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B-174739, Jan 19, 1972

Number: B-174739

Date: 1972-01-19

B-174739, JAN 19, 1972

CONTRACTS - GOVERNMENT INSURED LOANS - REIMBURSEMENT FOR LOSS DECISION DENYING CERTIFICATION OF A VOUCHER FOR PAYMENT TO THE FIRST NATIONAL BANK AND TRUST COMPANY FOR REIMBURSEMENT FOR A LOSS SUSTAINED ON A LOAN TO EUOLA MUTZIG AND MUTZIG'S, INC., WHICH HAD BEEN INSURED UNDER TITLE 1 OF THE NATIONAL HOUSING ACT. WHILE THE LEASE WAS SIGNED BY EUOLA MUTZIG AS PRESIDENT OF MUTZIG CONNER, INC., THE LOAN WAS SIGNED BY EUOLA MUTZIG AS PRESIDENT OF MUTZIG'S, INC. THE PARTY TO WHOM THE LOAN WAS MADE WAS NOT A LESSEE OF THE PROPERTY AND WAS THEREFORE INELIGIBLE FOR AN INSURED LOAN UNDER 12 U.S.C. 1703(A). ACCORDINGLY, THE VOUCHER MAY NOT BE CERTIFIED FOR PAYMENT.

TO MR. R. P. GARRITY:

YOUR LETTER OF DECEMBER 9, 1971, REQUESTS OUR ADVICE AS TO WHETHER YOU MAY PROPERLY CERTIFY FOR PAYMENT A VOUCHER IN FAVOR OF THE FIRST NATIONAL BANK AND TRUST COMPANY, CHICKASHA, OKLAHOMA, IN THE AMOUNT OF $1,690.30. THE VOUCHER COVERS THE CLAIM OF THE BANK FOR REIMBURSEMENT OF A LOSS SUSTAINED ON A LOAN TO EUOLA MUTZIG AND MUTZIG'S, INCORPORATED, WHICH HAD BEEN INSURED UNDER TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703.

THE LOAN, FOR IMPROVEMENT OF LEASED COMMERCIAL PROPERTY, WAS MADE ON SEPTEMBER 26, 1968, WITH THE NOTE TO BE PAID IN 60 MONTHLY INSTALLMENTS, THE LAST INSTALLMENT BEING PAYABLE SEPTEMBER 26, 1973. THE LEASE INVOLVED HEREIN WAS FOR A TERM OF 5 YEARS EXPIRING ON JUNE 30, 1973, WITH THE LESSEE HAVING AN OPTION TO EXTEND THE LEASE FOR AN ADDITIONAL 5 YEAR PERIOD.

SECTION 2 OF THE NATIONAL HOUSING ACT, AS AMENDED, 12 U.S.C. 1703, PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"THE SECRETARY IS AUTHORIZED AND EMPOWERED *** TO INSURE BANKS *** AGAINST LOSSES *** AS A RESULT OF LOANS *** FOR THE PURPOSE OF FINANCING ALTERATIONS, REPAIRS AND IMPROVEMENTS UPON OR IN CONNECTION WITH EXISTING STRUCTURES *** BY THE OWNERS THEREOF OR BY LESSEES OF SUCH REAL PROPERTY UNDER A LEASE EXPIRING NOT LESS THAN SIX MONTHS AFTER THE MATURITY OF THE LOAN OR ADVANCE OF CREDIT *** ."

ALTHOUGH YOU QUESTION THE ELIGIBILITY OF THE LOAN FOR FHA INSURANCE BECAUSE THE BASIC LEASE TERM EXPIRES EARLIER THAN 6 MONTHS AFTER MATURITY OF THE LOAN, WE DO NOT FIND IT NECESSARY TO CONSIDER THIS POINT. WE NOTE THAT EUOLA MUTZIG AND MUTZIG'S, INCORPORATED, TO WHOM THE LOAN WAS MADE, ARE NOT THE LESSEES UNDER THE LEASE SUBMITTED TO US. THE LESSEE IS MUTZIG- CONNOR, INCORPORATED, AND THE LEASE WAS SIGNED BY EUOLA MUTZIG AS PRESIDENT OF MUTZIG-CONNOR, INCORPORATED. THE

NOTE, ON THE OTHER HAND WAS SIGNED BY EUOLA MUTZIG BOTH INDIVIDUALLY AND AS PRESIDENT OF MUTZIG'S, INCORPORATED, APPARENTLY A DIFFERENT CORPORATION. THUS, IT APPEARS THAT THE PARTIES TO WHOM THE LOAN WAS MADE WERE NEITHER OWNERS NOR LESSEES OF THE PROPERTY INVOLVED AND WERE THEREFORE INELIGIBLE FOR AN INSURED LOAN UNDER 12 U.S.C. 1703(A).

ACCORDINGLY, THE VOUCHER, WHICH IS RETURNED HEREWITH TOGETHER WITH YOUR CLAIM FILE, MAY NOT BE CERTIFIED FOR PAYMENT.