600. HOWEVER, APPARENTLY NO SUCH INCREASE OR DETERMINATION WAS MADE AT THAT TIME WITH RESPECT TO LOANS HAVING A PRINCIPAL AMOUNT OF $600 OR LESS. THUS THE STATUTORY LIMITATION OF 3 YEARS AND 32 DAYS WAS CONTINUED WITH RESPECT TO SUCH LOANS. HENCE, THE EXTENSION OF THE TIME FOR THE PAYMENT OF THE LOAN ON MARCH 15, 1960, BEYOND 3 YEARS AND 32 DAYS WAS IN VIOLATION OF SECTION 2 (B) OF THE NATIONAL HOUSING ACT AND THE LOAN BECAME UNINSURED AS OF THAT DATE. ACCORDINGLY, THE HOLDING IN OUR DECISION OF JULY 17, 1957, B-131963, IS FOR APPLICATION HERE.

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