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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194145 DATE: December 12, 1980

MATTER OF: First Missouri Bank - National Housing Act Claim

DIGEST: Bank's claim for reimbursement for loss sustained on several property improvement loans made to lessees is denied. Lessees were ineligible for insurance when loans were made, being neither owners of property nor having a lease expiring at least six months after maturity of loans as required by 12 U.S.C. § 1703. Refinanced loan made after borrowers exercised their option to purchase property does not qualify for insurance since loans being refinanced were never validly insured.

B.C. Tyner, an authorized certifying officer of the Department of Housing and Urban Development (HUD), asks whether he may certify for payment, in whole or in part, a voucher in the amount of $4,761.86 payable to the First Missouri Bank of St. Charles County, Missouri. by Bank The voucher covers a claim for reimbursement of a loss sustained on ~~several~~ property improvement loans which the Bank made to Robert and Pennie Leach, and submitted to HUD for insurance pursuant to Title 1 of the National Housing Act, as amended, 12 U.S.C. § 1703.

The Bank's claim was initially denied by HUD because, at the time the loans were made, the borrowers were not eligible for insurance, being neither the owners of the property nor lessees with a lease expiring at least six months after the maturity of the loans. For the reasons set forth hereafter, it is our view that HUD's original determination was correct and that the voucher may not be certified for payment in whole or in part.

The first loan, in the amount of $725, was made to the borrowers on April 5, 1976, for a term of 15 months. Shortly thereafter, the April 5 loan was consolidated with a second loan made on July 2, 1976, and a new note totalling $2,000, exclusive of interest, having a 36-month term, was reported to HUD for insurance as a refinancing. At the time both of these loans were made, the borrowers were occupying the property under a one-year lease terminating January 6, 1977.

The third loan, in a principal amount of $3500 and having a term of 72 months, was made to the borrowers on August 5, 1976. Apparently, this was a separate loan and not a refinancing of the earlier loans. On the next day, August 6, the borrowers exercised their option under the lease to purchase the property. Then, on November 29, 1976, the two

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outstanding loans--those of July 2 and August 5--were consolidated into a new loan totalling $5,286.13, not including interest, and having a term of 108 months. This new note was also reported to HUD as a refinancing.

The loans in question were submitted to HUD for insurance pursuant to 12 U.S.C. § 1703, which reads in pertinent part as follows:

> "The Secretary is authorized and empowered*** to insure banks***against losses which they may sustain as a result of loans and advances***for the purposes of financing***improvements upon or in connnection 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***."

As stated above, HUD denied the Bank's claim because the loans of April 5, July 2, and August 5, 1976, were all made at a time when the borrowers were not eligible for HUD insurance. The original loan of April 5 and the refinancing loan of July 2 were clearly ineligible for insurance since at the time both of those loans were made, the borrowers were occupying the property under a lease due to expire before either of the loans would have matured. The statute authorizes insurance of a loan to a lessee only if the lease expires six months or more after the maturity of the loan. HUD's decision to deny the claim is consistent with our decisions concerning this statutory requirement. See B-129898, December 28, 1956, and B-172965, July 16, 1971. Similarly, the loan of August 5 did not qualify for HUD insurance since the borrowers were still occupying the property under the same ineligible lease on that date.

The Bank, in its letter to HUD of June 12, 1978, presents several arguments to support its request for reconsideration. The first of these--that its claim should be honored because it had been incorrectly advised by HUD's area office that the loan in question was eligible for HUD insurance due to the option to purchase in the lease--was adequately disposed of by HUD in its response to the Bank. HUD cited a decision of this Office (B-188240, August 10, 1977), in support of the long recognized principle that the United States cannot be bound or estopped by the unauthorized acts of its agents.

In addition, the Bank makes two other arguments which formed the primary basis for HUD's submission of this case to this Office. First, the Bank claims that since the $3500 loan of August 5 was not disbursed until August 6--the date on which the disbursement check was honored--by which date the borrowers had gained legal title to the property, the Bank should at the very least be entitled to a claim based upon the $3500 new loan. While HUD is authorized under 12 U.S.C. § 1703 to make home improvement loans to property owners, it is quite clear that at the time the August 5 note was signed, the borrowers were lessees and not owners. The fact that the borrowers chose to exercise their option to purchase on the following day does not change the legal relationship that existed between the borrowers and their landlord on August 5. Moreover, since the note is dated August 5 and the loan check was given to the borrower on that date, the fact that the check was not presented and honored until August 6 has no legal significance. See 55 Comp. Gen. 126 (1975). Our Office has consistently taken the position in cases involving other statutory limitations in Title 1 of the National Housing Act, such as the maximum permissible term for an insured loan, that unless the statutory requirements are strictly complied with, a loan is not eligible for insurance. See B-188240, August 10, 1977, supra; B-172121, April 12, 1971; and other cases cited in those decisions.

The final argument made by the Bank is that the claim can be paid based on the note of November 29, 1976 which refinanced the then-outstanding loans of July 2 and August 5. In this connection, the Bank maintains that since the November 29 refinancing loan covered "legitimate qualified improvements and***was executed after the borrower had obtained ownership of the property," it qualified for insurance under HUD's refinancing regulations. See 12 CFR § 201.9 (1980).

However, based on the statutory refinancing provisions, we believe that the November 29 refinancing loan was also ineligible for insurance. In this connection 12 U.S.C. § 1703(b) provides in pertinent part as follows:

> "***Provided further, that any obligation with respect to which insurance is granted under this section on or after July 1, 1939, may be refinanced and extended in accordance with such terms and conditions as the Secretary may prescribe***."

In our view this provision must be interpreted as prohibiting a refinancing loan unless the prior loans being refinanced were themselves validly insured. Since, as explained above, the loans of July 2 and August 5 were ineligible for insurance from their inception, we fail to see how the loan of November 29 that refinanced those uninsured loans could qualify for insurance. Moreover, if the loan of November 29 is considered as an entirely new loan for the purpose of determining its insurability, we believe that it would not have been eligible under the terms of 12 U.S.C. § 1703(a) which authorizes loans to finance alterations, repairs, and improvements upon real property, not to repay outstanding uninsured loans.

In accordance with the foregoing, the voucher in question cannot be certified for payment, in whole or in part. The voucher, together with the case file, is being returned to the certifying officer who submitted them.

Milton J. Socolar

For the Comptroller General
of the United States