

DECISION

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

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FILE:

DATE: AUG 12 1975

MATTER OF: B-183516

DIGEST:

Computation of Claim of Government-Insured Lender When Value of Collateral Cannot Be Determined As Required By Regulation

Lender's claim on Government-insured mobile home loan in default may properly be certified for payment based on sale price of mobile home, notwithstanding that regulation calls for use of higher of sale price or appraised value, where lender complied with regulations and acted consistently with protection of Government's interest and where, through no fault of lender, appraised value cannot be ascertained.

This decision is in response to a letter dated March 24, 1975 (ref. AFMI:TI:CE), from Mr. B. C. Tyner, an authorized certifying officer of the Department of Housing and Urban Development (HUD), asking whether a voucher enclosed therewith, payable to Imperial Savings Association of Amarillo, Texas, in the amount of \$4,783.21, may be certified for payment. The voucher covers a claim on a loan made by Imperial Savings Association to Clarence H. and Janet F. Amerine for the purchase of a mobile home. The lender was insured by HUD with respect to this loan pursuant to section 2 of title I of the National Housing Act, as amended, 12 U.S.C. § 1703 (1970).

The certifying officer explains the circumstances giving rise to the claim as follows:

"The borrowers purchased a 1973 Glenbrook Mobile Home, vehicle identification number 3B302R-512529. The cash price of the home was \$9,163.00 with a down payment of \$533.00 for a loan balance of \$8,630.00. One payment of \$93.56 was made on the loan and it subsequently went into default on July 1, 1973. The home was repossessed by the lending institution on February 4, 1974, and was offered for sale to the highest bidder for cash on February 27, 1974, at 2:00 p.m., in the offices of Imperial Savings Association of Amarillo, Texas, located at 415 West 8th Street, Amarillo, Texas. The borrower was given notice of the sale by certified mail on February 22, 1974. The lender failed to receive

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satisfactory bids at the first sale and set down a second sale on May 29, 1974. The borrower was given notice of the above sale by certified mail on May 24, 1974. Imperial Savings Association received three bids: (1) a bid of \$3,000 from National Mobile Exchange, Inc.; (2) a bid of 2,785.00 from Amarillo Trailer Sales; and (3) a bid of \$3,410.00 from King Mobile Homes. The home was sold to the highest bidder, King Mobile Homes, on May 31, 1974 for 3,410.00 and title was transferred to King Mobile Homes."

The method of computing the amount of reimbursement by HUD of an insured lender for losses on mobile home loans made pursuant to 12 U.S.C. § 1703 is prescribed in paragraphs (a) through (c) of 24 C.F.R. § 201.680. Paragraph (a) provides as follows:

"(a) Deduct from the unpaid amount of the obligation (net unpaid principal and the earned portion of the financing charge, at the time of default) the actual sales price obtained for the mobile home following its repossession, or the appraised value of the mobile home, whichever amount is the greater. The determination of appraised value (for the purposes of this paragraph) shall be made by the Commissioner, at his option, on the basis of either the value listed in a current accepted "blue or red book" value rating publication (establishing wholesale values for comparable mobile homes in the geographic rating area) or on the basis of an actual appraisal of the mobile home. The Commissioner's determination of appraised value shall be binding on the insured for the purposes of establishing its loss."

The certifying officer states that HUD has been unable to find a value listing in a current accepted "blue book or red book" value rating publication for the mobile home in question, and that the home is no longer available for an actual appraisal by an agent of the Secretary. Thus, determining an appraised value by either of the methods prescribed by regulation is not possible. The certifying officer asks, in effect, whether the voucher may be certified for payment, where the amount has been computed on the basis of the actual sales price obtained for the home, notwithstanding the fact that the regulation requires that it be computed based on the appraised value where that is greater than the sales price.

The regulation cited above allows the use, for determining appraised value, of the "value listed in a current accepted 'blue or red book' value rating publication (establishing values for comparable mobile homes in the geographic rating area) * * *." It is incumbent upon HUD, in accordance with its regulation, to make every practicable effort to determine in a given case, whether there is a listing in a current accepted value rating publication for a mobile home, particularly where, as is the case in this instance, there is a lack of an actual appraisal. If it is administratively determined that the value of the mobile home in question as of the time of default is listed in a current value rating publication, the regulation requires that it be used to compute the amount of reimbursement to the insured lender.

We understand that the certifying officer's statement that a value listing could not be found for the particular make and model of home here involved was based on a check of one value rating publication. We have determined, however, that there are at least three such publications, and that the Glenbrook mobile home is listed in at least the current edition of one of these publications, the publication issued by the National Automobile Dealers Association (NADA). We have not attempted to determine what the NADA book value was at the time of default but presumably the book value of the mobile home in question would have been higher at that time than at present.

The NADA publication is used by financial institutions and can fairly be characterized, we believe, as a "current accepted" publication, within the meaning of the regulation. We understand that HUD has some question whether the NADA value listing is applicable to the particular model of Glenbrook mobile home which is here involved.

Until HUD has exhausted all reasonable efforts to determine the "blue or red book" value of the mobile home involved here, the voucher may not be certified for payment. We would point out in this connection that it appears that the claim file in this case includes sufficient information on the mobile home, including the manufacturer's serial number, that it may be possible, through inquiry to the manufacturer if necessary, to resolve any doubt concerning whether there is indeed a book value listing applicable to this particular model of mobile home, whether in the NADA "book" or another current accepted value rating publication.

If, however, upon diligent inquiry, it appears that there is no value listing for the mobile home, it would then be proper to consider whether the instant voucher may be certified for payment based on the actual sale price obtained for the mobile home. With respect to that possibility, we note that the regulations which prescribe the procedure to be followed by the insured lender in the event of the borrower's default require that a claim shall not be filed by the lender until after default, repossession, and sale of the mobile home. 24 CFR § 201.665(b). That procedure was followed in this case. Thus, it is as a result of the lender's compliance with the HUD regulations that the collateral is not available for an actual appraisal of its value.

The present inability to determine whether the sales price is greater than the appraised value or not is thus not the result of non-compliance with regulations by the insured lender. Rather, the burden of establishing the value of the property in question is on the agency. The Commissioner is to determine appraised value, at his option, either by making an actual appraisal, a procedure which the same regulation has precluded in this case by requiring the sale of the mobile home before submission of the claim, or by using the "book" value, which, if in fact it should be unavailable, would be so through no fault of the lender.

We note that allowance of the claim based on the actual sale price would not deprive the United States of its rights as against the borrowers. The lender has assigned to the United States all its right, title, and interest in the note executed by the borrowers. Moreover, since the insured lender must, under the statute, bear at least 10 percent of the loss on the loan (12 U.S.C. § 1703(a)), the lender has an incentive to realize as much as possible on the sale of the collateral. Further, in the instant case the lender, when it did not receive satisfactory bids at a sale of the mobile home after repossession, held a second sale at which the highest of three bids was accepted.

Under the circumstances, and assuming that the "book" value cannot be ascertained after diligent effort, we believe that the voucher in the instant case may properly be certified based on the sale price alone, notwithstanding that no formal appraised value is available, if the Commissioner determines that the price received for the home in question was reasonable.

We note that, according to the certifying officer's submission, " * * * the issue affects a number of claims that have been submitted." Where the Commissioner cannot determine the appraised value of the collateral in circumstances such as those here presented (i.e. under either of the methods presented in the regulation), and where it appears that the insured lender has made adequate attempts to sell the collateral under conditions which will protect the interest of the Government, we would agree that the sale price--if administratively determined to be reasonable--may be used to compute the amount of reimbursement to the insured lender. We recommend that the regulation which gives rise to this anomalous situation be promptly amended.

R. F. KELLER

[Deputy]
Comptroller General
of the United States