

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXXXXXXXX

Docket BD-4-11

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 the insurance claim filed by XXXXXX.

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 30th, 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 (Appellants) opened membership accounts in the FCU in 2005 and owned two share accounts, each with a sub-account as follows: share account XXXXXX, share certificate XXXXXX, share account XXXXXX, and share certificate XXXXXX. The signature cards for these accounts show XXXXXX as joint accountholders and list XXXXXX, as the payable-on-death beneficiary for both accounts. As of the liquidation date, the balance of the Appellants' accounts was \$ XXXXXX.

NCUA's Asset Management and Assistance Center (AMAC)¹ determined the Appellants held joint revocable trust accounts with one beneficiary and that they were each entitled to \$250,000 in share insurance coverage, for a total of \$500,000 in insured shares. On May 5, 2010, AMAC made an initial payout to Appellants in the amount of \$10,000. On June 24, 2010, AMAC paid each Appellant the remaining \$245,000 for their insured shares and issued to them certificates for uninsured shares in the total amount of \$XXXXXX.

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

Appellants filed an appeal to the NCUA Board, dated March 18, 2011.

Argument

In a letter to AMAC, dated November 9, 2010, Appellants stated that, while they had balances in the FCU that exceeded the share insurance limit for years, FCU staff assured them that their money was safe and did not warn them of their potential exposure. They also inquired about the investigation and the likelihood they would receive more of their money. Appellants filed an appeal to the NCUA Board, dated March 18, 2011, reiterating their statements in the November 9 letter to AMAC and noting that the FCU's interim manager may have also been involved in the FCU's failure.

Discussion

Section 745.4 of NCUA's insurance regulation addresses revocable trust accounts. Section 745.4(a) defines this type of account as one or more accounts "which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries." 12 C.F.R. §745.4(a). A revocable trust account, including a payable-on-death (POD) account, is insured separately from other types of accounts the owner has in the credit union. The amount of insurance coverage for this type of ownership account is calculated by multiplying the standard maximum share insurance amount of \$250,000 times the number of different beneficiaries named on the account(s). "The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount." *Id.*

The rule also specifically addresses jointly owned POD accounts. Where a revocable trust account "is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary" up to \$250,000. 12 C.F.R. §745.4(f).

As of the liquidation date, the FCU's records show that Appellants co-owned two share accounts that named the same individual as the sole payable-on-death beneficiary. The maximum coverage afforded for Appellants' joint revocable trust accounts is determined by multiplying the number of owners (2) by the maximum insurance amount of \$250,000 times the number of different beneficiaries (1). Therefore, XXXXXX is entitled to revocable trust coverage of \$250,000 and XXXXXX is entitled to revocable trust coverage of \$250,000.

By combining the amounts held in co-ownership under account numbers XXXXXX and XXXXXX, the total amount of shares held by the Appellants in joint POD accounts as of the liquidation date was \$ XXXXXX; AMAC paid them \$500,000 in insured shares, leaving \$ XXXXXX in uninsured shares. AMAC's determination was consistent with the calculation process for determining insurance coverage explained in Section 745.4(f),

as the account documents show both Appellants named on each account and designating the same, sole POD beneficiary on each account.

In addition, credit union employee statements or omissions about share insurance coverage, do not bind the liquidating agent or the NCUA Board and do not obligate either to provide coverage in excess of coverage provided by the NCUA Regulations.

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>.

The Board has recently denied appeals from members who were misinformed about insurance coverage by credit union staff, including other claims arising from the liquidation of St. Paul. 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 third 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.²

Finally, we note that Appellants 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

² These decisions are consistent with older appeals in which the NCUA Board stated that credit union personnel cannot obligate the National Credit Union Share Insurance Fund. See NCUA Docket 02-INS-003 and 96-002.

reconsideration. 12 C.F.R. §745.202(a). The liquidating agent sent notification of its initial insurance determination on June 24, 2010 and the NCUA Board received Appellant's request for appeal on March 18, 2011.

Conclusion

As discussed above, the respective interest of each co-owner in a revocable trust account(s) is insured up to the standard maximum share insurance amount of \$250,000 per different beneficiary. In this case, Appellants received a combined total of \$500,000 in insured shares. Applying the rule for co-owned revocable trust accounts, the remaining unpaid balance of Appellants' share accounts (\$XXXXXX) is uninsured. Furthermore, Appellants filed an untimely request for appeal by submitting their appeal more than sixty days from the date AMAC made its insurance coverage reconsideration determination. Accordingly, Appellants' claim for payment of \$ XXXXXX is denied. This decision does not affect Appellant's certificate of claim for \$ XXXXXX 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 the appeal of XXXXXX.

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 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 19th day of May 2011 by the National Credit Union Administration Board.

Mary Rupp
Secretary of the Board