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UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXXXXXXXXXXXXXX

Docket BD 11-09

Creditor Claim
Cal State 9 Credit Union

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) pursuant to Section 709.8 of the NCUA Regulations (12 C.F.R. 709.8), as an appeal of the determination by the Liquidating Agent of Cal State 9 Credit Union denying xxxxxxxxxxxxxxxxxxxxxx claim in the amount of \$ xxxxxxxxxxxxxx.

Background and Chronology

Cal State 9 Credit Union (Cal State 9 or the Credit Union) was a federally insured, state chartered credit union located in Concord, California. On June 30, 2008, the National Credit Union Administration placed Cal State 9 into liquidation and named staff in both Region V and the Asset Management and Assistance Center as agents for the liquidating agent.¹ Patelco Credit Union entered into a purchase and assumption agreement with NCUA, acquiring most of the assets and liabilities of Credit Union 9 upon its liquidation.

XXXXXXXXXXXXXXXXXX was a member of Cal State 9. On November 1, 2004, xxxxx executed a durable power of attorney (POA) appointing xxxxxxxxxxxx, xxxxxxxxxxxx, with a (POA) for xxxxx. On November 5, 2004, a joint account agreement was signed establishing a joint account for xxxxx, xxxxx and xxxxxxxxxxxx, a friend of xxxxxx. xxxxx signed as POA for xxxxx, xxxxx and xxxxx signed as joint owners. On January 6, 2005, xxxxxx executed a POA appointing xxxxxxxxxxxx with a power of attorney. This POA revoked all previous POAs. On February 17, 2006, a court order was signed appointing xxxxxxxxxxxx as guardian over the estate and person of xxxxxxxxxxxxxx, pending xxxxx qualifying and obtaining required bonding. No bond was ever obtained. On March 6, 2006, xxxxx withdrew the entire proceeds (\$xxxxxxxxx) from the xxxxxxxxxxxxxxxxxxxxxx joint account. The check was made out to "xxxxxxxxxxx as Guardian for the Benefit of xxxxxxxxxxxxxx". On March 7, 2006, a court order was signed on motion withdrawing xxxxxxxxxxxx application for permanent guardianship over xxxxx. xxxxxxxxxxxxxx died on July 22, 2006. xxxxx xxxxx was appointed personal representative of xxxxxxxx estate on November 14, 2006. On

¹ All references to AMAC throughout this Decision refer to it in its capacity as agent for the liquidating agent.

November 29, 2007, xxxx, through her attorney, filed suit in California State Court against the Credit Union for the \$xxxxxxx it had paid to xxxx.

The NCUA Board liquidated the Credit Union on June 30, 2008. Pursuant to the FCU Act, NCUA then had the xxxx lawsuit removed to federal district court, had the NCUA Board substituted for the Credit Union as defendant, and had the case stayed.

On July 29, 2008, AMAC sent xxxxx attorney a creditor claim notice pursuant to §709.4 of the NCUA Regulations (12 C.F.R. §709.4). The preamble to this regulation specifically states that “[a]ll claimants, including those involved in litigation against the credit union at the time of the liquidation, must file a claim within the period provided for the notice.” See 56 Fed.Reg. 56923 (Nov. 7, 1991). On August 15, 2008, xxxxx attorney filed a claim for \$ xxxxxxxx plus interest, the same claim as in the above-noted law suit. AMAC denied the claim stating that xxxx had the right to withdraw the funds from the account as a joint owner of the account.² We received xxxxx October 2, 2009 appeal on October 13th.

We then notified xxxxx attorney that the appeal would be handled as a creditor claim appeal pursuant to §709.8(c)(1) of the NCUA Regulations, rather than an insurance claim appeal pursuant to §745.202. We further clarified that pursuant to §709.7 of the NCUA Regulations, xxxx could either pursue her lawsuit or the administrative appeal to the Board, but not both. See discussion in preamble at 56 Fed.Reg. 56923 (Nov. 7, 1991). On February 10, 2010, xxxxx attorney wrote indicating that xxxx would pursue the administrative appeal to the Board, enclosing a signed stipulation for dismissal of the lawsuit with prejudice.

Analysis

AMAC disallowed the original claim based on the fact that the share account agreement indicated joint ownership (between xxxxxxxxxxxxxx and xxxx) and all joint owners had full access to the account. AMAC asserted that xxxx could legally withdraw the funds from the account as a joint owner. AMAC did not address the fact that the Credit Union distributed the funds to Xxxxx based on incomplete documentation that xxxx was xxxxxx guardian. It appears that the Credit Union allowed xxxx to withdraw the funds based on the (incorrect) conclusion that xxxx was xxxxxx guardian.³

We agree with AMAC’s position that the guardianship issue is irrelevant since xxxx was a joint owner with rights to withdraw funds from the account. As noted above, xxxx had a legal POA based on the form executed on November 1, 2004. On November 5, 2004 xxxx opened the joint account for xxxxxx by signing as POA for xxxxxx and signing for herself as joint owner; xxxx signed as the third joint owner. The 3-party joint account

² AMAC denied the claim as an insurance claim rather than a creditor claim and gave xxxx appeal rights under the insurance claim rather than the creditor claim regulation (Part 745 of NCUA Regulations rather than Part 709). We believe that this is a creditor claim based on the alleged mishandling of the withdrawal request by Credit Union personnel. AMAC now agrees that the claim should have been denied as a creditor claim.

³ xxxxx was never legal guardian as she never obtained the required bonding.

gave both xxxxx and xxxxx full rights to all of the funds in the account as joint owners; xxxxx was entitled to make a valid withdrawal on March 6, 2006 as a joint owner. The fact that xxxxx rather than xxxxx at that point had a POA for xxxxxx would not affect xxxxxx joint ownership interest. xxxxx attorney alleges that xxxxx was no longer joint owner when she made the withdrawal on March 6, 2006. xxxxxx attorney presents no conclusive evidence to show that Xxxxx was removed as joint owner. As an attachment to xxxxxx appeal, her attorney submitted a Credit Union generated document that notes xxxxxxxxxx as joint owner and does not list xxxxxxxxxxxx as joint owner on the account. There is only one line on this form for a joint owner name so perhaps multiple joint owners cannot be listed. In addition, it appears that this document is dated July 26, 2007, seventeen months after the Credit Union distributed the funds to xxxxx and one year after xxxxxx death. We do not believe this form evidences that Xxxxx was not a joint owner at the time the funds were distributed. The account agreement (signature card) evidencing the three party joint account had never been changed.

Based on the above analysis and documentation that we reviewed, we believe that AMAC appropriately denied the claim. xxxxx was entitled to the funds in the account as a joint owner when the Credit Union distributed the funds to her on March 6, 2006.

Order

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

The decision of the National Credit Union Administration's Asset Management and Assistance Center (AMAC) denying xxxxxxxxxxxx claim in the amount of \$ xxxxxxxxx is affirmed and xxxxxxxxxxxx appeal is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. §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 FCU'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 18th day of March, 2010 by the National Credit Union Administration Board.

Mary Rupp
Secretary, NCUA Board