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B-172672, Jun 22, 1971

Number: B-172672

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B-172672, JUN 22, 1971

MORTGAGE - TRANSFER BY MORTGAGOR - DEFAULT ADVISING THAT THE COMP. GEN. HAS NO AUTHORITY TO TRANSFER LIABILITY OF A MORTGAGOR IN CONNECTION WITH A DEFAULT ON A VA GUARANTEED LOAN TO SUBSEQUENT TRANSFEREES. THE CONVEYANCE BY A MORTGAGOR OF MORTGAGED PROPERTY DOES NOT EXONERATE HIM FROM PERSONAL LIABILITY FOR THE SECURED DEBT. SINCE MORTGAGOR FAILED TO OBTAIN A RELEASE FROM LIABILITY FROM THE VA IN ACCORDANCE WITH 38 U.S.C. 1817, HE IS STILL LIABLE FOR THE DEBT.

TO MR. SECRETARY:

IN A LETTER DATED APRIL 20, 1971, THE SOLICITOR OF LABOR REQUESTED RECONSIDERATION OF THE INDEBTEDNESS TO THE UNITED STATES OF MR. JAMES F. SCEARCE, AN EMPLOYEE IN THE DEPARTMENT OF LABOR, RESULTING FROM DEFAULT IN CONNECTION WITH VETERANS ADMINISTRATION GUARANTEED LOAN NO. LH26431-W. THE CLAIMS DIVISION, UNITED STATES GENERAL ACCOUNTING OFFICE IN A LETTER DATED MARCH 4, 1971, TO YOU, HAD REQUESTED YOUR ASSISTANCE IN MAKING COLLECTION.

BRIEFLY, MR. SCEARCE OBTAINED A REAL ESTATE LOAN GUARANTEED BY THE VETERANS ADMINISTRATION UNDER THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED. HE TRANSFERRED THE PROPERTY INVOLVED TO A THIRD PARTY WITHOUT RECEIVING A RELEASE FROM LIABILITY FROM THE VETERANS ADMINISTRATION IN ACCORDANCE WITH PUB. L. 85-857, 38 U.S.C. 1817. THE PROPERTY HAS SINCE BEEN TRANSFERRED SEVERAL TIMES. BECAUSE OF DEFAULT IN THE MONTHLY PAYMENTS DUE ON THE LOAN AND SUBSEQUENT FORECLOSURE PROCEEDINGS, THE VETERANS ADMINISTRATION WAS REQUIRED TO PAY THE SUM OF $1,869.35. THE VETERANS ADMINISTRATION TRIED TO COLLECT THIS AMOUNT FROM MR. SCEARCE AND WHEN IT DID NOT RECEIVE PAYMENT IT REFERRED THE CLAIM TO THIS OFFICE UNDER THE FEDERAL CLAIMS COLLECTION ACT FOR FURTHER COLLECTION ACTION.

IT IS SETTLED THAT THE CONVEYANCE BY A MORTGAGOR OF MORTGAGED PROPERTY DOES NOT IN ITSELF EXONERATE THE MORTGAGOR FROM PERSONAL LIABILITY FOR THE DEBT SECURED, EVEN IF THE TRANSFEREE PERSONALLY ASSUMES AND AGREES TO PAY THE MORTGAGE DEBT. WHERE THERE ARE SUCCESSIVE TRANSFEREES OF MORTGAGED PROPERTY, EACH ASSUMING PAYMENT OF THE MORTGAGE DEBT, THE TRANSFEREES ARE CO-OBLIGORS, JOINTLY AND SEVERALLY LIABLE, AND THE MORTGAGEE - OR IN THIS CASE THE VETERANS ADMINISTRATION AS GUARANTOR - MAY HOLD ANY OR ALL OF THE TRANSFEREES FOR THE DEBT AND IS NOT OBLIGATED TO LOOK TO THE MOST RECENT TRANSFEREE. SINCE THE PROPERTY WAS TRANSFERRED WITHOUT RECEIVING A RELEASE FROM LIABILITY FOR THE MORTGAGE DEBT FROM THE VETERANS ADMINISTRATION, MR. SCEARCE CONTINUES TO BE PERSONALLY LIABLE. SEE UNITED STATES V SHIMER, 367 U.S. 374 (1961) AND UNITED STATES V ROSSI, 342 F. 2D 505 (9TH CIR. 1965). SEE GENERALLY 55 AM. JUR 2D "MORTGAGES" 1045 ET SEQ. AND 1070 ET SEQ. THIS OFFICE HAS NO AUTHORITY TO TRANSFER THAT LIABILITY TO SUBSEQUENT TRANSFEREES.

MR. SCEARCE, IN A MEMORANDUM DATED APRIL 14, 1971, TO MR. PETER NASH, THE SOLICITOR OF LABOR, STATES THAT HE TOOK ISSUE AND STILL TAKES ISSUE THAT NO REASONABLE SEARCH WAS MADE FOR HIM PRIOR TO PUTTING THE PROPERTY AT AUCTION. WE CAN VERY WELL UNDERSTAND MR. SCEARCE'S COMPLAINT UPON THIS POINT. HOWEVER AS A MATTER OF LAW NOTICE TO MR. SCEARCE WAS NOT REQUIRED. SEE UNITED STATES V ROSSI, SUPRA.

AS STATED IN THE CLAIMS DIVISION LETTER OF MARCH 4, 1971, TO YOU, AND IN ACCORDANCE WITH 4 CFR 102.5 AND 4 GAO 54.1, YOU ARE REQUESTED TO ASSIST IN MAKING COLLECTION.