

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

W & A Federal Credit Union Docket 02-INS-002

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 Unified Singers Federal Credit Union denying W & A Federal Credit Union's claim for dividends in the amount of \$606.20 from March 1, 2002, through April 30, 2000, (the date of the liquidation).

Background

Unified Singers Federal Credit Union (hereinafter Unified Singers or the Credit Union) was chartered in 1968 to serve the Unified Inspirational Singing Convention in Thomas County, Georgia. The Credit Union was granted a low-income designation in 1989. The NCUA Board placed the Credit Union into liquidation on April 30, 2002, due to insolvency. The Agent for the Liquidation Agent (hereinafter the Liquidating Agent) determined that the Credit Union had been insolvent for at least a year prior to liquidation. The Credit Union, and after the liquidation the Liquidating Agent, paid dividends to all shareholders through December 31, 2001. The Liquidating Agent made share payouts directly to the shareholders.

W & A FCU had a \$100,000 share certificate with Unified Singers that was issued on May 20, 2000. W & A FCU renewed the certificate in May of 2001. W & A FCU received dividends on its share certificate from Unified Singers on August 20, 2001 (in the amount of \$1528.77) and on February 28, 2002 (in the amount of \$5,161.64). Dividends were sent to W & A in the form a check; they were not reinvested into the share certificate account. W & A FCU was one of a very few account holders that received dividends after December 31, 2001. The vast majority of account holders were only paid dividends through December 31, 2001. The Liquidating Agent paid W & A FCU \$100,000 in insurance proceeds on May 16, 2002. On June 5, 2002, W & A FCU sent a letter to the NCUA Board appealing the Liquidating Agent's determination and requests a payment of \$606.20 for dividends earned from March 1, 2002 to April 30, 2002, the date of liquidation

Application of FCU Act and NCUA Regulations to Appeal

One of the ways a federal credit union differs from a bank or savings institution is that it pays dividends, which are based on earnings, rather than interest, which is a contractual obligation, not based on earnings. A federal credit union cannot pay dividends unless it has earnings and the appropriate transfers of earnings to reserves are made. Section 117 of the Federal Credit Union Act, 12 U.S.C. §1763, states in part: "At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid ... at different rates and maturity dates in the case of share certificates ..." Section 702.401(d) of the NCUA Rules and Regulations, 12 C.F.R. §702.401(d) restates this requirement: "The transfer of earnings to a federally-insured credit union's regular reserve account ... must occur ... before payment of dividends to members." The Liquidating Agent determined Unified Singers to be insolvent for at least a year prior to liquidation. Unified Singers had no earnings in 2002 from which to pay dividends.

W & A Federal Credit Union received dividends for the first two months of 2002; however, Unified Singers did not have a legal basis to pay these dividends. There were no earnings to transfer to reserves in 2002; hence, no additional dividends can be paid to W & A Federal Credit Union.

Order

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

The Board upholds the Liquidating Agent's decision and denies W & A Federal Credit Union'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 21st day of November, 2002 by the National Credit Union Administration Board.

Becky Baker
Secretary of the Board