

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

(b)(6)

Docket BD-02-05

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 denying (b)(6) insurance claim in the amount of \$675.

Background

Dallas Educators Federal Credit Union (the FCU) 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. NCUA named itself as the liquidating agent and appointed several Asset Management and Assistance Center (AMAC) staff members as agents for the liquidating agent.¹ AMAC determined that Dallas Educators FCU was insolvent for at least nine years prior to its liquidation. AMAC also became aware that, in addition to other problems, the FCU's payment of member dividends was not uniform and there were inconsistencies in many balances noted in members' passbooks as compared with balances noted on the FCU's computer system. Some of the member passbooks indicated the dividend rate paid, others did not. In addition, many members' passbook accounts were not found on the FCU's computer system. AMAC did a reconstruction of accounts, starting with balances in members' passbooks, in order to determine the balances in members' accounts and to pay out claims.

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

(b)(6) opened passbook savings account #159 at Dallas Educators FCU in September, 2000. The passbook did not indicate a specific dividend rate. According to the passbook, the account was opened with a deposit of \$3000. There were various deposits, withdrawals and interest (dividend) payments noted in the passbook over the next several years. The last entry in the passbook (dated February 2, 2004) indicated a deposit of \$30,000. AMAC verified this deposit. In an affidavit submitted to AMAC, the (b)(6) state that the FCU manager agreed to pay them 9% interest on the \$30,000 deposit for a period of 3 months. There is no written evidence of an agreement to pay the (b)(6) interest on the \$30,000 deposit. No dividends were paid on this deposit. After reconstruction of their account was completed, AMAC paid the (b)(6) the closing balance of their account. AMAC determined not to pay dividends on the \$30,000 deposit. The (b)(6)s, through their attorney, appealed AMAC's denial of interest (dividend) payment on the \$30,000 deposit.

Analysis

FCUs pay dividends, not interest. Dividends can only be declared by the board of directors and paid if the FCU has sufficient earnings and has made provision for required reserves. 12 U.S.C. 1763. See also 12 C.F.R. 707.2(i) and Appendix C §707.2(i)(1) & (3) for a definition of dividends and when they can be paid. Since AMAC determined that the FCU had been insolvent for at least nine years, the FCU should not have paid dividends for the last nine years it was in existence. Although the FCU's board of directors never formally declared dividends, the FCU did pay dividends that varied widely among members. AMAC calculated the dividends paid on the (b)(6) account to range from 4.5% to 8.98%, with the last dividend payment made on July 23, 2002. These rates were well above market rate, and were paid in absence of required FCU earnings.

Part 745 of the NCUA Rules and Regulations addresses payment of share insurance and appeals. Section 745.200(b) is entitled *Amount of insurance* and states in part as follows:

... For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this part. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends was due to the fraud, embezzlement or accounting errors of credit union personnel.

The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

The dividends noted in the (b)(6) passbook were deemed principal and included in AMAC's payment of the closing balance to the (b)(6) . The \$675 the (b)(6) are requesting was not posted to their account. In addition, the FCU did not have earnings in order to pay the dividends. Although Section 745.200(b) does not address whether unposted dividends can be paid if there are not sufficient earnings, the preamble to the regulation states: "...the rule provides flexibility in dealing with sufficient earnings. ... [The] rule is silent on sufficient earnings, but a credit union's earnings could be a factor used by the liquidating agent in determining insured shares." 61 Fed. Reg. 60185, November 27, 1996. AMAC determined not to exercise its discretion to pay the dividends requested in this case. Section 745.200(b) provides that dividends can only be considered as principal if such treatment is consistent with amounts paid on similar classes of shares. The (b)(6) account was treated consistently with other claims. AMAC only paid out dividends that were either posted to the member's passbook or where a 1099 form had been provided to the IRS and member by the FCU. Since there was no 1099 form or any other evidence that supported a claim of \$675 in dividends, AMAC determined not to pay the (b)(6) claim. AMAC did not abuse its discretion by failing to pay the \$675 (b)(6) claim. Its denial of the claim was consistent with its treatment of other classes of shares in this liquidation as required by the Section 745.200(b) of the NCUA Regulations.

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 the appeal of (b)(6).

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 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 15th day of September 2005 by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board