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B-166521, Apr. 25, 1969

Number: B-166521

Date: 1969-04-25

B-166521, APR. 25, 1969

TO MR. LESTER H. THOMPSON:

REFERENCE IS MADE TO YOUR LETTER OF MARCH 21, 1969 (YOUR REFERENCE "COMPTROLLER'S DIVISION I:EOD:321"), ASKING WHETHER YOU MAY CERTIFY A VOUCHER ENCLOSED THEREWITH, PAYABLE TO THE NORTH AMERICAN SAVINGS ASSOCIATION (NORTH AMERICAN), IN THE AMOUNT OF $476.60. THE VOUCHER COVERS A CLAIM FOR REIMBURSEMENT OF A LOSS SUSTAINED ON ACCOUNT OF A NOTE MADE BY WILLIAM F. SUMMERS. THE NOTE WAS REPORTED FOR INSURANCE BY THE LENDER UNDER ITS CREDIT INSURANCE 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 PREMIUMS WERE PAID.

THE PERTINENT FACTS AND CIRCUMSTANCES CONCERNING THE MATTER, AS DESCRIBED BY YOUR LETTER ARE SET FORTH BELOW.

THE NOTE IS DATED JUNE 20, 1963, AND THE PAYEE WAS SECURITY SAVINGS ASSOCIATION WHOSE ASSETS WERE TAKEN OVER BY THE PRESENT CLAIMANT, NORTH AMERICAN SAVINGS ASSOCIATION, ON SEPTEMBER 7, 1967.

THE NOTE CALLS FOR THE FIRST INSTALLMENT TO BECOME DUE ON JULY 1, 1968. HOWEVER, 12 PAYMENTS, COMMENCING IN AUGUST 1963, AND ENDING IN SEPTEMBER 1964, WERE MADE WHICH, YOU STATE, GIVES SOME INDICATION THAT THE PROVISION IN THE NOTE PROVIDING FOR THE FIRST PAYMENT TO BE DUE IN 1968 WAS THE RESULT OF AN ERROR. IF THE FIRST PAYMENT IS DETERMINED TO HAVE BEEN NOT DUE UNTIL JULY 1, 1968, THE TERMS OF THE NOTE WOULD HAVE BEEN IN VIOLATON OF SECTION 2 (B) OF THE NATIONAL HOUSING ACT, AS AMENDED (12 U.S.C. 1703 (B) (WHICH PROVIDES AS FOLLOWS:

"-NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION * * *

(2) IF SUCH OBLIGATION HAS A MATURITY IN EXCESS OF 3 YEARS AND THIRTY-TWO DAYS, EXCEPT THAT THE COMMISSIONER MAY INCREASE SUCH MAXIMUM LIMITATION TO 7 YEARS AND 32 DAYS IF HE DEEMS SUCH INCREASE TO BE IN THE PUBLIC INTEREST * * *.-" THE MAXIMUM MATURITY HAS BEEN INCREASED BY THE COMMISSIONER TO 7 YEARS AND 32 DAYS. SE 24 CFR 201.2 (D) (2) (I). FHA REGULATIONS (24 CFR 201.11 (C) (PROVIDE THAT CLAIM SHALL BE FILED NO LATER THAN SIX MONTHS AFTER THE DUE DATE OF THE FINAL INSTALLMENT PROVIDED FOR IN THE NOTE,AND IN THE INSTANT CASE CLAIM WAS FILED OCTOBER 23, 1968.

DUE TO THE FACT THAT THE ORIGINAL LENDING INSTITUTION IS NO LONGER IN EXISTENCE, NO FURTHER CLARIFICATION OF THE CIRCUMSTANCES SURROUNDING THE LOAN CAN BE OBTAINED.

AS INDICATED IN YOUR LETTER, IT APPEARS THAT THE PROVISION IN THE NOTE PROVIDING FOR THE FIRST PAYMENT TO BE DUE JULY 1, 1968, WAS THE RESULT OF AN ERROR. THE NOTE PROVIDES FOR 60 CONSECUTIVE MONTHLY INSTALLMENTS AND SINCE THE DATE OF THE NOTE IS JUNE 20, 1963, IT WOULD NOT BE REASONABLE TO ASSUME THAT AUGUST 1, 1963, WAS THE INTENDED DUE DATE OF THE FIRST PAYMENT. IN FACT 12 PAYMENTS WERE MADE ON THE NOTE, THE FIRST ONE BEING MADE ON AUGUST 6, 1963, AND THE LAST ON SEPTEMBER 30, 1964, THUS LENDING SUPPORT TO THE IMPLICATION THAT THE DUE DATE OF THE FIRST PAYMENT WAS INTENDED TO BE AUGUST 1, 1963. IN OTHER WORDS, THE PAYMENT RECORD OF THE BORROWER SUPPORTS THE CONCLUSIONS THAT THE INTENDED DUE DATE OF THE FIRST PAYMENT WAS AUGUST 1, 1963.

ASSUMING THAT AUGUST 1, 1963, WAS THE INTENDED DUE DATE OF THE FIRST PAYMENT, THE DATE OF JULY 1, 1968, WOULD HAVE BEEN THE "MATURITY DATE" OF THE NOTE, SINCE THE NOTE WAS TO BE PAID IN 60 CONSECUTIVE MONTHLY INSTALLMENTS. UNDER THE CIRCUMSTANCES IT COULD REASONABLY BE ASSUMED THAT DUE TO INADVERTENCE THE MATURITY DATE -- INSTEAD OF THE DUE DATE OF THE FIRST PAYMENT -- WAS INSERTED IN THE NOTE IN THE BLANK INDICATING THE DUE DATE OF THE FIRST PAYMENT.

IN LIGHT OF THE FOREGOING IT IS OUR VIEW THAT AUGUST 1, 1963, MAY BE CONSIDERED THE DUE DATE OF THE FIRST PAYMENT ON THE NOTE. ACCORDINGLY, THE VOUCHER IN QUESTION MAY BE CERTIFIED FOR PAYMENT IF OTHERWISE CORRECT.