

**All redactions made pursuant to (b)(6) of the FOIA**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXXXXXXXXXX

*Docket BD-07-10*

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 St. Paul Croatian Federal Credit Union (FCU) denying XXXXXXXXXXXXXXXXXXXX insurance claim.

**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 30<sup>th</sup>, 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**

XXXXXXXXXXXXXXXX (appellants) were members of the FCU and jointly owned two share certificate accounts. As of the liquidation date, the balances in the accounts were \$XXXXXXX and \$XXXXXXX, respectively. Each also maintained a regular share account with a balance of less than \$XXX. NCUA's Asset Management and Assistance Center (AMAC)<sup>1</sup> paid out the full amount of these balances to the XXXXXX.

The balances in the share certificate accounts as of the liquidation date did not include any portion attributable to dividends for the month of April. Appellants assert that, for share insurance purposes, the account balances should have included interest for the month of April, and have appealed AMAC's determination not to include that amount. AMAC estimates, based on the dividend rate paid through the period ending March 31,

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

2010, that the amount in dispute here is approximately \$xxxxx. This figure includes nominal dividends for the two regular share accounts.

### **Argument**

Appellants have not submitted any documents or specific arguments in support of their position. Instead, they have simply written on the letter sent to them by the Agent for the Liquidating Agent enclosing their share insurance checks noting that April interest was not included and requesting that April interest be applied to both of the share certificate accounts.

### **Discussion**

We first noted that the xxxxxx mistakenly believe they are entitled to interest rather than dividends. FCUs pay dividends, not interest. In order to pay dividends, an FCU must have the appropriate earnings. This is different from the payment of interest, which is paid contractually on savings accounts by banks pursuant to a debtor/creditor relationship.

According to research conducted by AMAC, the FCU did not follow a uniform practice in its dividend policy for all accounts. Dividends for regular share accounts and the general practice for natural person member share certificate accounts was to post dividends on a quarterly basis. In some cases, share certificate accounts were set up for dividends to be posted on a monthly or semi-annual basis. The FCU followed its general practice for the xxxxxx share certificates. It posted dividends on a quarterly basis and this was documented by the xxxxx member statement for the period of December 31, 2009 through March 31, 2010. Dividends were posted to appellants' accounts at the end of the first quarter, 2010, but dividends for April had neither been declared nor posted to the accounts.

NCUA's regulation governing payment of share insurance provides specific guidance on this issue. Subpart B of part 745 provides the following:

[f]or 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.

12 C.F.R. §745.200(b) (emphasis added). As noted above, in this case the FCU's practice was to declare and post dividends on the share certificate accounts on a quarterly basis. In accordance with this practice, dividends were declared and posted to xxxxxs' accounts for the first quarter of 2010, ending March 31<sup>st</sup>. Based on the quoted language from our rule, AMAC properly considered the first quarter dividend to be part of the principal of the accounts for purposes of calculating insurance coverage.

Even though the date of liquidation for the FCU coincided with month-end, the FCU did not post dividends on these share certificates as of month-end; it was the FCU's

practice to post quarterly rather than monthly dividends. Accordingly, money representing what would have been one-third of the next quarter's dividend, even though capable of estimation, had not been posted by the FCU on April 30<sup>th</sup> and so should not have been added to the principal account balances for insurance purposes. Claimants were not entitled to such a posting and AMAC was not incorrect in failing to provide that treatment.

We note that the rule does provide for some discretion on the part of the liquidating agent to make determinations concerning dividends that should have been posted to an account but were not, due to circumstances such as mistake or outright fraud by the credit union:

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 earned or accrued was due to the fraud, embezzlement or accounting errors of credit union personnel.

Id. According to the preamble of the proposed rule that added this language to the regulation, the intention of the change was to provide authority for the liquidating agent to use his or her discretion in correcting circumstances such as where some accounts did have dividends posted while other, similar accounts did not, for reasons such as fraud or error. 61 FR 36663 (July 12, 1996). The rule, in other words, authorizes the liquidating agent to correct mistakes that would otherwise result in inequitable treatment among accounts. In this case, by contrast, no mistake in posting occurred. It should also be noted that there is no indication in this case that these accounts were in any way involved with or affected by the fraudulent manipulation of accounts that did occur with some member accounts at the FCU. Claimants do not dispute the balances of their accounts as identified by AMAC.

The preamble also states that, under the proposed rule, dividends not earned in the normal course of business would not be included in the determination of insured shares. Id. In this case, normal practice for the FCU was that dividends on these share certificates were declared and posted (i.e., "earned") on a quarterly basis.

### **Conclusion**

As discussed above, we do not believe amounts representing one-third of the dividend that would have been earned at the end of the second quarter of 2010 should be considered to have been "earned," for share insurance determination purposes, as of the date of liquidation. We do not believe the failure to declare or post such an amount to appellants' accounts was the result of error or fraud, but rather was the result of the FCU's normal, stated practice. The appellants are not entitled to any additional payment.

## 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 xxxxx  
xxxxxxxxxxx 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 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 21st day of October 2010 by the National Credit Union Administration Board.

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Mary Rupp  
Secretary of the Board