

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

Firley, Moran, Freer, & Essa, PC  
Certified Public Accountants

*Docket 01-CRED-001*

Creditor Claim  
UFCW District Local One Federal Credit Union

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) pursuant to 12 CFR 709.8, as an appeal of the determination by the Liquidating Agent of UFCW District Local One Federal Credit Union denying Firley, Moran, Freer, & Essa's (Claimant) claim in the amount of \$12,325.

Background

Effective December 18, 2000, the NCUA Board placed UFCW District Local One Federal Credit Union (FCU) into involuntary liquidation due to insolvency. The Liquidating Agent was also appointed on December 18, 2000. The assets and liabilities of the FCU were purchased and assumed by Power FCU. The liquidation notice for UFCW District Local One FCU was published in the Utica Dispatch, a local newspaper, and letters to creditors were sent pursuant to statutory and regulatory requirements. (See Section 207(b)(3) of the FCU Act, 12 U.S.C. 1787(b)(3) and Section 709.4(b) of the NCUA Rules and Regulations, 12 C.F.R. 709.4(b).) Pursuant to the liquidation notice, creditor claims were to be filed with the Liquidating Agent by April 13, 2001. The Claimant filed its claim with the Liquidating Agent on February 6, 2001. After obtaining additional information from the Claimant, the Liquidating Agent denied the claim on March 16, 2001. On May 14, 2001, the Claimant requested administrative review of the denial pursuant to Section 709.8(c)(1) of the NCUA Regulations.

The Claimant was hired by the FCU to perform an audit of the FCU's financial statements as of December 31, 1999. The Claimant and the FCU signed the Claimant's engagement letter, which was dated March 8, 2000. The engagement letter addressed fees for services and states in relevant part:

Based on our preliminary estimates, the fee should approximate \$15,000 for the audit. This fee estimate will be subject to adjustments based on changes in the scope of our work, incomplete information provided to us by your personnel, and/or information not being readily available. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional cost. All other

provisions of this letter will survive any fee adjustment.

The FCU paid \$25,270 to the claimant for work performed under the March 8 engagement letter. This exceeds the amount agreed to in the engagement letter by \$10,270. The Claimant is pursuing an additional \$12,325 for services performed related to the audit. The claimant billed the FCU for these additional fees on September 6, 2000. The FCU did not pay this bill. The claimant states many justifications for its additional fees, including: the extent of the fraud at the FCU; the condition of the FCU's books and records; the fact the FCU was liquidated, and that the Claimant produced an additional letter identifying many weaknesses in internal controls. The Claimant does not, however, produce any evidence of a new fee estimate as required by the engagement letter. NCUA staff involved with the FCU prior to its liquidation indicated

Claimant did not perform anything in addition to what was required by the engagement letter. Staff noted that identification of additional weaknesses, and issuance of a separate letter to that effect, was necessary in order to perform a complete audit.

The engagement letter, a contract between the CPA Claimant and the FCU, provides for a fee of \$15,000, with a provision that additional costs require a discussion and a new fee estimate. Although the Claimant may have incurred additional costs, no evidence of an additional fee estimate was presented. The Claimant has presented no legal basis for its claim.

#### Order

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

The Board upholds the Liquidating Agent's decision to deny Firley, Moran, Freer, & Essa's claim in the amount of \$12,235, and denies the claimant's appeal.

The Board's decision constitutes a final agency determination. Pursuant to 12 CFR 709.8(c)(1)(iv)(B), 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 FCU's principal place of business was located. Such action must be filed within 60 days of the date of this final determination.

So ORDERED this 18th day of October, 2001 by the National Credit Union Administration Board.

---

Becky Baker  
Secretary of the Board