

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXXXXXXXX

Docket BD-02-09

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 of West Hartford Credit Union denying XXXXXXXXXXXX's insurance claim for interest on his share account.

Background

West Hartford Credit Union (the Credit Union), a Connecticut-chartered, federally insured credit union, had been in operation since 1950, and had a community charter serving Litchfield, Hartford, Middlesex and New Haven Counties in Connecticut. The Credit Union was located in Farmington, Connecticut. The Credit Union had an excessive level of loan delinquency and charge-offs, and lacked internal controls. Management had shown an inability to develop sufficient internal controls to operate the Credit Union in a safe and sound manner resulting in operating losses over the last five years. If nonperforming loans had been appropriately classified for charge off (funding of the loan loss account), the Credit Union would have been insolvent prior to liquidation.

Upon the motion of the Connecticut Banking Commissioner, the Superior Court for the Judicial District of Hartford appointed NCUA as temporary receiver of the Credit Union on December 5, 2008 and as permanent receiver on December 15, 2008. The Credit Union was placed into liquidation on December 5, 2008. The NCUA named itself as liquidating agent and appointed various staff of the Asset Management & Assistance Center (AMAC) as agent for the liquidating agent.¹

Dividends and XXXXXXXX's Claim

NCUA's Truth in Savings Regulation defines a dividend as any declared or prospective earnings on a member's shares in a credit union to be paid to a

¹ References in this Decision to AMAC refer to AMAC staff in their capacity as agent for the liquidating agent.

member or to the member's account (12 C.F.R. §707.2(i)) and interest is defined as any payment for the use of funds in a nondividend-bearing account at a state-chartered credit union offered pursuant to state law. 12 C.F.R. §707.2(p). Interest is the return on a debt investment (deposits) and is payable according to the deposit contract. Dividends are returns on an equity investment (shares) and are not properly payable until declared at the close of the dividend period. Part 707, Appendix C – Official Staff Interpretation (Appendix C) at §707.2(p)2.

Appendix C explains further that state law is applicable in the case of state-chartered credit unions: State chartered credit unions may offer both share and deposit accounts if permitted by state law. See Appendix C at §§707.2(i)1. & 707.2(p)1. Credit unions must follow appropriate law (state law for state chartered credit unions) in determining dividend policies and declaring dividends, Appendix C §707.2(i)2; credit unions must follow the law of their primary chartering authority to determine when dividends are available. Appendix C §707.2(i)3.

Since the Credit Union was Connecticut-chartered, Connecticut law is determinative of dividends or interest that can be paid on accounts. The Connecticut Credit Union Act, Conn. Gen. Stat. Ann. §36a-435 et seq. only authorizes its state-chartered credit unions to issue dividend-bearing share accounts to members. There is no authority for a Connecticut-chartered credit union to offer interest-bearing deposit accounts to its members. Section 36a-456c of the Connecticut statutes addresses credit union payment of dividends and states in part as follows:

A Connecticut credit union ... may declare and pay dividends ... from current or accumulated earnings, provided such credit union shall meet its net worth requirements, provide for accrued and unpaid expenses and adequately fund the allowance for loan and lease losses account. A Connecticut credit union may not declare or pay dividends if it is insolvent.

The Credit Union paid dividends on all member accounts annually in January for the previous calendar year. The last dividends were paid in January 2008 based on calendar year 2007. The Credit Union paid no dividends for any part of 2008. As noted above, if the Credit Union had funded its loan loss account, it would have been insolvent prior to liquidation. Hence, pursuant to the Connecticut Credit Union Act, the Credit Union no authority to pay any annual dividends for 2008 based on its insolvency on December 5, 2008.

Xxxxxxxx's funds were held in share account #xxxx with the Credit Union. His balance at the time of liquidation was \$xxxxx. AMAC paid XXXXXXXXX the full balance of his account shortly after the liquidation. After receiving his \$xxxxx payment, XXXXXXXXX wrote to the NCUA Board requesting interest on these funds from January 1, 2008 until December 5, 2008. He requests neither a specific

amount of interest nor a stated percentage rate of interest. XXXXXXXXX believes he is entitled to interest on his account; he does not appear to understand that the Credit Union paid dividends rather than interest.

We conclude that neither the Credit Union nor AMAC had the authority to pay dividends for this period because the Credit Union was insolvent on the date of liquidation; AMAC did not pay any 2008 dividends for member accounts held at the Credit Union. Connecticut state law does not allow for payment of dividends when a credit union is insolvent. Since the Credit Union was insolvent at the date of liquidation (if appropriate accounting corrections had been made), there was no authority under Connecticut law to pay dividends based on the calendar year dividend period.

Order

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

The Board upholds the agent for the liquidating agent's decision and denies XXXXXXXXX's appeal.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 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 district court for the Federal judicial district 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 June 2009 by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board