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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXX

*Docket No. BD 09-09*

Creditor Claim  
New London Security Federal Credit Union

**Decision and Order on Appeal**

This matter comes before the National Credit Union Administration Board (Board or NCUA) pursuant to section 709.8 of NCUA Rules and Regulations (12 C.F.R. § 709.8), as an appeal from the denial by the Liquidating Agent for New London Security Federal Credit Union of a creditor claim filed by Mrs. XXXXXXXXX, individually and as Executrix of the Estate of Mr. XXXXXXXXX. Mrs. XXXXXXXXX is the widow of Mr. XXXXXXXXX, who acted as investment broker for New London Security FCU. In her claim, Mrs. XXXXXXXXX sought the return of \$1,411,000 transferred from her and Mr. XXXXXXXXX's personal bank account to the Credit Union.

**Background**

On July 28, 2008, NCUA placed New London Security FCU (New London or Credit Union) of New London, Connecticut into involuntary liquidation due to insolvency.<sup>1</sup> Chartered in 1936, New London served 365 residents of the New London area and had reported assets of \$12.7 million at the liquidation date. The insolvency and liquidation were due to the alleged fraud of Mr. XXXXXXXXX in his capacity as the Credit Union's broker, causing a shortage of approximately \$12 million.

According to New London's records, Mr. XXXXXXXXX handled the Credit Union's investment portfolio for at least xx years. Mr. XXXXXXXXX also served on New London's board from approximately February xxxx through February xxxx. In

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<sup>1</sup> NCUA named itself as the liquidating agent; various Asset Management and Assistance Center (AMAC) staff members were named as agents for the liquidating agent. References in this memo to AMAC refer to those staff in their capacity as agents for the liquidating agent.

March xxxx, Mr. XXXXXXXXX joined A.G. Edwards, which became Wachovia Securities and is now Wells Fargo. When he joined A.G. Edwards, Mr. XXXXXXXXX opened an A.G. Edwards account, purportedly on New London's behalf, using \$4.8 million of New London's funds.

In fact, the account contained no information related to New London and was opened in the name of the now-defunct XXXXXXXXXXXX Company, owned by Mrs. XXXXXXXXX's family. The account listed the physical address of XXXXXXXXXXXX, a separate company owned by XXXXXXXXXXXX. XXXXXXXXXXXX and members of Mrs. XXXXXXXXX's family signed the necessary forms for the account. The tax ID number listed for the account belonged to XXXXXXXXXXXX, Inc. of the New London area. Under this account name and in his capacity as an A.G. Edwards employee, Mr. XXXXXXXXX controlled the account.

Between March 1988 and June 2008, New London deposited an additional \$1,789,097.61 in the A.G. Edwards account by means of checks written to A.G. Edwards, referencing the XXXXXXXXXXXX Company account number. To conceal the alleged fraud, Mr. XXXXXXXXX provided the Credit Union with forged A.G. Edwards account statements that listed the Credit Union as the account holder. He also provided the Credit Union with trade and transaction confirmations that appeared as though trades and transactions were made on behalf of the Credit Union. By June 30, 2008, New London's account at A.G. Edwards had a value of \$11,818,185.71 according to the account statements Mr. XXXXXXXXX provided.

Between April 1988 and April 2008, New London made requests to Mr. XXXXXXXXX to withdraw a total of \$5,009,275.66 from its nonexistent A.G. Edwards investment account. Mr. XXXXXXXXX transferred funds to the Credit Union's bank account at Fleet Bank (later merged with Bank of America) by checks or wire transfers. These transferred funds came from personal accounts that were under the control of Mr. XXXXXXXXX, one of which was at People's United Bank under Mr. and Mrs. XXXXXXXXX's names. Mr. XXXXXXXXX was listed as a principal on the People's United account. Transfers from the People's United account, and possibly other personal accounts, concealed Mr. XXXXXXXXX's fraud since there was no operational investment account in the Credit Union's name.

#### Mrs. XXXXXXXXX's Claim

Mrs. XXXXXXXXX submitted a claim on December 17, 2008 to AMAC, seeking funds that she alleges were transferred to the Credit Union from her and Mr. XXXXXXXXX's joint personal bank account at People's United Bank. Mrs. XXXXXXXXX submitted the claim on her own behalf and as Executrix of the Estate of Mr. XXXXXXXXX. The claim letter included a table listing eighteen checks and wire transfers dated from October xxxx to April xxxx in amounts ranging from \$9,000 to \$250,000 and totaling \$1,411,000. In her claim letter, Mrs. XXXXXXXXX stated she believed there may be additional transfers from her and Mr.

Xxxxxxxx's joint accounts and that she reserved the right to submit evidence of additional amounts.

On June 16, 2009, AMAC sent a letter to Mrs. XXXXXXXXX's attorney, acknowledging receipt of the claim and denying it in full because Mrs. XXXXXXXXX had not proven the claim to the satisfaction of the liquidating agent. The denial letter noted that the claim lacked underlying justification and rationale. Pursuant to section 207(b)(6) of the Federal Credit Union Act, 12 U.S.C. § 1787(b)(6), the letter advised Mrs. XXXXXXXXX that she had sixty days from the letter's date to request administrative review or file an action in United States District Court.

On July 15, 2009, Mrs. XXXXXXXXX timely sent a letter requesting administrative review of AMAC's denial of her claim.<sup>2</sup> The request sought review by an alternative dispute resolution procedure, to be later agreed upon, under 12 C.F.R. § 709.8(c)(2). Pursuant to the sole discretion vested in it by § 709.8(c)(2), the Board denied the request for alternative dispute resolution on September 2, 2009. On September 3, 2009, NCUA sent a letter to Mrs. XXXXXXXXX's counsel containing notice of the denial. NCUA then confirmed with Mrs. XXXXXXXXX by letter of September 14, 2009 that she wished to have her request for review processed under 12 C.F.R. § 709.8(c)(1).

## Analysis

Although 12 C.F.R. § 709.8(c)(1) does not allocate the burden of proof with respect to the substance of the appeal, it nevertheless states that an appeal under its provisions must include "a statement of the facts," grounds for objection to the initial determination, and any new evidence not previously provided. In this case, Mrs. XXXXXXXXX made no legal or equitable argument in support of her claim in her initial claim letter. She did not submit any grounds for objection to AMAC's initial determination in her appeal letter. She did not submit any new evidence for NCUA to consider on review of AMAC's determination. Nor did she take the opportunity provided by 12 C.F.R. § 709.8(c)(1)(ii)(B) to amend or supplement the appeal in writing, despite being on notice from AMAC's initial denial letter that the claim lacked rationale, justification, and proof. These omissions alone are sufficient grounds to affirm AMAC's denial.

Even if NCUA were to construct legal and equitable arguments on her behalf, no grounds for the claim exist either individually for Mrs. XXXXXXXXX or on behalf of Mr. XXXXXXXXX's estate. Under Connecticut common law, "[t]he coholders of a joint account are considered owners of the entire account and either may withdraw." *Masotti v. Bristol Savings Bank*, 653 A.2d 836, 838 (Conn. Sup. Ct. 1994). The evidence here indicates Mr. XXXXXXXXX was a principal on the People's United Bank account. Mrs. XXXXXXXXX presented no evidence of any contractual or other limitation on Mr. XXXXXXXXX's legal right to withdraw funds

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<sup>2</sup> NCUA received the appeal from AMAC on July 20, 2009, leaving 180 days, or until January 20, 2009, to make a determination on the appeal. See 12 C.F.R. § 709.8(c)(1)(iii)(A).

and transfer them to other parties, including the Credit Union. This unrestricted right undermines conceivable legal bases for the claim.

Equitable grounds are similarly absent. Mr. XXXXXXXXX's estate has no claim in equity as Mr. XXXXXXXXX was the alleged fraud's perpetrator. See *Bauer v. Waste Mgmt.*, 686 A.2d 481, 486 (Conn. 1996) ("The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue."). Even if Mrs. XXXXXXXXX was unaware of the decades-long fraud and claimed neither she nor Mr. XXXXXXXXX benefited from the fraud, the Credit Union and its members have an equally or more compelling equitable claim to the funds due to the losses and hardship suffered. See *United Coastal Indus. v. Clearheart Constr. Co.*, 802 A.2d 901, 906 (Conn. App. Ct. 2002) ("A claim for restitution is equitable in nature, and permits a trial court to balance the equities and to take into account competing principles to determine if the defendant was unjustly enriched."). Mrs. XXXXXXXXX therefore has no overriding equitable grounds or justification for the claim either on her behalf or on behalf of Mr. XXXXXXXXX's estate.<sup>3</sup>

### Order

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

The decision of AMAC denying XXXXXXXXX's claim, individually and as Executrix of the Estate of XXXXXXXXX is affirmed and XXXXXXXXX's appeal, individually and on behalf of the Estate of XXXXXXXXX, is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 CFR § 709.8(c)(1)(iv)(B), 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 within 60 days of the date of this final determination.

So **Ordered** this 20<sup>th</sup> day of November, 2009 by the National Credit Union Administration Board.

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Mary Rupp  
Secretary of the Board

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<sup>3</sup> The same result would obtain under both a legal or equitable analysis with regard to future claims, on behalf of Mrs. XXXXXXXXX and/or Mr. XXXXXXXXX's estate, for as-yet-unidentified transfers made under similar circumstances.