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UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXXXXXXXXXX

Docket BD 08-08

Creditor Claim
Norlarco Credit Union

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) pursuant to Section 709.8 of the NCUA Regulations (12 C.F.R. 709.8), as an appeal of the determination by the Liquidating Agent of Norlarco Credit Union denying XXXXXXXXXXXXXXXX's claim in the amount of \$XXXXXXXX.

Background

Norlarco Credit Union (Norlarco) originally received a federal credit union charter in 1959 to serve employees of Colorado State University and the Poudre School District; in 1979 it converted to a state charter. On May 15, 2007, the Division of Financial Services of the State of Colorado placed the Credit Union into conservatorship and appointed NCUA as conservator. NCUA placed Norlarco into involuntary liquidation on February 29, 2008.¹ Public Service Credit Union (PSCU) entered into a purchase and assumption agreement with NCUA, acquiring most of the assets and liabilities of Norlarco upon its liquidation.

Ms. XXXXXXXXXXXXXXXX's Claim

AMAC published and sent the required notice to creditors concerning Norlarco's liquidation. AMAC sent XXXXXXXXXXXXXXXX a creditor claim notice on March 19, 2008. XXXXXXXXXXXXXXXX submitted her claim in a letter dated June 20, 2008. XXXXXXXXXXXXXXXX makes an equitable claim for 90-days' severance pay she believes is due to her. Her hourly pay at the time of liquidation was \$XXXX making her claim for 90-days' pay \$XXXXXX.

XXXXXXXXXXXXXXXXXXXX was hired to work as the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX at Norlarco in August 2000. She did not have an employment contract.

¹ All references to AMAC throughout this Decision refer to it in its capacity as agent for the liquidating agent.

Xxxxxxxxxxxxxxxxx continued to work at Norlarco through merger discussions with PSCU in early 2007, the conservatorship in May 2007, up until February 28, 2008, the day before Norlarco's liquidation.

Life insurance was included as a benefit to Xxxxxxxxxxxxxxxxx in her position at Norlarco. Because of an ongoing xxxxxxxxxxxxxxxxxxx, Xxxxxxxxxxxxxxxxx states that she was forced to resign from her job the day before the liquidation in order to preserve her life insurance policy; her life insurance provider required that in order to convert to a personal policy, her last day of service had to be before the termination of the group plan.

On February 12, 2008 (sixteen days before the liquidation but after PSCU had been selected to become the succeeding credit union for Norlarco), PSCU issued a memorandum concerning Norlarco employees and their potential employment with PSCU. On February 26, 2008, Xxxxxxxxxxxxxxxxx submitted a memo to PSCU management concerning potential benefits PSCU might offer to Norlarco employees who PSCU did not intend to hire. Included in this memo was Xxxxxxxxxxxxxxxxx's suggestion that PSCU pay those Norlarco employees 90-days' "severance pay." Xxxxxxxxxxxxxxxxx neither applied for nor was offered a job with PSCU. She was paid her hourly wages by NCUA (as conservator for Norlarco) from the date of conservatorship through February 28, 2008, her resignation date. Neither she nor any other Norlarco employees received any additional payment from NCUA as liquidating agent upon Norlarco's liquidation.

Staff from PSCU told AMAC staff that it paid no severance packages to former Norlarco employees. These employees did not work for PSCU; hence severance pay would not be available. PSCU did pay employee assistance to three Norlarco employees who applied for positions but were not hired by PSCU. As noted above, xxxxxxxxxxxxxxxxxxx did not apply for a job with PSCU.

According to the Purchase and Assumption Agreement that PSCU entered with NCUA, PSCU was not obligated to hire any of Norlarco's employees. There was no provision in the P&A Agreement requiring PSCU to make any assistance payment to Norlarco's employees (or severance payments as Xxxxxxxxxxxxxxxxx terms it). Neither did NCUA (as conservator or liquidating agent) have any obligation to make the payment that Xxxxxxxxxxxxxxxxx requests.

AMAC denied Xxxxxxxxxxxxxxxxx's claim on August 20, 2008. In its denial letter, AMAC noted claimant's appeal rights as set forth in Part 709 of the NCUA Rules and Regulations, 12 C.F.R. Part 709. Xxxxxxxxxxxxxxxxx submitted her appeal to the Board on October 15, 2008. Section 709.8(a) of the Regulation states that any appeal must specify whether a hearing on the record is requested pursuant to §709.8(b) or the appeal is a less formal appeal to the Board pursuant to §709.8(c)(1). Claimant did not request a hearing on the record. The appeal was handled pursuant to §709.8(c)(1).

Appeal and Analysis

Xxxxxxxxxxxxxxxxxx makes an equitable claim for 3 months' pay (\$xxxxxxx) to the Board. She presents no legal justification requiring NCUA to make any kind of payment to her. She was paid her salary up until February 28, 2008, the day she voluntarily resigned from her position at Norlarco. At no time was she working under an employment contract or other provision that would require NCUA to make any additional payment to her. NCUA, whether acting in its capacity as conservator or liquidating agent of Norlarco, has no obligation to pay Xxxxxxxxxxxxxxxxxx the \$xxxxxxx payment she requests. AMAC made the correctly denied Xxxxxxxxxxxxxxxxxx's claim.

Order

For the reasons set forth above, it is ORDERED as follows:

The decision of the National Credit Union Administration's Asset Management and Assistance Center (AMAC) denying Xxxxxxxxxxxxxxxxxx's claim in the amount of \$38,685.60 is affirmed and Xxxxxxxxxxxxxxxxxx's appeal is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 CFR 709.8(c)(1)(iv)(B), this final determination is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the FCU's principal place of business was located. Such action must be filed within 60 days of the date of this final determination.

So **ORDERED** this 21st day of April, 2009 by the National Credit Union Administration Board.

/S/

Mary Rupp
Secretary, NCUA Board