

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXXX

*Docket BD-12-10*

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 XXXXXXXXXX's 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**

XXXXXXXXXX (Appellant) was a member of the FCU and maintained, among other ownership accounts, an Investment Retirement Account (IRA). The claim at issue concerns only the Appellant's IRA account and his assertion that he is entitled to a quarterly dividend for the first quarter of 2010.

As of the liquidation date, the balance of the Appellant's IRA account was \$XXXXX. When NCUA's Asset Management and Assistance Center (AMAC)<sup>1</sup> sent the Appellant his Members Confirmation and Affidavit form, he responded by stating that he did not agree with the IRA balance because it did not include unpaid dividends (approximately \$XXXX based on past dividend postings). AMAC determined Appellant was not entitled to quarterly dividends on the IRA account, but rather semiannual dividends. As such, AMAC found that Appellant had not earned a dividend on the IRA account as of the liquidation date. On July 2, 2010, AMAC paid out the full amount of the account balance, \$XXXXX, to Appellant.

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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.

Appellant asserts that, for share insurance purposes, the account balance should have included a quarterly dividend covering January 1, 2010 through March 31, 2010, and has appealed AMAC's initial determination and reconsideration decision to exclude that amount.

### **Argument**

Appellant simply submitted a letter requesting an appropriate dividend for the first quarter of 2010, because the FCU was not liquidated until April 30, 2010,<sup>2</sup> and included a copy of his FCU statement indicating that he did not receive a dividend for the period ending March 31, 2010.

### **Discussion**

The Federal Credit Union Act states that “[a]t such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid” at different rates on different types of shares and share draft accounts and, at different rates and maturity dates in the case of share certificates. 12 U.S.C. §1763. NCUA's share insurance rules follow by providing that “[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. 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.” 12 C.F.R. 745.200(b). A member, therefore, is not entitled to a dividend, and treatment as such for share insurance coverage, until the dividend is earned in the ordinary course of business.

AMAC reconstructed Appellant's IRA account using the FCU's records, including member statements, the IRA Trust applications and IRA Periodic Payments form. AMAC found that on November 5, 2002, Appellant had completed a Form 2316 (Credit Union Individual Retirement Account Periodic Payments Before Age 70 ½) indicating that he wanted his earnings transferred semiannually into his share account. AMAC's research indicated that the FCU posted quarterly dividends for the IRA account from March 31, 2005 through December 31, 2008. In 2009, however, the FCU amended its practice and posted dividends for the IRA account on a semiannual basis. Appellant received dividend payments on June 30, 2009 and December 31, 2009. Furthermore, in 2010, the FCU posted quarterly dividends on Appellant's share certificate on March 31, 2009, but did not post dividends to the IRA account. AMAC determined that a dividend payment was not due on the IRA account until June 30, 2010. The FCU was insolvent and liquidated on April 30, 2010. Appellant's IRA account, therefore, was not due dividends on April 30, 2010.

The FCU clearly changed its dividend policy for IRAs in 2009, posting dividends to the IRA account semiannually rather than quarterly as in previous years. In accordance with this practice, dividends were declared and posted to Appellant's account for the

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<sup>2</sup> Appellant's letter incorrectly states that the credit union was closed on April 29, 2010.

first half and second half of 2009, ending December 31. Appellant received the two semiannual dividend payments on the IRA account and therefore had constructive, if not actual, notice of the change in policy. The FCU's board of directors did not declare and post dividends on the IRA account on the quarter ending March 31, 2010. As such, dividends were not earned and posted in the ordinary course of business. Appellant was not entitled to such a posting and AMAC was not incorrect in failing to provide that treatment.

As stated above, 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.

12 C.F.R. §745.200(b). 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. Appellant does not otherwise dispute the balance of his IRA account.

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, as noted above, normal practice for the FCU was that dividends on the IRA account were declared and posted (i.e., "earned") on a semiannual basis.

### **Conclusion**

As discussed above, we do not believe the Appellant is entitled to three months' worth of the dividend because the dividend was not "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 Appellant's IRA account was the result of error or fraud, but rather was the result of the FCU's normal, stated practice of declaring dividends on the account semiannually. Accordingly, Appellant is 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 XXXXXXXXX'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 17<sup>th</sup> day of November 2010 by the National Credit Union Administration Board.

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Mary Rupp  
Secretary of the Board