

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**Office of Small Credit Union
Initiatives**

Docket BD 08-06

Claim

Decision and Order

Decision

This matter comes before the National Credit Union Administration Board (Board) as an administrative claim of the determination by the agent for the liquidating agent of D. Edward Wells Federal Credit Union, denying the Office of Small Credit Union Initiatives (formally the Office of Credit Union Development) claim in the amount of \$51,890.52.

Background

D. Edward Wells Federal Credit Union (FCU) was chartered in 1959. It was a low-income credit union chartered to serve the members of the Mt. Calvary Baptist Church and Brotherhood of Springfield, MA, immediate family members and organizations of such persons. The FCU historically had persistent problems in the areas of capital adequacy, earnings and management. The FCU was placed in conservatorship on February 21, 2003. Staff from NCUA's Region I served as the conservatorship staff. During the conservatorship, staff discovered that the FCU was insolvent. The NCUA Board placed the FCU into liquidation on May 17, 2003. NCUA named itself as the liquidating agent and appointed several Asset Management and Assistance Center (AMAC) staff members as agents for the liquidating agent.¹ In February of 2006, NCUA filed a civil suit against (b)(6), as well as others involved in the FCU. Criminal charges have now been filed against (b)(6) related to the failure of the FCU. NCUA's civil lawsuit seeking damages has been stayed pending the ongoing criminal case.

¹ References to AMAC throughout this decision refer to AMAC staff acting in their capacity as agents for the liquidating agent.

OSCUI (previously OCUD) Claim

In 1999, the NCUA, through OCUD², made a \$295,000 loan to the FCU from the Community Development Revolving Loan Fund (CDRLF). The loan was booked as a non-member deposit with the entire balance due and payable upon default. The FCU had a history of late payment on the loan. On January 2 and February 14, 2003, OSCUI sent the FCU late notices regarding a loan payment that was due on December 7, 2002. The FCU did not make the required payment on the loan. As noted, the FCU was placed into conservatorship on February 21, 2003. On March 7, 2003, OSCUI sent a letter to the conservatorship staff, demanding full payment on the loan due to its default. The conservatorship staff responded on April 11, 2003, remitting a check for \$31,309.64, the amount of principal and interest due on December 7, 2002. On April 17, 2003, OSCUI again requested payment in full (\$151,890.52) due to default. The conservatorship staff did not pay out the OSCUI claim and the FCU was placed into liquidation on May 17, 2003.

On July 1, 2003, AMAC paid OSCUI \$100,000 in insured funds. OSCUI then requested that AMAC pay OSCUI the remaining balance of \$51,890.52 in uninsured shares. On November 4, 2003, OSCUI requested that AMAC reconsider its claim as a contract claim under the loan agreement, rather than one of uninsured shares. AMAC responded on November 14, 2003, denying the claim was a contract claim and continuing to treat the claim as one of an uninsured shareholder. There was some additional correspondence between OSCUI and AMAC. On July 22, 2004, AMAC issued a final determination denying OSCUI's request to repay its claim as a contract (creditor) claim and restating its treatment of the claim as one for uninsured shares. Appeal rights to the NCUA Board were given. OSCUI requested and was granted an extension of time to file an appeal. However, no formal appeal was filed. Since both OSCUI and AMAC are components of NCUA, it was agreed that the OSCUI claim would be presented to the Board without a formal appeal by OSCUI.

Analysis

Pursuant to the Section 207(k) of the FCU Act (12 U.S.C. §1787(k)(1)) and Part 745 of the NCUA Rules and Regulations (12 C.F.R. Part 745), accounts in federally insured credit unions are insured for up to \$100,000 per insured account. Section 705.7(c) of the NCUA Regulations, 12 C.F.R. §705.7(c), states that a CDRLF loan can be booked as a non-member deposit. The loan agreement notes that this loan was so booked. AMAC correctly treated the OSCUI account as a non-member deposit and paid out \$100,000 of the

² All further references to this claim are made to OSCUI since that is the office that currently exists within NCUA that is responsible for the Community Development Revolving Loan Fund. OSCUI replaced OCUD in December 2004.

\$151,890.52 balance as a non-member insured account. AMAC was limited by the FCU Act and NCUA Regulations to a payout of \$100,000 for an insured non-member account. However, the conservatorship staff for the FCU should have paid the defaulted loan in full once it received demand for payment under the loan agreement during the conservatorship. Liquidity (or lack thereof during the conservatorship) was not an issue. The conservatorship staff had increased the line of credit with the corporate and used it to pay out other accounts. Funds were available to the conservatorship staff to pay off the loan.

Section 207(f) of the FCU Act (12 U.S.C. §207(f) is entitled Valuation of Claims in Default. It states in part as follows:

(1) In general. – Notwithstanding any other provision of Federal law or the law of any State, this subsection shall govern the rights of the creditors (other than insured accountholders) of such credit union.

...

(3) Additional payments authorized. –
(A) In general. – The Board may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Board shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

...

Section 207(f) provides the appropriate authority for the Board to authorize payment of the OSCUI claim.

Order

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

The Board directs the NCUA's Asset Management & Assistance Center to pay the Office of Small Credit Union Initiatives \$51,890.52 from the Share Insurance Fund for deposit into the Community Development Revolving Loan Fund (Account 25X4472).

The Board's decision constitutes a final agency determination.

So **ORDERED** this 14th day of December 2006 by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board