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B-163029, Feb. 16, 1968

Number: B-163029

Date: 1968-02-16

B-163029, FEB. 16, 1968

HOUSING - LOANS - DEFAULT - ATTORNEY'S FEES DECISION TO CERTIFYING OFFICER OF FEDERAL HOUSING ADMINISTRATION CONCERNING REIMBURSEMENT FOR ATTORNEY'S FEES IN COLLECTION OF NOTE INSURED WITH F.H.A. WHERE AN INSURED NOTE WAS COLLECTED BY ATTORNEYS FOR A SAVINGS AND LOAN ASSOCIATION IN OHIO WITHOUT RESORT TO COURT ACTION AND NOTE DID NOT CONTAIN ANY STIPULATION FOR PAYMENT OF ATTORNEY'S FEES, THE COLLECTION EXPENSE MAY BE REGARDED AS A LOSS ON THE LOAN ENTITLING THE LENDER TO RECOVER. THEREFORE PAYMENT TO THE LENDER MAY BE MADE.

TO MR. RALPH L. VITALE:

WE REFER TO YOUR LETTER OF NOVEMBER 30, 1967, REQUESTING TO BE ADVISED WHETHER YOU MAY CERTIFY AN ENCLOSED VOUCHER FOR THE PAYMENT OF $47.75 TO THE UNITED SAVINGS AND LOAN ASSOCIATION OF TOLEDO, OHIO.

THE VOUCHER IS FOR THE PARTIAL REIMBURSEMENT OF ATTORNEY'S FEES INCURRED BY THE ASSOCIATION, THE LENDER, IN THE COLLECTION OF A NOTE INSURED UNDER ITS CONTRACT OF INSURANCE WITH THE FEDERAL HOUSING ADMINISTRATION, PURSUANT TO TITLE 1 OF THE NATIONAL HOUSING ACT, 12 U.S.C. 1703.

UPON DEFAULT IN THE MONTHLY PAYMENTS BY THE BORROWER, THE LENDER REFERRED THE INSURED NOTE TO ITS ATTORNEYS. THE ENTIRE AMOUNT DUE ON THE NOTE WAS COLLECTED BY THE ATTORNEYS WITHOUT RESORTING TO SUIT. THE NOTE APPARENTLY DID NOT CONTAIN A STIPULATION FOR THE PAYMENT OF ATTORNEY'S FEES IN THE EVENT OF DEFAULT AND IT APPEARS THAT OHIO IS ONE OF SEVERAL STATES WHEREIN SUCH A STIPULATION WOULD NOT HAVE BEEN ENFORCEABLE. SEE MILLER V KYLE, 85 OHIO ST. 186, 97 N.E. 372; MANUFACTURERS TRADING CORPORATION V ROBERTS, 5 CIR., 138 F2 806; 10 C.J.S. BILLS AND NOTES SEC. 108. THUS THE NOTE IN THIS CASE WAS MARKED "PAID" AND RETURNED TO THE BORROWER.

THE ASSOCIATION CLAIMS REIMBURSEMENT UNDER ITS CONTRACT OF INSURANCE, WHICH INCLUDES THE FEDERAL HOUSING ADMINISTRATION REGULATIONS CONTAINED IN TITLE 24, PART 201, CODE OF FEDERAL REGULATIONS. AT THE TIME THIS LOAN WAS INSURED THE REGULATIONS IN SECTION 201.11 (E) PROVIDED:

"/E) CLAIM AMOUNT. AN INSURED WILL BE REIMBURSED FOR ITS LOSSES ON LOANS MADE IN ACCORDANCE WITH THE REGULATIONS IN THIS PART UP TO THE AMOUNT OF ITS RESERVE AS ESTABLISHED BY SEC. 201.12. THE AMOUNT OF THE REIMBURSEMENT IS DETERMINED BY ADDING THE ITEMS IN SUBPARAGRAPHS (1), (2), (3), AND (4) AS FOLLOWS:

"/1) 90 PERCENT OF THE NET UNPAID AMOUNT OF THE LOAN ACTUALLY MADE * *

"/2) INTEREST COMPUTED UNDER ONE OF THE FOLLOWING FORMULAS:

"/3) UNCOLLECTED COURT COSTS, INCLUDING FEES PAID FOR ISSUING, SERVING, AND FILING SUMMONS.

"/4) ATTORNEY'S FEES ACTUALLY PAID NOT EXCEEDING:

"/I) 25 PERCENT OF THE AMOUNT COLLECTED BY THE ATTORNEY ON THE DEFAULTED NOTE, PROVIDED THE INSURED DOES NOT WAIVE ITS CLAIM AGAINST THE BORROWER FOR SUCH FEES * * *.'

ALTHOUGH THE OBLIGATION OF THE BORROWER UPON HIS NOTE HAS BEEN FULLY DISCHARGED, WE NEVERTHELESS, IN VIEW OF THE QUOTED REGULATION, CONSIDER THE COLLECTION EXPENSE HERE INVOLVED AS AN ITEM OF LOSS ON THE LOAN ENTITELING THE LENDER TO RECOVER UNDER THE PROVISIONS OF SEC. 201.11 (E) (4) (I). IT MAY BE MENTIONED, AS IS POINTED OUT IN YOUR LETTER, THAT THIS CASE HAS LIMITED SIGNIFICANCE IN THAT ON JULY 31, 1967, SEC. 201.11 (E) (4) (I) WAS AMENDED TO PROVIDE THAT PAYMENT OF ATTORNEY'S COLLECTION FEES SHALL BE MADE "IF THE BORROWER IS LIABLE FOR THE PAYMENT OF SUCH FEE UNDER THE LAWS OF THE JURISDICTION APPLICABLE TO THE NOTE * * *.' 32 FR 11328.

YOU ARE ADVISED THAT THE SUBMITTED VOUCHER, RETURNED HEREWITH TOGETHER WITH THE CLAIM FILE, MAY BE CERTIFIED FOR PAYMENT.