

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

In the Matter of

XXXXXXXXXXXXXXXXXX

Docket 04-INS-001

Insurance Claim

**Decision and Order on Appeal
Decision**

This matter comes before the National Credit Union Administration Board (Board) pursuant to 12 CFR 745.202, as an administrative appeal of the determination by the Agent for the Liquidating Agent (Liquidating Agent) of Roosevelt County Credit Union denying XXXXXXXXXXXXXXXXXXXX insurance claim. The appeal follows a denial by the Liquidating Agent¹ of a request for reconsideration.

Background

Roosevelt County Credit Union (hereinafter Roosevelt or the Credit Union) was a state chartered, federally insured credit union located in Portales, New Mexico. The NCUA Board placed the Credit Union into liquidation on June 30, 2002, due to insolvency. Most of the Credit Union's assets and liabilities were purchased and assumed by First Financial Credit Union, another state chartered, federally insured credit union located in New Mexico. First Financial Credit Union did not purchase XXXXXXXXXXXXXXXX loans; they have been retained by AMAC.

XXXXXXXXXXXXX was delinquent in her loan payments in an amount exceeding her share balance. Three days prior to the liquidation, the Credit Union transferred XXXXXXXXXXXXXXXX share balance (\$29,225.17) to her outstanding loan balance (\$98,694.76), leaving her with a loan balance of \$69,469.59 at liquidation. Credit Union members were notified of the June 30, 2002, liquidation by the Credit

¹ NCUA's Asset Management and Assistance Center (AMAC) is responsible for managing liquidations of federally insured credit unions. The term liquidating agent and AMAC both refer to the liquidating agent.

Union, rather than by the liquidating agent.² In July of 2002, xxxxxxxxxxxx attorney wrote to the liquidating agent claiming xxxxxxxxxxxx was owed \$85,000. In September of 2002, the liquidating agent sent xxxxxxxxxxxx a reconstruction of her accounts. The reconstruction confirmed the \$69,469.59 balance due on xxxxxxxxxxxx outstanding loans. The liquidation agent's reconstruction of accounts was based on quarterly account statements the Credit Union sent to xxxxxxxxxxxx. In October 2002, xxxxxxxxxxxx's attorney wrote to the liquidating agent claiming xxxxxxxxxxxx was owed \$95,000 in shares; however xxxxxxxxxxxx was unable to document her claim. AMAC initially denied xxxxxxxxxxxx's claim in April 2003. In May 2003, xxxxxxxxxxxx's attorney requested reconsideration from the liquidating agent. The liquidating agent responded requesting an affidavit from xxxxxxxxxxxx. The liquidating agent granted xxxxxxxxxxxx two requests for extensions of time to submit an affidavit and any further documentation of account. xxxxxxxxxxxx failed to submit an affidavit or further account documentation and the liquidating agent denied the request for reconsideration on July 30, 2003. xxxxxxxxxxxx appealed the liquidating agent's denial on October 3, 2003. She provided neither an affidavit nor further documentation with her appeal letter. xxxxxxxxxxxx requested and was granted two extensions of time from the Board to submit additional information on her appeal. She eventually provided a supplemental letter, but the letter contained nothing to controvert the liquidating agent's reconstruction of her account and her outstanding loan balance.

xxxxxx Account Analysis

In reconstructing xxxxxxxxxxxx's accounts, the liquidating agent was unable to obtain copies of all checks that cleared through xxxxxxxxxxxx's accounts, and six months of account statements (April – September 1994) were missing. However, the liquidating agent was able to reconstruct xxxxxxxxxxxx's accounts over a twelve year period, from April 1991 through liquidation in June 2002.

Shares

xxxxxxxxxx's share and share certificate accounts reached their maximum in January of 1994. At that time she had approximately \$91,000 in her share and share certificate accounts. Except for what appear to be small dividend amounts, xxxxxxxxxxxx made no further deposits after January of 1994. Various withdrawals and pay downs on loans resulted in a total share and share certificate balance of \$29,225.17 just prior to liquidation. A breakdown by account shows \$13,000 and \$16,183.67, respectively, in each of two share certificate accounts, and \$41.50 in the share account.

² This case is unusual in that both the notification of the liquidation and the share to loan transfer were done by the Credit Union rather than the liquidating agent.

Loans

As detailed in the liquidating agent's reconstruction, XXXXXXXXX had six loans with the Credit Union over the years. Various draws and payments were made. Two of the loans were paid off long before the liquidation and do not affect XXXXXXXXX's claim. The balances on the remaining loans just prior to liquidation were: Loan 1 (Account xxxx) - \$50,258.24; loan 3 (Account xxxx) - \$8,980.75; loan 4 (Account xxxx) - \$18,147.77, and loan 5 (Account xxxx) \$21,308. As noted above, XXXXXXXXX's shares (\$29,225.17) were used to pay off/pay down her loan balances just three days prior to liquidation. This pay down depleted XXXXXXXXX's shares leaving a combined balance of \$69,469.59 in outstanding loans.

XXXXXXXXXX does not controvert any of the information the liquidating agent used in the reconstruction of accounts and determination that XXXXXXXXX has an outstanding loan balance of \$69,469.59. The liquidating agent's reconstruction and determination was based on member account statements sent to Credit Union members.

Order

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

The Board upholds the Liquidating Agent's decision and denies XXXXXXXXX's appeal.

The Board's decision constitutes a final agency determination. Pursuant to 12 CFR 745.203(c), 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 credit union's principal place of business was located. Such action must be filed not later than 60 days after the date of this final determination.

So ORDERED this 18th day of March 2004, by the National Credit Union Administration Board.

Becky Baker
Secretary of the Board