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B-153971, Jun. 17, 1964

Number: B-153971

Date: 1964-06-17

B-153971, JUN. 17, 1964

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

REFERENCE IS MADE TO YOUR LETTER OF APRIL 13, 1964, WITH ENCLOSURES, REQUESTING OUR DECISION IN THE MATTER OF A VOUCHER THEREWITH TRANSMITTED FOR $2,332.28 IN FAVOR OF THE FIRST NATIONAL BANK OF SKOKIE, ILLINOIS, COVERING A CLAIM FOR REIMBURSEMENT OF LOSS INCURRED BY REASON OF DEFAULT IN PAYMENT OF A NOTE SIGNED BY ALBERT AND LOIS CHERNICK.

THE RECORD SHOWS THAT THE ORIGINAL NOTE SINGED BY ALBERT AND LOIS CHERNICK DATED AUGUST 13, 1960, IN THE FACE AMOUNT OF $1,246.80 WAS BASED ON AN ADVANCE OF $1,000 AND WAS REPORTED FOR INSURANCE UNDER ITS CONTRACT OF INSURANCE AUTHORIZED BY TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1701 ET SEQ. THE ORIGINAL NOTE WAS REFINANCED BY A NOTE DATED MAY 4, 1961, WHICH IN TURN WAS REFINANCED BY A NOTE DATED JULY 7, 1961. THE NOTE THAT WAS EXECUTED ON JULY 7, 1961, REPRESENTED A REFINANCING OF THE NOTE OF MAY 4, 1961, AND AN ADDITIONAL ADVANCE OF $2,416.44, AND WAS IN THE FACE AMOUNT OF $4,312.80. SUBSEQUENTLY, THE LOAN WENT INTO DEFAULT AND THE LENDER, FIRST NATIONAL BANK OF SKOKIE, SUBMITTED A CLAIM DATED AUGUST 24, 1962, TO THE FEDERAL HOUSING ADMINISTRATION (FHA) PURSUANT TO SECTION 201.11 OF FHA REGULATIONS, 24 CFR 201.11, BASED ON THE AMOUNT OF THE NOTE OF JULY 7, 1961, INCLUDING THE AFOREMENTIONED ADDITIONAL ADVANCE.

YOU STATE THAT A SEARCH OF THE INSURANCE REGISTRY FAILED TO SHOW THAT A REFINANCING REPORT BASED ON THE NOTE OF JULY 7, 1961, HAD EVER BEEN SUBMITTED, AND THAT FHA RECORDS SHOWED THAT NO PREMIUM HAD BEEN PAID FOR THE ADDITIONAL AMOUNT ADVANCED BY THE LENDER. THE LENDER, BY LETTER OF DECEMBER 20, 1962, WHICH WAS SUBSEQUENT TO THE DATE THE CLAIM WAS SUBMITTED AND TO DEFAULT ON THE LOAN, SUBMITTED A REFINANCING REPORT BASED ON THE NOTE OF JULY 7, 1961, SHOWING THE ADDITIONAL ADVANCE. THE ACTION OF THE LENDER SUBMITTING A LATE REFINANCING REPORT WAS STATED TO BE PURSUANT TO THE PROVISIONS OF SECTION 201.10 OF FHA REGULATIONS, 24 CFR 201.10, WHICH PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"LOANS SHALL BE REPORTED ON THE PRESCRIBED FORM TO THE FEDERAL HOUSING ADMINISTRATION AT WASHINGTON, D.C., WITHIN 31 DAYS FROM THE DATE OF THE NOTE OR DATE UPON WHICH IT WAS PURCHASED. ANY LOAN REFINANCED AS PROVIDED IN SEC. 201.9 SHALL LIKEWISE BE REPORTED ON THE PRESCRIBED FORM WITHIN 31 DAYS FROM DATE OF REFINANCING. * * * IN ANY CASE, THE COMMISSIONER MAY, IN HIS DISCRETION, ACCEPT A LATE REPORT.'

ALSO, THE LENDER REQUESTED THAT ITS CLAIM BE SUBMITTED TO THE SUBSTANTIAL

COMPLIANCE COMMITTEE FOR CONSIDERATION.

THE COMMISSIONER HAS DELEGATED TO THE SUBSTANTIAL COMPLIANCE COMMITTEE IN SECTION 200.89 OF FHA REGULATIONS, 24 CFR 200.89, THE FUNCTIONS OF WAIVING COMPLIANCE WITH FHA REGULATIONS REGARDING THE INTEREST AND MATURITY OF, AND THE TERMS, CONDITIONS, AND RESTRICTIONS UNDER WHICH LOANS, ADVANCES OF CREDIT AND PURCHASES MAY BE INSURED UNDER SECTION 2 OF TITLE I OF THE NATIONAL HOUSING ACT. HENCE, THE COMMISSIONER HAS DELEGATED TO THE SUBSTANTIAL COMPLIANCE COMMITTEE HIS DISCRETIONARY POWER TO ACCEPT A LATE REFINANCING REPORT.

THE RECORD SHOWS THAT THE CLAIM OF THE FIRST NATIONAL BANK OF SKOKIE HAS BEEN SUBMITTED TO THE SUBSTANTIAL COMPLIANCE COMMITTEE TWICE FOR ITS CONSIDERATION. ON EACH OCCASION THE SUBSTANTIAL COMPLIANCE COMMITTEE HAS DETERMINED THAT UNDER THE CIRCUMSTANCES SET FORTH ABOVE, THE LENDER'S CLAIM MAY BE CERTIFIED FOR PAYMENT ONLY ON THE BASIS OF INSURED LOAN OF AUGUST 13, 1960. HENCE, THE SUBSTANTIAL COMPLIANCE COMMITTEE, HAS, IN EFFECT, REFUSED TO ACCEPT THE LENDER'S LATE REPORT IN THE INSTANT CASE.

THE RECORD SHOWS THAT, IN ACCORDANCE WITH THE AFOREMENTIONED DETERMINATION OF THE SUBSTANTIAL COMPLIANCE COMMITTEE, PAYMENT HAS BEEN MADE TO THE LENDER, BASED UPON THE INSURED LOAN OF AUGUST 13, 1960, IN THE AMOUNT OF $627.32. SINCE THE SUBSTANTIAL COMPLIANCE COMMITTEE DID NOT IN ITS DISCRETION ACCEPT THE LATE REFINANCING REPORT BASED ON THE NOTE OF JULY 6, 1961, WHICH INCLUDED THE ADVANCE OF $2,416.44, NO ADDITIONAL AMOUNT BASED ON SUCH NOTE IS PAYABLE TO THE LENDER. THEREFORE, THE VOUCHER IN THE AMOUNT OF $2,332.23 WHICH REPRESENTS SUCH AN ADDITIONAL AMOUNT BASED ON THE NOTE OF JULY 7, 1961, MAY NOT BE CERTIFIED FOR PAYMENT.

AS REQUESTED, THE VOUCHER AND SCHEDULE OF PAYMENT FORM AND CLAIM FILE ARE RETURNED HEREWITH.