Text as published on gao.gov, https://www.gao.gov/products/b-162542, archived 2026-07-12. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-162542, Oct. 24, 1967

Number: B-162542

Date: 1967-10-24

B-162542, OCT. 24, 1967

HOUSING - LOANS - DATE OF MATURITY DECISION TO CERTIFYING OFFICER OF F.H.A. CONCERNING PROPRIETY OF CERTIFYING VOUCHER FOR REIMBURSING COMMERCE BANK AND TRUST CO. FOR LOSS BECAUSE OF DEFAULT ON NOTE INSURED BY F.H.A. WHERE QUESTION CONCERNING DATE OF FINAL MATURITY OF NOTE TO BE ELIGIBLE FOR INSURANCE ARISES AND WHERE IT IS SHOWN THAT PARTIES BY LETTER AGREEMENT MOVED DATE OF FIRST PAYMENT TO AUGUST 25, 1965 INSTEAD OF ON SEPT. 1, 1965, AS PROVIDED IN THE NOTE, INTENT OF PARTIES WAS THAT OTHER PAYMENTS WOULD BECOME DUE ON 25TH DAY OF EACH SUCCESSIVE MONTH MAKING JULY 25, 1970 LAST DATE. THEREFORE AGREEMENT IS CONSTRUED AS REFLECTING INTENT OF PARTIES AND MODIFYING TERMS OF NOTE SO THAT PAYMENT MAY BE MADE.

TO MR. LESTER H. THOMPSON:

YOUR LETTER OF SEPTEMBER 19, 1967 (YOUR REFERENCE "COMPTROLLER'S DIVISION FCI-T"), REQUESTS OUR DECISION WHETHER YOU MAY CERTIFY FOR PAYMENT A VOUCHER IN FAVOR OF THE COMMERCE BANK AND TRUST COMPANY (LENDER), OF HELENA, MONTANA, IN THE AMOUNT OF $1,807.39. THE VOUCHER COVERS A CLAIM FOR REIMBURSEMENT OF LOSS SUSTAINED BY THE LENDER ON ACCOUNT OF DEFAULT ON A NOTE MADE BY CLAUDE E. AND MYRNA HUCKINS. THE NOTE WAS REPORTED FOR INSURANCE BY THE LENDER UNDER ITS CONTRACT WITH THE FEDERAL HOUSING ADMINISTRATION (FHA) PURSUANT TO TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1702 ET SEQ., AND THE REQUISITE INSURANCE CHARGE WAS PAID.

THE PERTINENT FACTS AND CIRCUMSTANCES, AS DISCLOSED BY YOUR LETTER, ARE SET FORTH BELOW.

THE NOTE IS DATED JUNE 25, 1965, AND AS ORIGINALLY REPORTED, PROVIDED FOR THE FIRST PAYMENT TO FALL DUE ON SEPTEMBER 1, 1965. AT THE TIME OF REPORTING THE NOTE FOR INSURANCE, FHA ADVISED THE LENDER, BASED ON THE INFORMATION FURNISHED BY THE LENDER, THAT THE APPARENT TERM OF THE NOTE EXCEEDED 5 YEARS AND 32 DAYS AND RETURNED THE INSURANCE APPLICATION TO THE LENDER. THE LENDER STATED THAT THE NOTE HAD BEEN DATED IN ERROR AND OBTAINED A LETTER AGREEMENT FROM THE BORROWER, STATING THAT THE DATE OF FIRST PAYMENT WOULD BE AUGUST 25, 1965, RATHER THAN SEPTEMBER 1, 1965, AS ORIGINALLY REPORTED ON THE LENDER'S LOAN MANIFEST OF JULY 6, 1965. THE LOAN MANIFEST DOES NOT SHOW THE DATE OF FINAL MATURITY OF NOTES REPORTED FOR INSURANCE AND THAT DATE MUST BE CALCULATED FROM THE DATE OF THE NOTE, AND THE DATE OF FIRST PAYMENT TAKING INTO ACCOUNT THE NUMBER OF PERIODIC PAYMENTS WHICH ARE SHOWN ON THE MANIFEST. AT ALL TIMES, UNTIL AND IF A CLAIM IS FILED, POSSESSION OF THE NOTE IS RETAINED BY THE LENDER.

AFTER RECEIVING FHA'S ADVICE THAT BASED ON THE DATES SHOWN ON THE MANIFEST THE

NOTE IN QUESTION DID NOT QUALIFY FOR INSURANCE, THE LENDER, IN THE BELIEF THAT THE ERROR HAD BEEN CORRECTED, REPORTED THE LOAN ON A MANIFEST DATED SEPTEMBER 15, 1965, SHOWING THE FIRST PAYMENT AS FALLING DUE ON AUGUST 25, 1965. THE APPARENT TERM PROJECTED FROM THIS DATE WOULD HAVE BEEN WITHIN THE MATURITY LIMITS, PROVIDED BY SECTION 2 (B) OF THE NATIONAL HOUSING ACT, AS AMENDED, AUGUST 7, 1956 (12 U.S.C. 1703 (B) (, WHICH 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 * * *.'

THE MAXIMUM MATURITY WAS INCREASED BY THE COMMISSIONER TO 5 YEARS AND 32 DAYS (SEE 24 CFR 201.2 (D) (2) (I)).

ASSUMING THAT THE AGREEMENT OF THE PARTIES TO THE NOTE, AS TO THE DATE OF FIRST PAYMENT, WAS A VALID EXPRESSION OF THEIR TRUE INTENT TO EXECUTE A NOTE WHICH WOULD MATURE IN LESS THAN 5 YEARS AND 32 DAYS, YOU STATE THAT THE QUESTION ARISES AS TO WHETHER THIS INTENT WAS SUFFICIENT TO OVERCOME THE STATEMENT IN THE NOTE THAT THE FINAL PAYMENT WOULD NOT BE DUE UNTIL THE FIRST DAY OF AUGUST 1970, WHICH WOULD RESULT IN MATURITY OF 5 YEARS AND 37 DAYS.

IN VIEW OF THE FACTS AND CIRCUMSTANCES, OUR ADVICE IS REQUESTED AS TO WHETHER IT IS PROPER TO CERTIFY THE ENCLOSED VOUCHER FOR PAYMENT.

THE NOTE INVOLVED PROVIDED THAT THE PAYMENTS THEREON WOULD BE MADE IN INSTALLMENTS, THE FIRST PAYMENT TO BE MADE ON SEPTEMBER 1, 1965, AND PAYMENTS ON THE FIRST DAY OF EACH SUCCESSIVE MONTH THEREAFTER FOR 58 CONSECUTIVE MONTHS, AND THE LAST PAYMENT ON AUGUST 1, 1970. IN OTHER WORDS PAYMENTS ON THE NOTE WERE TO BE MADE ON THE FIRST OF EACH MONTH FOR 60 CONSECUTIVE MONTHS STARTING WITH SEPTEMBER 1, 1965.

IT IS REASONABLE TO ASSUME THAT WHEN THE PARTIES TO THE NOTE SUBSEQUENTLY AGREED (IN THE LETTER AGREEMENT) TO MOVE THE FIRST PAYMENT DATE TO AUGUST 25, 1965, THAT THEY INTENDED THAT THE OTHER 59 PAYMENTS WOULD BECOME DUE ON THE 25TH DAY OF EACH SUCCESSIVE MONTH FOR 59 MONTHS, THUS MAKING JULY 25, 1970, THE DUE DATE FOR THE LAST PAYMENT. TO CONCLUDE THAT IT WAS INTENDED BY THE LETTER AGREEMENT TO CHANGE ONLY THE DATE OF THE FIRST PAYMENT ON THE NOTE FROM SEPTEMBER 1, 1965, TO AUGUST 25, 1965, AND THAT IT WAS NOT INTENDED TO CHANGE THE OTHER DATES FOR PAYMENT FIXED IN THE NOTE, WOULD HAVE REQUIRED THAT THE BORROWER MAKE A PAYMENT ON AUGUST 25, 1965, AND THEN MAKE ANOTHER PAYMENT ON SEPTEMBER 1, 1965. THAT SUCH A RESULT WAS NOT INTENDED IS CLEAR FROM THE PAYMENT RECORD OF THE BORROWER. THE FIRST PAYMENT WAS MADE ON AUGUST 24, 1965, AND THE SECOND PAYMENT ON SEPTEMBER 27, 1965. FURTHER THERE WAS NO LATE CHARGE ASSESSED INCIDENT TO THE SECOND PAYMENT, AS APPARENTLY WOULD HAVE BEEN THE CASE HAD THE SECOND PAYMENT BEEN CONSIDERED DUE SEPTEMBER 1, 1965.

IT IS OUR VIEW THAT TO THE EXTENT THAT THE INTENT OF THE PARTIES THERETO CAN BE ASCERTAINED, THE LETTER AGREEMENT MODIFIES THE TERMS OF THE NOTE. ACCORDINGLY, IN LIGHT OF WHAT IS SET FORTH ABOVE CONCERNING THE INTENT OF THE PARTIES, THE LETTER AGREEMENT MAY BE CONSIDERED AS AMENDING THE NOTE SO AS TO REQUIRE THE LAST PAYMENT TO BE MADE ON JULY 25, 1970, THUS RESULTING IN A MATURITY NOT EXCEEDING 5 YEARS AND 32 DAYS. THEREFORE, IN OUR OPINION, THE VOUCHER IN QUESTION MAY BE CERTIFIED FOR PAYMENT IF OTHERWISE CORRECT.