

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

xxxxxxxxxxxxx Docket 02-INS-004

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 First Hialeah Community Federal Credit Union denying xxxxxxxx insurance claim in the amount of \$15,234.64.

Background

First Hialeah Community Federal Credit Union (hereinafter First Hialeah or the FCU) was originally chartered in 1970 as Coulter Employees Federal Credit Union in Hialeah, Florida. In 1997, the FCU converted to a low-income community charter serving those who live, work and worship in Hialeah, Florida. The FCU changed its name to First Hialeah Community FCU in 1999 to more accurately reflect its field of membership. The NCUA Board placed the Credit Union into liquidation on May 10, 2002, due to insolvency. The FCU's assets and liabilities were purchased and assumed by Government Employees Credit Union, located in Jacksonville, Florida.

xxxxxxx Account Analysis

xxxxxxxxxxxxx had several different accounts held in different capacities at the FCU, including regular share, share certificate, IRA and Roth IRA accounts. The accounts were held individually and jointly, as well as individually and jointly with payable on death designations. The total of all accounts where xxxxxxxxxx was either an owner or joint owner was approximately \$277,000. Of the approximately \$277,000 held in First Hialeah, \$115,234.64 was held in two traditional IRA and three Roth IRA accounts. The insurance coverage of the IRA and Roth IRA accounts are the subject of xxxxxxxxxx appeal. All of the remaining funds that xxxxxxxxxx held in the FCU were fully insured.

The account numbers, dates the accounts were opened, and balances of the IRA and Roth IRA accounts follow:

Roth IRA certificate xxxx, opened April 1, 1998 – closing balance \$2,572.90.

Roth IRA certificate xxxx, opened July 15, 1998 – closing balance \$18,096.06.

IRA certificate xxxx, opened January 18, 2001 – closing balance \$38,974.06.

IRA certificate xxxx, opened February 27, 2001 – closing balance \$53,460.41

Roth IRA certificate xxxx, opened March 19, 2001 – closing balance \$2,131.21.

Insurance of IRA Accounts

Section 745.9-2 of the insurance regulation addresses IRA accounts. 12 C.F.R.

§745.9-2. This section is entitled IRA/Keogh Accounts. Roth IRA accounts first became available to consumers

on January 1, 1998. The Internal Revenue Code provision authorizing Roth IRAs is 26 U.S.C. §408(A). NCUA modified §745.9-2(a) March 2000, to recognize the authority for Roth IRA accounts by adding to §745.9-2 a reference to Section 408A of the Internal Revenue Code. See 65 Fed. Reg. 10933, 3/1/2000. In June 2000, the section was again revised to specifically state that IRA and Roth IRA accounts would be combined for insurance purposes. Effective July 3, 2000, Section 745.9-2(a) provides as follows:

The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account), section 408(a) (IRA) and section 408(A) (Roth IRA) of the Internal Revenue Code (26 U.S.C. 401(d), 408(a) and 408A) will be insured up to \$100,000 separately from other accounts of the participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to \$100,000(1).

See 65 Fed. Reg. 34921, 6/1/2000, emphasis added. NCUA regulations never provided that traditional IRAs and Roth IRAs were separately insured.

It is clear from §745.9-2(a) of the Regulations that traditional IRAs and Roth IRAs are aggregated to a maximum of \$100,000 for insurance purposes. The Liquidating Agent determined that \$100,000 of xxxxxxxxxxx combined Roth and traditional IRA funds was insured. This amount has been transferred to Government Employees Credit Union as insured IRA shares. On June 4, 2002, the Liquidating Agent sent xxxxxxxxxxx an uninsured share certificate in the amount of \$15,243.64. On June 7, 2002, xxxxxxxxxxx wrote (faxed) the Liquidating Agent requesting reconsideration and set forth slightly modified account amounts. On June 7, 2002, the Liquidating Agent denied xxx request for reconsideration and modified the uninsured amount to \$15,234.64.

Appeal

xxxxxxxxxxx submitted an appeal of the Liquidating Agent's determination on June 22, 2002. At the latest, xxx combined IRA funds exceeded \$100,000 on February 27, 2001, when xxx purchased IRA certificate 2742(2). xxxxxxxxxxx states that FCU staff consistently told xxx that all of xxx funds were fully insured. xxxxxxxxxxx believed that traditional IRAs and Roth IRAs were separately insured. NCUA Regulations clearly state that traditional IRAs and Roth IRAs are aggregated for insurance purposes. Therefore, xxxxxxxxxxx is only entitled to receive the claim certificate for uninsured shares for the \$15,234.64 in excess of \$100,000 in xxx combined IRA and Roth IRA accounts. [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 NCUA Regulations or the Federal Credit Union Act, 12 U.S.C. § 1751.]

Order

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

The Board upholds the Liquidating Agent's decision and denies xxxxxxxx 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 19th day of December 2002 by the National Credit Union Administration Board.

Hattie Ulan

Acting Secretary of the Board

1. This language reflects the current regulation.
2. It is impossible to tell when xxxxxxxxxxx combined IRA and Roth IRA funds first exceeded \$100,000 since xxx IRA applications indicate that at least three of the IRA purchases were from previous IRAs and the FCU did not maintain previous applications with their records.