

November 26, 2008

Ellen E. Coates, Senior Assistant Attorney General
Commonwealth of Virginia
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Re: Commonwealth of Virginia's Division of Unclaimed Property's (DUP's) Review of
ABNB Federal Credit Union (ABNB).

Dear Ms. Coates:

Your letter, dated August 1, 2008, to Jane Walters, NCUA Region II Director, was forwarded to NCUA's Office of General Counsel for review and response. The DUP has asked Region II to assist it in forcing ABNB to comply with Virginia's Unclaimed Property Act (Va. Code Ann. §§ 55-210.1 et. seq.). Specifically, the DUP believes ABNB has willfully failed to report and remit outstanding official checks pursuant to § 55-210.3:2. As discussed in detail below, we do not believe the checks at issue are outstanding items; consequently, ABNB has not improperly withheld monies from the state.

ABNB's official check is a teller's check and not a cashier's check. A teller's check is defined as a check drawn by a bank¹ on, or payable through, another bank. Va. Code Ann. §8.3A-104(h). In effect, ABNB is a customer of the bank and is writing a check on its account with the bank. A cashier's check is a check "with respect to which the drawer and drawee are the same bank or branches of the same bank." Va. Code Ann. §8.3A-104(g). In issuing a cashier's check, a bank is writing a check on its account with itself. As a bank's ability to refuse to pay an official check differs depending on the type of check, these distinctions are important.

Section 8.3A-411 of the Virginia Code addresses a bank's refusal to pay cashier's checks, teller's checks, and certified checks. Under this section, a distinction is clearly made between teller's checks and cashier's or certified checks. Enforcement rights against the issuer of a teller's check hinge upon *wrongful* stop payment or *wrongful* refusal to pay a *dishonored* teller's check. Va. Code Ann. 8.3A-411(b)(ii), (iii). Enforcement rights against the issuer of a cashier's check, or the maker of a certified check, hinge upon a wrongful refusal to pay the item. Va. Code Ann. 8.3A-411(b)(i).

¹The word "bank" under the Virginia Code's Title 8.1A, UNIFORM COMMERCIAL CODE - GENERAL PROVISIONS, is defined as "a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company." Va. Code Ann. §8.1A-201.

Ms. Ellen E. Coates
November 26, 2008
Page two

Additionally, Virginia's Fairfax County Circuit Court has indicated a teller's check is distinguishable from a cashier's check. In *Meritor Savings, F.A. v. John V. Duke*, the court noted several distinguishing features regarding a teller's check:

(1) it is a check drawn by a bank on its account with another bank; (2) under the Virginia Uniform Commercial Code, the bank drawing the teller's check (drawer bank) is a customer of the other bank; (3) as the customer, the drawer bank may stop payment on its check prior to the check's acceptance or certification; and, (4) a teller's check is not deemed accepted upon its issuance.

Meritor Savings, F.A. v. John V. Duke, 31 Va. Cir. 183 (1993). As stated on the face of the teller's check, ABNB's teller's checks are void 180 days after the date of issuance. After this time period elapses, ABNB notifies the payable-through bank that the item is void and returns the money to the member who requested the teller's check. Only items that have not been accepted or certified are covered by this practice. Accordingly, ABNB's actions do not constitute a wrongful stop payment or wrongful dishonor of the item.

Va. Code §55-210.3:2 pertains to checks, drafts, and similar instruments issued or certified by banking and financial organizations that have been outstanding for more than five years after becoming payable or after being issued, if payable on demand. The voided teller's checks are not outstanding items. Consequently, these items are not governed by Va. Code §55-210.3:2.

If you have any questions, please contact Staff Attorney Linda Dent or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/LKD:bhs
08-0820

cc: Jane Walter, Region II Director