

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**Robert M. Hughes Academy
Charter School**

Docket 04-INS-002

Insurance Claim

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) pursuant to 12 C.F.R. 745.202, as an administrative appeal of the determination by the agent for the liquidating agent of D. Edward Wells Federal Credit Union, denying the Robert M. Hughes Academy Charter School (Charter School) claim in the amount of \$50,393.88.

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. During the conservatorship, NCUA staff discovered that the FCU was insolvent. The NCUA Board placed the FCU into liquidation on May 17, 2003.

Robert M. Hughes Academy Charter School Claim

The Charter School opened a \$150,000 non-member share certificate account at the FCU in July, 2002. The Charter School requested the withdrawal of all of its funds (\$150,000 plus accrued dividends) on April 16, 2003.¹ The Charter School did not present the share certificate with its request to withdraw funds. The FCU did not have a copy of the certificate; rather they had a receipt for the certificate. The share certificate receipt is what the FCU typically kept in its files. If the certificate is not available, an affidavit is normally required by the agent for the liquidating agent in post liquidation claims. On May 6, 2003, NCUA staff for the conserved FCU sent a blank affidavit to the

¹AMAC also states that according to the Charter School, a request was made for its funds on March 17, 2003. There is no written documentation of the March 17th request. The attorney for the Charter School also mentions this in his appeal letter.

Charter School stating that once it was complete, the funds would be released. The business administrator for the Charter School completed the affidavit attesting to the funds. The Charter School had the affidavit hand-delivered to the FCU on May 8, 2003. NCUA staff for the conserved FCU did not pay out on the share certificate. The FCU was placed into liquidation on May 17, 2003. On June 17, 2003, NCUA's Asset Management and Assistance Center (AMAC), as the agent for the liquidating agent of the FCU, paid the Charter School \$100,000 in insured funds. The payout was based on the affidavit, the same evidence that had been presented to the conserved FCU. On August 29, 2003, AMAC sent a certificate of uninsured shares in the amount of \$50,393.88² to the Charter School. On September 26, 2003, the Charter School requested that AMAC reconsider its determination. AMAC responded on October 30, 2003, stating that its decision to pay the \$100,000 insured amount remained unchanged.

The Charter School appealed AMAC's determination through its attorney on December 24, 2003. The appeal was submitted pursuant to Part 745 of the NCUA Rules and Regulations, 12 C.F.R. 745. Pursuant to Section 745.202(d), if the NCUA Board does not issue a decision on an insurance appeal within 180 days of its receipt, the appeal is deemed denied for purposes of judicial review. The 180-day period was due to expire on June 28, 2004. In an effort to obtain further information on this appeal, staff requested, with the Charter School's consent, that the Board extend the 180-day period for 45 days. On June 23, 2004, the Board extended the time period until August 12, 2004.

Analysis

Pursuant to the Section 207 of the FCU Act (12 U.S.C. 1787(k)(1)) and Part 745 of the NCUA Rules and Regulations, accounts in federally insured credit unions are insured for up to \$100,000 per insured account.³ The Charter School maintained a non-member share certificate account at the FCU. There were no loans, pledges of shares, additional shareholders, or other transactions or parties involved with the account. Once the FCU was placed into liquidation, AMAC (as agent for the liquidating agent) could only pay the Charter School \$100,000 of the funds in its account pursuant to Section 207(k)(1) of the FCU Act and Part 745 of the Rules and Regulations. AMAC did not obtain further evidence on the Charter School account than that required by and submitted to NCUA staff for the conserved FCU. AMAC paid out \$100,000 on the Charter School account out based on the affidavit submitted on May 8, 2003.

AMAC made the correct determination. It had appropriate evidence of an insured account, but it was limited by the FCU Act and NCUA Regulations to a payout of

² \$50,000 represents the remainder of the share certificate account; \$393.88 represents accrued dividends paid on the share certificate that were posted to a regular share account.

³ There are some types of accounts where additional insurance coverage is provided if certain criteria are met (e.g. payable on death and other trust accounts, and joint accounts). The Charter School Account was an account held by an association subject to the \$100,000 insurance limitation. (See Section 745.6 of the Regulations.) This type of account does not qualify for additional insurance coverage.

\$100,000 for an insured non-member share certificate account. We believe, however, that NCUA staff for the conserved FCU should have paid the account in full once it received the affidavit on May 8, 2003. The same evidence presented by the Charter School to the conserved FCU was relied upon by AMAC in paying out the \$100,000 in insured shares to the Charter School. NCUA staff for the conserved FCU received the affidavit from the Charter School nine days prior to the liquidation. There was no indication in the Daily Updates for the conserved FCU why the Charter School account was not paid once the affidavit was submitted. In fact there was no discussion of the Charter School account in the Daily Updates after May 8, 2003, the day the affidavit was submitted. There has been no indication or evidence that the Charter School account was other than a legitimate account.

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 Charter School 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 Robert M. Hughes Academy Charter School \$50,393.88 from the Share Insurance Fund.

The Board's decision constitutes a final agency determination.

So **ORDERED** this 22nd day of July 2004 by the National Credit Union Administration Board.

/S/

Becky Baker
Secretary of the Board