UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXXXXXXX *Docket BD-24-10*

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 the insurance claim submitted by XXXXXXXXX.

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

XXXXXXXXX (Appellant) was a business member of the FCU and held share accounts (share account number XXXXXXXXX, and share certificate account numbers XXXXXXXXX and XXXXXXXXX). Appellant's aggregate share account balance as of the liquidation date was $ XXXXXXXXX. On May 5, 2010, NCUA's Asset Management and Assistance Center (AMAC)[1] made an initial pay out to Appellant in the amount of $5,000. On June 16, 2010, AMAC mailed a check in the amount of $ XXXXXXXXX to Appellant and notified it by letter on the same date that the remaining unpaid balance of $ XXXXXXXXX exceeded the $250,000 share insurance limit and therefore was uninsured. Appellant appealed AMAC's determination.

[1] References to AMAC throughout this decision refer to AMAC staff acting in their capacity as agents for the liquidating agent.

Argument

Appellant's president and owner, XXXXXXXXX, states the company intentionally established two share certificate accounts to obtain federal share insurance coverage on each account. When opening the accounts, XXXXXXXXX specifically asked the FCU for separate accounts to obtain insurance coverage up to $250,000 per account. FCU staff told him, when structuring the two share certificate accounts, that each account would be insured up to the federal limit of $250,000. As such, Appellant maintained the following amounts in its accounts:

Share Account, XXXXXXXXX:	$ XXXXXXXXX
Share Certificate Account, XXXXXXXXX:	$ XXXXXXXXX
Share Certificate Account, XXXXXXXXX:	$ XXXXXXXXX

XXXXXXXXX states Appellant would have deposited the uninsured amount in excess of $250,000 in another financial institution had he not been misinformed by FCU staffers who were motivated by fraud.

XXXXXXXXX also states that Appellant had no notice of the conservatorship and was not aware of the letter from NCUA Regional Director Alonzo Swann, dated April 26, 2010, to members notifying them of the conservatorship and the $5,000 withdrawal restriction imposed by the conservator. He states that he went into the credit union during the week of the conservatorship for a personal transaction, yet staff did not inform him about the conservatorship.

Discussion

NCUA's rules governing share insurance provide that accounts of a corporation engaged in any independent activity shall be insured up to $250,000 in the aggregate. 12 C.F.R. §745.6.

Appellant is a privately-held corporation incorporated in the State of XXXXXXXXX and XXXXXXXXX, a natural-person member of the FCU, is Appellant's president and owner. AMAC was unable to locate forms for Appellant's share certificate accounts and Appellant's membership card but determined that Appellant's account was not manipulated by the FCU's CEO. Appellant, through XXXXXXXXX 's affidavit, confirmed the share balances on the liquidation date identified by AMAC as accurate. Appellant, therefore, does not dispute the number or amount of share certificates held in the FCU as of April 30, 2010.

Appellant argues in its appeal that each certificate of deposit should be individually insured for up to $250,000 because FCU employees informed XXXXXXXXX that such insurance would be provided. Appellant alleges the FCU's employees' misinformation about Appellant's insurance coverage was intentional in order to obtain funds for the FCU. Appellant's argument is not persuasive for an extension of coverage beyond the standard maximum share insurance amount of $250,000.

As stated above, Section 745.6 of the NCUA Rules and Regulations (12 C.F.R. §745.6) provides in part as follows:

> Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to the SMSIA in the aggregate.

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 Federal Deposit Insurance Corporation (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.

Statements made by credit union employees 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, even if the statements were made specifically to defraud members. Appellant's share account and two share certificates must be aggregated and insured up to $250,000 pursuant to Section 745.6.

We also note the NCUA Board has recently denied appeals from members who were misinformed about insurance coverage by credit union staff. See NCUA Docket BD-06-05 and NCUA Docket BD-16-08. In the first case, the conservator placed a 60-day freeze on share withdrawals in excess of $250 and the business member, unable to withdraw all of its funds from several share certificates, was limited to the insurance coverage provided in Section 745.6. In the second case, credit union staff incorrectly advised a member 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 the member intended the share accounts be structured.[2]

[2] These decisions are consistent with older appeals in which the NCUA Board stated that credit union personnel cannot obligate the National Credit Union Share Insurance Fund. See NCUA Docket 02-INS-003 and 96-002.

Conclusion

As discussed above, an account of a corporation may be insured up to no more than $250,000 under Section 745.6.[3] AMAC correctly determined that Appellant's corporation account (share account XXXXXXXXX , share certificates XXXXXXXXX and XXXXXXXXX) is entitled to the standard maximum share insurance amount of $250,000. Despite the possibility that FCU staff intentionally misled the Appellant about insurance coverage to perpetuate fraudulent activities, the law does not allow the Board to extend insurance coverage on such a basis. Applying the rule for corporation accounts, therefore, the remaining unpaid balance of Appellant's share account ($XXXXXXXXX) is uninsured. 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 the appeal of XXXXXXXXX.

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 November 2010 by the National Credit Union Administration Board.

_____
Mary Rupp
Secretary of the Board

[3] We note section 343(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act providing for unlimited share insurance for "noninterest-bearing transaction accounts," which took effect July 22, 2010, is inapplicable here.