

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXX

Docket BD 3-11

Creditor Claim

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 administrative appeal of the determination by the Agent for the Liquidating Agent of Center Valley Federal Credit Union denying XXXXX's (Claimant) claim that the FCU owed him an unspecified amount of money.

Background

Center Valley Federal Credit Union (the FCU) was located in Wheeling, West Virginia. NCUA placed the FCU into liquidation on February 13, 2009, due to its 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 The FCU was victimized by fraud perpetrated by its manager and, as a result, there was no purchase and assumption transaction consummated. Instead, the Board proceeded as Liquidating Agent with a straight liquidation.

By letters dated November 5, 2009, representatives of AMAC provided Claimant with an accounting of the amounts owed to the FCU by Claimant personally and by XXXXXX, a business for which Claimant was the principal owner. As described in the two letters, the accounting was based on research, including the tracing of funds and reconstruction of records, performed by AMAC following the closing of the FCU. The letters describe the basis of the claims against Claimant and Claimant's company, including both direct loans and the payment of overdrafts from share draft accounts. AMAC followed investigatory practices that

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

provided Claimant with the benefit of the doubt in any circumstance in which records were considered unreliable. For example, any records showing deposits in cash to Claimant's accounts were credited, while records indicating cash withdrawals were generally assumed inaccurate. In addition, loan proceeds for which AMAC was not able to determine that Claimant received the benefit were not used in calculating the balance of his indebtedness.

Although Claimant made no response to the November 2009 letters, in June of 2010, AMAC wrote another letter to Claimant, noting his failure to challenge or respond to the initial determination and reiterating its conclusion, now characterized as final, as to the amount of indebtedness owed by Claimant. Claimant did challenge this letter. By letter dated August 1, 2010, addressed to the "NCUA Board of Appeals" (but sent to the outside contractor retained by AMAC to effect collections on behalf of the FCU; received by NCUA on September 7, 2010), Claimant appealed AMAC's final determination. Claimant's letter asserted his disagreement with respect to the existence and amount of the debts AMAC claimed to be owed by him, and also asserted his belief that he "could be owed money" by the FCU. This is the claim considered by the Board in this appeal.

Analysis

Claimant's letter provides nothing specific in support of his position. He has not provided anything to deflect or challenge the reconstruction of his share and loan accounts by AMAC, and the Board does not perceive any basis on which to question the conclusions reached by AMAC. The Board believes AMAC has met its burden in establishing the existence of debt owed by Claimant to the FCU. Similarly, Claimant has not come forward with any concrete evidence or support for his position that the FCU may owe him money.

In accordance with applicable regulations, NCUA's Special Counsel to the General Counsel wrote to Claimant on October 28, 2010, advising him that the agency needed additional support from him concerning his claim. The letter provided Claimant with a period of 45 days in which to provide that support. 12 C.F.R. §709.8(c)(1)(ii)(A). The letter advised Claimant that something more than a generalized allegation of wrongdoing at the FCU by its former manager was necessary, and the letter provided some examples of the type of supporting evidence that was necessary. The letter advised Claimant that failure to provide such additional evidence in support of his claim could result in the denial of his appeal. Claimant did not, in fact, provide any response whatsoever to the October 28 letter.

No evidence has been developed indicating the Claimant is owed money by the FCU. Claimant has failed to produce anything to support his position.

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 XXXXX.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 709.8(c)(1)(iv), 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 17th day of February, 2011, by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board