

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXX

*Docket BD-1-11*

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 St. Paul Croatian Federal Credit Union (FCU) denying XXXXXX's insurance claim.

**Background**

NCUA placed St. Paul Croatian FCU (FCU) into conservatorship on April 23, 2010, following the discovery of fraud, in the form of fictitious loans and other manipulation of the records, allegedly perpetrated by the FCU's CEO. On April 30<sup>th</sup>, one week later, the NCUA Board determined, given the scope of fraud, that conservatorship was not a viable option and placed the FCU into involuntary liquidation.

**Claim**

XXXXXX (Appellant) was a member of the FCU and held an account in his own name (membership number XXXXXXXX with twelve subaccounts: XXXXXXXX-00, XXXXXXXX -21, - XXXXXXXX -22, XXXXXXXX -23, XXXXXXXX -25, XXXXXXXX -29, XXXXXXXX -33, XXXXXXXX -34, XXXXXXXX -35, XXXXXXXX -36, XXXXXXXX -38, and XXXXXXXX -39). Appellant's aggregate share account balance as of the liquidation date was \$ XXXXXXXX. On May 5, 2010, NCUA's Asset Management and Assistance Center (AMAC) made an initial pay out to Appellant in the amount of \$ XXXXXXXX. On June 15, 2010, AMAC mailed a check in the amount of \$ XXXXXXXX to Appellant and notified him by letter on the same date that the remaining unpaid balance of \$ XXXXXXXX exceeded the \$250,000 share insurance limit and therefore was uninsured.

In a letter dated June 29, 2010, Appellant requested AMAC's reconsideration and asserted he was entitled to coverage of up to \$250,000 for each of his eleven share certificates because FCU staff told him each account was separately insured. On July 8, 2010, AMAC upheld its original determination that Appellant owned a single ownership account and therefore was eligible only for insurance coverage of \$250,000, leaving \$ XXXXXXXX in uninsured shares.

Appellant appeals AMAC's determination of July 8, 2010.

**Argument**

In his request for AMAC's reconsideration, Appellant asserted he was informed by FCU staff that each of his share certificates would be insured in the amount of \$250,000. In his appeal to the Board, Appellant did not submit any additional arguments in support of his position. He simply submitted a letter, received by the Board Secretary on January 31, 2011, requesting his money and enclosing AMAC's reconsideration letter, which included NCUA's booklet, entitled, "Your Insured Funds," October 2008.

**Discussion**

NCUA's rules governing share insurance provide that funds owned by an individual and deposited in one or more accounts in the individual's own name shall be insured up to \$250,000 in the aggregate. 12 C.F.R. §745.3(a)(1).

AMAC provided Appellant with a payout letter, a credit union statement for April showing a balance of \$ XXXXXXXX , a post-liquidation statement with a \$ XXXXXXXX check and an affidavit form. Appellant returned his affidavit form stating that he agreed to the balance of his account as of the liquidation date. The FCU records revealed that Appellant opened his account on December 27, 1970. The account form does not indicate joint accountholders or beneficiaries; in fact, he noted on the form that he was single and he did not complete the Joint Share Account Agreement portion of the form. The FCU's member statement also indicates that he held a single ownership account.

On April 30, 2010, Appellant held the following shares in the FCU:

Share Account	XXXXXXXX-00	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-21	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-22	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-23	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-25	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-29	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-33	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-34	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-35	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-36	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-38	\$XXXXXXXX
Share Certificate Account	XXXXXXXX-39	\$XXXXXXXX

Appellant does not allege that he is entitled to additional coverage above the \$250,000 statutory limit through another ownership account type. The record identifies only one individual account (with twelve subaccounts) in the name of Appellant with a share balance of \$ XXXXXXXX as of the liquidation date. As such, there is no dispute that

Appellant owned but one single ownership account under member number XXXXXXXX at the FCU. Accordingly, Appellant's account is insured only to the standard maximum share insurance amount of \$250,000. Appellant is not entitled to the remaining balance of his account, \$ XXXXXXXX, because payout of said remainder would permit coverage in excess of the share insurance limit.

Appellant argues that each share certificate should be individually insured up to \$250,000 because FCU employees informed him that such insurance would be provided. Appellant's argument is not persuasive for an extension of coverage beyond the standard maximum share insurance amount of \$250,000.

NCUA's publication "Your Insured Funds" clarifies the coverage by Part 745:

NCUA's rules on insurance control how accounts will be insured. Members are advised that no persons may, by representations or interpretations, effect the extent of insurance coverage provided by the Federal Credit Union Act as amended and the rules and regulations for insurance of share accounts. Also, members are advised to review their accounts periodically and whenever they open new accounts or modify existing accounts to ensure that all of their funds continue to be insured.

Your Insured Funds, NCUA publication 8046. We note the FDIC provides a similar disclosure on its electronic version of "FDIC: Your Insured Deposits" brochure by stating: "Depositors should note that federal law expressly limits the amount of insurance the FDIC can pay to depositors when an insured bank fails, and no representation made by any person or organization can either increase or modify that amount." <http://www.fdic.gov/deposit/deposits/insured/index.html>.

Statements made by credit union employees are not binding on the liquidating agent or the NCUA Board and do not obligate either to provide coverage in excess of coverage provided by the NCUA Regulations, even if the statements were made specifically to defraud members. Appellant's share account and eleven share certificates must be aggregated and insured up to \$250,000 pursuant to Section 745.3(a)(1).

We also note the NCUA Board has consistently denied appeals from members who were misinformed about insurance coverage by credit union staff. See NCUA Docket BD-24-10; NCUA Docket BD-06-05; NCUA Docket BD 16-08. The first case is an appeal from another St. Paul member who stated he was misled by FCU staff into believing that by opening separate share certificate accounts, there would be share insurance coverage of \$250,000 per share certificate. In the second case, the business member, unable to withdraw all of its funds from several share certificates due to a withdrawal freeze, was limited to the insurance coverage provided in 12 C.F.R. §745.6, even though it had written assurances from the credit union that each certificate was insured up to \$250,000. In the last case, the claimant stated that credit union staff incorrectly advised her on how to restructure joint accounts as beneficiary accounts to

expand coverage. The NCUA Board denied the member's appeal for insurance coverage to correspond to how she intended the share accounts be structured.

We also note that Appellant submitted an untimely appeal request. The procedures established for filing an appeal of an insurance coverage determination require an appellant to submit a written request of appeal within sixty days after the liquidating agent makes an initial determination or a determination on a request for reconsideration. 12 C.F.R. §745.202(a). AMAC sent notification of its reconsideration determination on July 8, 2010 and the NCUA Board received Appellant's request for appeal on January 31, 2011.

### **Conclusion**

As discussed above, a single ownership account may be insured up to no more than \$250,000. AMAC correctly determined that Appellant owned one single ownership account in the FCU. Applying the rule for single ownership accounts, the remaining unpaid balance of Appellant's share account (\$XXXXXXX) is uninsured. Furthermore, Appellant filed an untimely request for appeal by submitting his appeal more than sixty days from the date AMAC made its insurance coverage reconsideration determination. Accordingly, Appellant's claim for payment of \$ XXXXXXXX is denied. This decision does not affect Appellant's certificate of claim for \$ XXXXXXXX in uninsured shares.

### **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 XXXXXXXX'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 17<sup>th</sup> day of March 2011 by the National Credit Union Administration Board.

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Mary Rupp  
Secretary of the Board