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DECISION



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

FILE: B-188814

DATE: March 8, 1978

**MATTER OF: Michael O. Harvey - Default on Home Mortgage Loan
Guaranteed by Veterans Administration**

- DIGEST:**
1. Veteran, as original obligor on home mortgage guaranteed by Veterans Administration (VA) is personally liable to reimburse the United States for moneys paid by VA as result of default and foreclosure on loan, even though prior to foreclosure he had transferred property to another individual who assured him that he would no longer be liable to VA, since veteran did not obtain release of liability from VA prior to sale of property.
 2. Veteran is not eligible for retroactive waiver of liability under 38 U.S.C. § 1817(b) since he would not have been eligible for release if he had applied therefor at the time he disposed of the property. Moreover, request by veteran that debt be waived was denied by VA and our Office has no authority to overturn that decision.

Mr. Michael O. Harvey has requested reconsideration of our Claims Division Settlement Certificate Z-2633615-076, dated January 14, 1977, certifying Mr. Harvey to be indebted to the United States in the amount of \$4,354.60 plus interest, arising out of a default and foreclosure on a home mortgage loan which was guaranteed by the Veterans Administration (VA). Based on the information contained in the files of the Claims Division, the facts concerning this matter appear to be as follows.

On September 4, 1970, a VA guaranteed home mortgage loan to Mr. Harvey was closed in the amount of \$22,500. This loan went into default on October 1, 1972, and on September 27, 1973, the holder of the note foreclosed. Subsequently, on February 11, 1974, the VA paid a claim on its guarantee. Under the terms of the VA's guarantee, this amount was paid on behalf of Mr. Harvey and represents a debt he owes the United States.

Upon being contacted by the VA and asked to pay this debt, Mr. Harvey requested that the indebtedness be waived, claiming in

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essence, that the property involved had been sold to another individual who had assured Mr. Harvey that he would not bear any further liability to the VA after the sale of the property was completed. In support of his allegation, Mr. Harvey presented the VA with copies of a contract and Grant Deed, dated May 16, 1973, which indicated that Mr. Harvey sold his interest in the property to a Mr. B. Bernal, for the sum of \$150.

On March 28, 1975, the VA denied Mr. Harvey's waiver request. Its decision was based on Mr. Harvey's legal obligation as owner of record to pay off the loan by making regular monthly payments until the loan was paid in full, notwithstanding any subsequent transfers of the property, in the absence of an acceptance of the new owner in place of Mr. Harvey, and a release by the VA. The denial of the waiver request further stated that prior to the loan closing, Mr. Harvey had signed a VA form which explained his liability in the event he sold the property and the new owner defaulted in making loan payments resulting in foreclosure and payment by VA of a claim under its guarantee.

In its Settlement Certificate of January 14, 1977, our Claims Division, for the same reasons set forth by the VA, reaffirmed Mr. Harvey's legal obligation to reimburse the Federal Government for those moneys that were expended by the VA in honoring its guarantee. In his letter requesting reconsideration of this decision by the Claims Division, Mr. Harvey essentially repeated the same arguments he had made previously to support his contention that the instant debt should be waived due to "mitigating circumstances." He also maintained that since September 7, 1976, he has been permanently disabled as a result of a severe back injury and was therefore unable to pay the debt.

As stated by both the VA and our Claims Division, Mr. Harvey, is legally liable to the VA for the mortgage debt, pursuant to his contractual agreement to be so bound, regardless of subsequent transfers of the property, since he was not specifically relieved of further liability by the VA. See United States v. Shimer, 367 U.S. 374 (1961), and United States v. Rossi, 342 F.2d 505 (9th Cir. 1965). We cannot transfer the veteran's liability to any subsequent purchasers of the property, as Mr. Harvey requests. See B-172672, June 22, 1971.

Pursuant to 38 U.S.C. § 3102(b) as amended by the Veterans' Compensation and Relief Act of 1972, approved June 30, 1972, Pub. L. No. 92-328, 86 Stat. 396, the Administrator of Veterans' Affairs has authority to waive this type of indebtedness as follows:

"(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Administrator may waive payment of indebtedness to the Veterans' Administration by the veteran * * * or his spouse, following default and loss of the property, where the Administrator determines that collection of such indebtedness would be against equity and good conscience.

"(c) The Administrator may not exercise his authority under subsection * * * (b) of this section to waive * * * collection of any indebtedness if, in his opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation, material fault, or lack of good faith on the part of the person or persons having an interest in obtaining a waiver of * * * the collection of such indebtedness."

Since only the Administrator of Veterans' Affairs is authorized by statute to waive this type of indebtedness, and since his authority is discretionary, our Office has no authority to overturn, reconsider, or otherwise review the VA's decision denying Mr. Harvey's request for waiver.

We note that in addition to amending 38 U.S.C. § 3102, Pub. L. No. 92-328, supra, also amended 38 U.S.C. § 1817 by adding the following subsection:

"(b) If any veteran disposes of residential property securing a guaranteed, insured, or direct loan obtained by the veteran under this chapter without receiving a release from liability with respect to such loan under subsection (a), and a default subsequently occurs which results in liability of the veteran to the Administrator on account of the loan, the Administrator may relieve the veteran of such liability if the Administrator determines, after such investigation as the Administrator deems appropriate, that the property was disposed of by the veteran in such a manner, and subject to such conditions, that the Administrator would have issued the veteran a release

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from liability under subsection (a) with respect to the loan if the veteran had made application therefore incident to such disposal. * * *

Although this provision authorizes the Administrator to release a veteran of liability "retroactively," even though he had not requested a release at the time the property was sold, this action is only authorized if the Administrator determines that a release would have been granted had a request been made at the time the veteran disposes of the property. When a request for release from further liability is made by a veteran in connection with his disposal of the property, 38 U.S.C. § 1817(a) provides that the Administrator shall only issue a release if he determines that the loan is current, that the purchaser of the property is contractually obligated to assume full liability for the repayment of the unpaid balance of the loan, and the purchaser is a good credit risk.

In the present case, since Mr. Harvey had defaulted on the loan prior to the sale of the property and since the agreement between Mr. Harvey and the purchaser specifically provided that the purchaser was not obligated to pay the outstanding balance, the conditions for the issuance of a retroactive release under 38 U.S.C. § 1817(a) and (b) do not appear to have been met.

In accordance with the foregoing, we must reaffirm the Settlement Certificate issued by the Claims Division in this case that Mr. Harvey is indebted to the United States in the amount of \$4,354.60 plus interest.

Deputy


Comptroller General
of the United States