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B-172121, Apr 12, 1971

Number: B-172121

Date: 1971-04-12

B-172121, APR 12, 1971

INSURED LENDING INSTITUTION - REIMBURSEMENT FOR LOSS DECISION HOLDING THAT VOUCHER REPRESENTING CLAIM BY SOUTHEAST STATE BANK OF KANSAS CITY, MISSOURI FOR THE LOSS OF $1,308.86 SUSTAINED ON A NOTE ALLEGEDLY INSURED PURSUANT TO TITLE I OF THE NATIONAL HOUSING ACT (12 U.S.C. 1701, ET SEQ.) MAY NOT BE CERTIFIED FOR PAYMENT. BECAUSE THE NOTE HAD A MATURITY 4 DAYS OVER THE MAXIMUM LIMITATION OF 5- YEARS, 32 DAYS PROVIDED IN THE NATIONAL HOUSING ACT, AND THE RESPONSIBILITY TO MAKE CERTAIN THAT NOTES DO NOT HAVE MATURITIES IN EXCESS OF THAT PERMITTED RESTS UPON THE INSURED LENDING INSTITUTION, NOT THE GOVERNMENT, THE LOAN WAS INELIGIBLE FOR INSURANCE AT INCEPTION AND THE CLAIM FOR REIMBURSEMENT MUST BE DISALLOWED.

TO MR. FREDERIC W. WOLFES:

CONSIDERATION HAS BEEN GIVEN TO YOUR LETTER OF MARCH 5, 1971, REQUESTING ADVICE AS TO WHETHER IT WOULD BE PROPER TO CERTIFY THE VOUCHER IN FAVOR OF SOUTHEAST STATE BANK OF KANSAS CITY, MISSOURI, WHICH COVERS THE BANK'S CLAIM FOR REIMBURSEMENT OF THE LOSS OF $1,308.86 SUSTAINED ON THE NOTE OF FRANZE M. GOURLEY AND FREDERICK L. CARLSON, ALLEGEDLY INSURED PURSUANT TO TITLE I OF THE NATIONAL HOUSING ACT (12 U.S.C. 1701, ET SEQ.). THE CLAIM WAS DENIED BY YOU BECAUSE THE TERM OF THE LOAN WAS IN EXCESS OF THE STATUTORY MAXIMUM OF 5 YEARS AND 32 DAYS IN EFFECT AT THE TIME THE LOAN WAS MADE WHICH MADE IT INELIGIBLE AT INCEPTION.

AT THE TIME THE LOAN WAS MADE, SECTION 2(B) OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703(B) READ AS FOLLOWS:

"NO INSURANCE SHALL BE GRANTED UNDER THIS SECTION TO ANY SUCH FINANCIAL INSTITUTION WITH RESPECT TO ANY OBLIGATION REPRESENTING ANY SUCH LOAN *** (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 COMMISSIONER INCREASED THE MAXIMUM MATURITY TO 5 YEARS AND 32 DAYS AS AUTHORIZED. (INCIDENTALLY, IT IS NOTED THAT IN ACCORDANCE WITH THE HOUSING ACT OF 1968, PUB. L. 90-448, 82 STAT. 476, THE MAXIMUM TERM FOR LOANS OF THIS TYPE HAS BEEN INCREASED TO 7 YEARS AND 32 DAYS. 24 CFR 201.2(D)(2)(I).)

THE NOTE IN THIS CASE IS DATED APRIL 26, 1965. IT PROVIDED THAT THE FIRST OF SIXTY CONSECUTIVE MONTHLY INSTALLMENTS WOULD BECOME DUE JULY 1, 1965. THIS MADE THE FINAL PAYMENT FALL DUE ON JUNE 1, 1970, FOR A TOTAL TERM OF 5 YEARS AND 36

DAYS WHICH IS 4 DAYS OVER THE MAXIMUM THEN IN EFFECT.

THE INSURED BANK STATES THAT THERE WAS A TYPOGRAPHICAL ERROR IN THE FIRST PAYMENT DATE OF JULY 1, 1965, AND THAT THE ORIGINAL NOTE SHOULD HAVE CALLED FOR THE FIRST PAYMENT TO BE DUE JUNE 1, 1965. IT STATES THAT ALL INFORMATION FOR THE BANK RECORDS AND YOUR REPORTS WOULD HAVE TO BE ENCODED FROM THE ORIGINAL NOTE AND THAT WITH THE DATE OF THE NOTE BEING APRIL 26, 1965, YOUR COMPUTER SHOULD HAVE REJECTED JULY 1, 1965, AS A FIRST PAYMENT DATE. IT CONTENDS THAT YOU DO NOT NOW HAVE A RIGHT TO DISALLOW INSURANCE SINCE YOU ACCEPTED THE BANK'S INFORMATION AND INSURANCE PREMIUMS AT INCEPTION.

YOUR LETTER TO US STATES THAT UNDER PRESENT OPERATING PROCEDURES YOUR COMPUTER IS PROGRAMMED TO DETECT DISCREPANCIES SUCH AS THIS, HOWEVER, IT WAS NOT SO PROGRAMMED IN 1965 AND AT THAT TIME THERE WAS NO PROCEDURE TO CATCH SUCH ERRORS. YOUR LETTER STATES THAT IT HAS ALWAYS BEEN YOUR POSITION THAT THE ACCURACY OF THE DUE DATE AND THE RESPONSIBILITY TO MAKE CERTAIN THAT NOTES DO NOT HAVE MATURITIES IN EXCESS OF THAT PERMITTED BY THE NATIONAL HOUSING ACT RESTS UPON THE INSURED LENDING INSTITUTION.

NEITHER THE ACT NOR THE REGULATIONS REQUIRE THAT THE GOVERNMENT MUST DETERMINE WHETHER OR NOT A LOAN IS INSURABLE BEFORE THE GOVERNMENT WILL ACCEPT INSURANCE CHARGES PAID ON SUCH LOAN. THE REGULATIONS MERELY OUTLINE THE REQUIREMENTS, AS DOES THE ACT, THAT A LOAN MUST MEET BEFORE A CONTRACT OF INSURANCE WILL BE BINDING ON THE GOVERNMENT. ALSO WE ARE IN AGREEMENT WITH YOUR POSITION THAT THE RESPONSIBILITY TO MAKE CERTAIN THAT NOTES DO NOT HAVE MATURITIES IN EXCESS OF THAT PERMITTED BY THE NATIONAL HOUSING ACT RESTS UPON THE INSURED LENDING INSTITUTION.

THE NOTE IN THIS CASE HAD A MATURITY IN EXCESS OF THE MAXIMUM LIMITATION OF 5 YEARS AND 32 DAYS PROVIDED IN THE APPLICABLE PROVISION OF THE NATIONAL HOUSING ACT QUOTED ABOVE. THE ACT IS SPECIFIC AND MAKES NO PROVISIONS FOR ANY EXCEPTIONS. THEREFORE, THE VOUCHER WHICH IS RETURNED HEREWITH MAY NOT BE CERTIFIED FOR PAYMENT.

THE OTHER ATTACHMENTS TRANSMITTED WITH YOUR LETTER ARE ALSO ENCLOSED.