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DECISION

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

FILE: B-194391 ALC00002 DATE: JUL 16 1979

MATTER OF: Small Business Administration - release of right of redemption

DIGEST: GAO has no authority under 28 U.S.C. § 2410(e) to issue certificate releasing right of redemption accruing to Small Business Administration (SBA) under 28 U.S.C. § 2410(c) on behalf of mortgagee who purchased property at foreclosure sale. Statute does not apply since mortgagee after purchase is no longer a lienholder but owns property in fee simple. However, under 15 U.S.C. § 634, SBA may release right of redemption in consideration of monetary payment by property owner.

The Small Business Administration (SBA) has asked us to issue a certificate of release of a lien under 28 U.S.C. § 2410(e)(1976) in the circumstances described below. For the reasons that follow, we conclude that 28 U.S.C. § 2410(e) is inapplicable to the situation presented, but that the Government's interest may be terminated without resort to that statute.

per memo DLG 02128

SBA held a second mortgage on certain real estate in Indiana, originally owned by Thomas H. Looper and Janice L. Looper. The senior mortgage was held by Shelby Federal Savings and Loan (Shelby). The Loopers apparently defaulted on their mortgage and Shelby initiated foreclosure proceedings. The record indicates that Shelby was the highest bidder at the foreclosure sale, purchasing the property for the amount of its judgment. The United States Marshall then deeded the property to Shelby in fee simple absolute.

The United States retains a right of redemption under 28 U.S.C. § 2410(c)(1976) which provides in pertinent part, "[w]here a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem." In order to conclude a prospective sale of the property, Shelby has tendered $100 to SBA in consideration for release of the Government's right of redemption. SBA has tentatively accepted the payment, subject to GAO's approval "pursuant to 28 U.S.C. § 2410(e)."

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In the circumstances presented, GAO has no authority to issue a certificate of release pursuant to 28 U.S.C. § 2410(e). The statute provides that the Comptroller General may issue a certificate releasing a Government lien, other than a tax lien, on any real or personal property upon the request of a senior lienholder, provided certain specific conditions have been met. Although it is unclear whether a statutory right of redemption may be construed as a lien for purposes of the statute, there is no need to resolve that question here. Rather, it is dispositive that Shelby is now a fee simple owner of the property, rather than the holder of a senior lien interest. The Default Judgment of Foreclosure completely terminated Shelby's mortgage lien on the property. We have consistently held that a certificate of release may not be issued to the property owner. For example, in our decision B-165746, December 26, 1968, we stated:

> "Our Office has no authority to issue a certificate of release of liens of the United States under the above-quoted statutory provision except upon the conditions expressly stipulated therein. One of the conditions expressly stipulated is that the applicant 'has a lien' upon the property. Where, as in this case, the applicant becomes the owner of the property before the issuance of the release, the applicant no longer has a lien upon the property so that the aforementioned condition stipulated in the statute no longer exists. In the absence of such condition, our Office is without authority to issue a certificate of release. See 17 Comp. Gen. 180 and 30 id. 268."

While a certificate of release is inappropriate for the reasons stated above, and although GAO has no authority to waive the Government's right of redemption (see B-165746, December 26, 1968), the issue of whether SBA can accept the $100 check from Shelby in consideration for releasing the Government's right of redemption may be resolved without resort to the provisions of 28 U.S.C. § 2410(e).

We have been informally advised by SBA that the second mortgage, from which the right of redemption arose, was given to SBA to secure a direct business loan pursuant to 15 U.S.C. § 636 (1976). 15 U.S.C. § 634(b)(2)(1976) provides that the Administrator of SBA has the following powers.

> "* * * under regulations prescribed by him, [the Administrator may] assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable,

> any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection." [Emphasis added.]

Therefore, it appears that the Administrator has discretionary authority to accept payment in exchange for release of the one-year right of redemption.

As mentioned above, the record indicates that SBA is now in possession of a check for $100 received from Shelby. A question remains concerning the proper disposition of those funds, if they are in fact retained by SBA. The general rule is that, unless an agency has specific statutory authority to the contrary, funds received "from whatever source for the use of the United States" must be deposited in the Treasury as miscellaneous receipts. 31 U.S.C. § 484 (1976). This rule does not apply if an agency has a revolving fund and the statutory authority to deposit receipts into it. According to 15 U.S.C. § 636(c)(1976), if the underlying loan was made pursuant to section 636(b)(1), 636(b)(2), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), or 636(c)(2), the $100 should be deposited in SBA's disaster loan revolving fund as a receipt arising out of the transaction. If the loan was made pursuant to section 636(a), 636(b)(3), 636(e), 636(h), or 636(i), the $100 should be deposited in SBA's business loan and investment revolving fund. Thus, the $100 may be deposited in the appropriate revolving fund if the underlying loan is covered by 15 U.S.C. § 633(c), supra, or a similar statutory provision. Otherwise it must be deposited in the Treasury as miscellaneous receipts.

We understand from informal discussions with SBA that the question has become moot with respect to the Shelby situation. SBA has advised us, however, that our decision is still desired, using the facts of the Shelby case for purposes of illustration, to provide guidance for similar situations that may arise in the future.

R.F. KELLER
Deputy Comptroller General
of the United States