UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXX *Docket BD-10-10*

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 submitted 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

XXXXXXX (Appellants) were members of the FCU and owned the following joint accounts: share account XXXXXXX-00, share certificate XXXXXXX-23, share account XXXXXXX-00, share account XXXXXXX-00 and share certificate XXXXXXX-21. As of the liquidation date, the balance of the Appellants' accounts was $.XXXXXXX.

On April 30, 2010, through the assistance of a family friend and FCU employee, Appellants added XXXXXXX and XXXXXXX to their joint accounts to expand their share insurance coverage. As of that date, each of the accounts referred to above named XXXXXX, XXXXXXX, XXXXXXX, and XXXXXXX as the co-owners of the joint accounts.

AMAC determined the Appellants had increased insurance coverage of their accounts by adding the XXXXXXX as co-owners of the joint accounts, but because the XXXXXXX owned other joint accounts at the FCU, AMAC was required to prorate share insurance

coverage by each member's interest in all joint accounts. As such, on June 24, 2010, AMAC paid $XXXXXXX to Appellants for their insured shares and issued them a certificate for uninsured shares in the amount of $XXXXXXX.

Appellants submitted an appeal of AMAC's initial determination to the NCUA Board, dated July 7, 2010, which the Board received on August 6, 2010. The parties agreed to extend the Board's 180-day determination period to March 19, 2011. In their appeal, Appellants assert conservatorship staff assured them that their account balance of $XXXXXXX would have full share insurance coverage if they added additional co-owners to their joint accounts.

Argument

Appellants submitted a letter of appeal, dated July 7, 2010, stating that during the week of conservatorship, NCUA employees met with the Appellants in the FCU and verbally guaranteed that their entire balance of $XXXXXXX was insured. Appellants subsequently clarified that a family friend and employee of the FCU, XXXXXXX, assisted the Appellants on April 30th in their home by obtaining Appellants authorization to add their in-laws, the XXXXXXX , to their joint accounts. On April 30, 2010, the XXXXXXX entered the FCU and signed signature cards to retitle the Appellants' joint accounts to add them as co-owners. Appellants argue that NCUA's agents failed to properly structure Appellants accounts to ensure full coverage.

Discussion

NCUA's rules governing share insurance provide that the interest of a co-owner in all qualifying joint accounts shall be added together and the total for that co-owner shall be insured up to $250,000. 12 C.F.R. §745.8.

Before NCUA placed the FCU into conservatorship, Appellants held several joint accounts in both of their names. On April 30th, Appellants authorized XXXXXXX to obtain the signatures of XXXXXXX and XXXXXXX on each of Appellants' joint account cards. The following sets forth the information on the Appellants' joint accounts as of the liquidation date:[1]

Account #	Account Name	Liquidation Balance
69600-00	XXXXXXX XXXXXXX XXXXXXX XXXXXXX	$XXXXXXX
69600-23	XXXXXXX XXXXXXX XXXXXXX	$XXXXXXX

[1] XXXXXXX also owned an Individual Retirement Account, XXXXXXX-20, in the amount of $XXXXXXX on the liquidation date, which was fully insured under share insurance coverage.

	XXXXXXX	
69601-00	XXXXXXX XXXXXXX XXXXXXX XXXXXXX	$XXXXXXX
69602-00	XXXXXXX XXXXXXX XXXXXXX XXXXXXX	$XXXXXXX
69602-21	XXXXXXX XXXXXXX XXXXXXX XXXXXXX	$XXXXXXX
	Total:	$XXXXXXX

The following sets forth the information on XXXXXXX's accounts as of the liquidation date:

Account #	**Account Name**	**Liquidation Balance**
59245-00	XXXXXXX XXXXXXX	$XXXXXXX
59245-20	XXXXXXX XXXXXXX	$XXXXXXX
59245-21	XXXXXXX XXXXXXX	$XXXXXXX
	Total:	$XXXXXXX

AMAC determined that based on the FCU's membership records as of close of business on April 30, 2010, XXXXXXX and XXXXXXX were joint owners with Appellants on the qualifying joint accounts that were previously owned solely by Appellants. AMAC also determined that XXXXXXX and XXXXXXX held additional qualifying joint accounts of their own. As such, AMAC determined that each of the four members were entitled up to $250,000 in total insurance coverage for their interests in all the joint accounts they held in the FCU. Pursuant to Section 745.8, AMAC added the interest of each co-owner in all qualifying joint accounts together and provided share insurance up to $250,000 per owner after prorating the coverage among the member's interest in all joint accounts.

Section 745.8 is entitled Joint ownership accounts and provides in part as follows:

> *(a) Separate insurance coverage.* Qualifying joint accounts . . . shall be insured separately from accounts individually owned by any of the co-

> owners. The interest of a co-owner in all qualifying joint accounts shall be added together and the total for that co-owner shall be insured up to the SMSIA. [standard maximum share insurance amount is $250,000]
> . . . .
>
> (c) *Qualifying joint accounts.* A joint account is a qualifying joint account if each of the co-owners has personally signed a membership or account signature card and has a right of withdrawal on the same basis as the other co-owners. . . .

12 C.F.R. §745.8. Section 745.2(c)(4) of the NCUA Regulations states that "the interests of co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of tenancy in common."

As noted above, for each of the Appellants' five accounts, the four co-owners personally signed a joint account card. In addition, both Appellants acknowledged the XXXXXXX as joint owners on their accounts when they each completed their Members Confirmation and Affidavit forms, dated May 13, 2010, confirming their account balances. Each co-owner had a right of withdrawal on the same basis as the other co-owners. The five accounts all qualify as joint accounts and the shareholders are each entitled to up to $250,000 in joint account insurance coverage pursuant to §745.8 of the NCUA Regulations. The accounts were not established as beneficiary accounts. They do not qualify for share insurance coverage under any other provision of the insurance regulation.

By combining the amounts held in co-ownership under account numbers XXXXXXX, XXXXXXX, XXXXXXX, and XXXXXXX, the total amount of shares held by the four members in joint accounts is $XXXXXXX; AMAC paid $XXXXXXX in insured shares, leaving $XXXXXXX in uninsured shares.

Appellants assert that NCUA should be responsible for their loss for alleged negligence in structuring their accounts. Members, however, are the parties responsible for structuring their accounts and determining whether their accounts are adequately insured. It is each owner's responsibility to consult with fellow joint accountholders to determine whether co-owners have ownership interests in other joint accounts that may impact total share insurance coverage under the joint ownership rule. In this case, Section 745.8 required AMAC to aggregate the interests of XXXXXXX and XXXXXXX in their other joint accounts (XXXXXXX-00, XXXXXXX-20, XXXXXXX-21) along with their co-ownership interests in the joint accounts with Appellants.

Furthermore, statements made by credit union employees or conservatorship staff are not binding on 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.

We note the NCUA 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.

Conclusion

As discussed above, the interest of a co-owner in all qualifying joint accounts shall be added together and the total for that co-owner shall be insured up to $250,000. Applying the rule for joint ownership accounts, the remaining unpaid balance of Appellants' share accounts ($XXXXXXX) is uninsured. Accordingly, Appellant's claim for payment of $XXXXXXX is denied. This decision does not affect Appellant's certificate of claim for $XXXXXXX 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 XXXXXXX's 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 17th day of March 2011 by the National Credit Union Administration Board.

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Mary Rupp
Secretary of the Board