

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

Xxxxxxxxxxxxxxx

Docket BD-03-09

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 Dallas Educators Federal Credit Union (FCU) denying Xxxxxxxxxxxxxxx's insurance claim. Xxxxxxxxxxxxxxx is the adult daughter of Xxxxxxxxxxxxxxx, who was the FCU member and is now deceased.

Background

Dallas Educators Federal Credit Union was located in Selma, Alabama. It was chartered in 1961 to serve employees of the Dallas County Board of Education. NCUA placed the FCU into conservatorship on April 19, 2004. On May 5, 2004, NCUA liquidated the FCU due to insolvency and named itself as the liquidating agent. Various AMAC staff was named as agent for the liquidating agent.¹

AMAC became aware that, in addition to other problems, there were inconsistencies in many balances noted in members' passbooks as compared with the account balances noted on the FCU's computer system. AMAC determined that there were many fraudulent entries and other inconsistencies in the FCU's computer system. AMAC found the computer records to be largely incorrect, inconsistent and in most cases missing shareholder information; the passbook information was more reliable. AMAC did a reconstruction of accounts, starting with balances in members' passbooks if available, in order to determine the balances in members' accounts and to pay out claims. Affidavits were requested of all members. If no passbook was available, AMAC requested an affidavit and any other account information the member had to be used with the FCU's available manual and other records to make a determination on the balance. AMAC did not rely solely on account information found in the FCU's computer system in any of the payouts it made.

Chronology of Xxxxxxxx Claim

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

AMAC staff met with XXXXXXXXXXXXX on May 12, 2004; it was noted that the FCU computer system indicated a \$985.41 balance in her account. AMAC then wrote to XXXXXXXXXXXXX requesting a copy of her passbook, and if she did not have that, an affidavit along with any other documentation of her share account claim. When no response was received AMAC sent a second request. After receiving no response to the requests, on February 28, 2006, AMAC sent XXXXXXXXXXXXX its determination that she had a zero balance in her share account and set forth her appeal rights to the NCUA Board – appeal to be filed within 60-days of the zero balance determination. No appeal was filed.

XXXXXXXXXXXXX died on May 7, 2006. Over a year later, on July 6, 2007, XXXXXXXXXXXXX contacted AMAC to renew her mother's claim. XXXXXXXXXXXXX submitted a copy of XXXXXXXXXXXXX's death certificate to AMAC but no new account information. AMAC advised XXXXXX that she would need to provide a passbook to substantiate a claim. More than another year passed and on October 27, 2008, XXXXXXXXXXXXX submitted an old passbook for her mother dating from 1962 – 1993, reflecting a balance of \$24,898.25 on June 4, 1993. On December 15, 2008, AMAC again denied the claim, noting that the old passbook did not substantiate a claim for funds in the FCU at the time of liquidation. AMAC provided the right to appeal within 60-days, this time to XXXXXXXXXXXXX. XXXXXXXXXXXXX filed her appeal with the NCUA Board on February 17, 2009, within the 60-day timeframe. No new documentation was submitted with the appeal; no specific account balance is claimed.

Analysis

Section 207(d) of the Federal Credit Union Act , 12 U.S.C. §1787(d), addresses payment of insured deposits, including the NCUA Board's authority to promulgate regulations for resolving any disputed claim. Section 745.200 et seq. of the NCUA Rules and Regulations, 12 C.F.R. §745.200 et seq., addresses payment of share insurance and appeals. Section 745.202(a) states that the accountholder may appeal to the NCUA Board within 60-days after issuance of an initial determination. As noted above, after meeting with XXXXXXXXXXXXX and then requesting information in writing at least two times and receiving no response, AMAC had no other alternative but to deny XXXXXXXXXXXXX's claim in a letter dated February 28, 2006. AMAC set forth XXXXXXX's right to appeal and noted the 60-day timeframe for appeal in this letter. An appeal would have been due by the end of April, 2006; no appeal was received.

When XXXXXXXXXXXXX contacted AMAC in July 2007, AMAC should have told her that the time to file an appeal had run. Instead, AMAC allowed Ms. XXXXXXXX renew the claim. Another year passed and XXXXXXXXXXXXX provided an old passbook which did not substantiate a claim. AMAC again denied the claim and gave new appeal rights. XXXXXXXXXXXXX then filed an appeal within the 60-day time period.

In addition to the appeal being untimely (appeal was due the end of April 2006; XXXXXXXXXXXXX did not contact AMAC until July 2007), no documentation was submitted to support a share account claim. AMAC did not rely on the FCU computer records showing a \$985.41 balance to support XXXXXXXXXXXXX's original claim. AMAC made no payouts

based solely on a balance noted in the FCU's computer records, concluding that most of the FCU's computer records were unreliable. It did not use these share balances unless they could be otherwise verified. AMAC relied on passbooks, deposits, withdrawals and cash vouchers. The incomplete information available in this case does not substantiate a share account claim.

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 XXXXXXXXXXXXXXX'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 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 16th day of July 2009 by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board