UNITED STATES OF AMERICA

BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of)
)
xxxxxxxxxxxx) Docket No. 97-001
)
Insurance Claim)
Oakland Airport Federal Credit Union)
	Decision and Order on Appeal

Decision

Background

Oakland FCU was chartered in 1974 to serve employees and family members of the World Airways Corporation in Oakland, California. NCUA's Region VI Director determined Oakland FCU was insolvent and, under delegated authority, [2] placed it into involuntary liquidation on September 30,1993, pursuant to section 207 of the Federal Credit Union Act (FCU Act). [3] Inwood Credit Union (Inwood CU) entered into a purchase and assumption agreement with the NCUA on October 4, 1993, whereby it obtained Oakland FCU's assets and liabilities.

According to Appellant, he had three share accounts at Oakland FCU but he provides no identifying information or statement of account balances. Appellant also had various loans from Oakland FCU. In correspondence prior to and not related to the liquidation, his accountant provided three account numbers but did not provide any account balances. Taken together with other information available to NCUA, it appears that at

It was not until September 22, 1995, almost 24 months after Oakland FCU was liquidated, purchased and assumed that Appellant requested xxxxxxxx in insurance proceeds for each of his three accounts at the credit union. The ALMC determined that Appellant did not file his claim within the 18-month period after the appointment of the liquidating agent and that his rights against the NCUA Board with respect to his insured accounts were barred. [9]

The Appellant filed this appeal on October 22, 1996. He does not identify specific accounts or account balances claimed to be insured. Although he does note he can no longer afford a lawyer, he makes no mention of why, if he had so much money in the credit union, he did not attempt to obtain it for almost two years or why he apparently was unconcerned that he was not receiving account statements. At no time since the liquidation has the Appellant, or anyone on his behalf, submitted account statements reflecting any share balances.

Finding

Based on the facts, the Board believes this matter can be summarily disposed of on the basis of timeliness, the determination made by the ALMC. Simply stated, section 207(o) of the FCU Act (12 USC §1787(o)) provides that if a member of a closed credit union is given at least four months notice and fails to claim his insured account within 18 months of the appointment of the liquidating agent, all rights against the Board as to the account "shall be barred." Appellant knew the Oakland FCU had been placed into liquidation. If Appellant had an account that was entitled to insurance at the time of liquidation, he did not file his claim within the period of time mandated by the FCU Act and, therefore, any claim he may have had against the Board for share insurance is barred. [10]

Analysis

The Board may make payment of insurance by transferring accounts to another insured credit union. This was accomplished through the purchase and assumption agreement with Inwood CU. The amount of insurance is determined in accordance with section 207(k) of the FCU Act, 12 U.S.C. § 1787(k), and NCUA's regulations, 12 CFR Part 745. Appellant had knowledge of the liquidation through his attorney even if he did not receive written notice of the liquidation from Inwood Credit Union. Appellant did not contact the ALMC until twenty-three months after the liquidation. Thus, any rights he may have had against this Board are barred by section 207(o) of the FCU Act.

In his appeal, the Appellant makes the statement that the "fact that I have filed my claims a couple of months too soon or a couple of months too late would not have happened if proper notification was given to me." The accountant's request that NCUA pay insurance while a credit union is still in operation is not a claim filed "a couple of months too soon" that could have been cured by proper notice. It is also difficult to accept that filing a claim almost six months after the expiration of the 18 month period was due to lack of notice, particularly when his counsel at the time knew of the liquidation and the Appellant was already involved in litigation against the credit union. His counsel knew at least within one month of the liquidation and had contacted NCUA on Appellant's behalf. Thus, Appellant had at least constructive, if not in fact actual, knowledge of the liquidation. Pursuant to California common law, knowledge on the part of an attorney is knowledge of, or imputed to, the client. [13] If Appellant did not have actual knowledge of the liquidation, his attorney's knowledge of the liquidation was imputed to him. Lack of personal receipt of notice, under these circumstances, can not be relied on to defeat the section 207(o) bar.

Order

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

The Board's decision constitutes a final agency determination. 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 not later than 60 days after the date of this final determination.

So ORDERED this 16th day of April, 1997 by the National Credit Union Administratic	on Board	d.
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Becky Baker	

Secretary of the Board.

- The Liquidating Agent is an NCUA employee responsible for conducting liquidation functions. Generally, the Liquidating Agent works in the Asset Management Assistance Center (AMAC), the NCUA component responsible for, *inter alia*, the liquidation of federally-insured credit unions. At the time of the liquidation of Oakland FCU, the AMAC was called the Asset Liquidation Management Center (ALMC). The terms "ALMC," "AMAC," and "Liquidating Agent" may be used interchangeably herein.
- NCUA's Regional Directors have been delegated the authority to act on behalf of the Board to place federal credit unions into involuntary liquidation, to act as Liquidating Agent and to appoint other agents to assist in the liquidation. Both the Regional Directors and AMAC have been provided broad authority to exercise the Board's authority in carrying out its liquidation functions under the FCU Act.
- [3] Section 207, 12 U.S.C. § 1787, sets forth the Board's liquidation authority.
- Letter from xxxxxxxxxxxxxx to Regional Director, dated June 24, 1993.
- [6] See footnote 4, supra.
- Letter from Regional Director to xxxxxxxxxxxxxx, July 20, 1993.
- Letter from attorney Ronald Foreman to Eric Jacobsen (NCUA analyst), dated October 27, 1993.
- Letter from Agent for the Liquidating Agent John Hollis to Christopher J. Zachar, then counsel to Appellant, September 23, 1996.
- It is noted for the record that Appellant has made no attempt to substantiate the amount he claims in his appeal or that he had an insured account at the time of liquidation. Records obtained from Inwood CU indicate that Appellant's share accounts had been closed out prior to the purchase and assumption through the charge-off of delinquent loans. The untitled printout of September 30, 1993, shows only a balance of xxxxxxx. *See*, note 5, *supra*.
- [11] 12 U.S.C. § 1787(d)(1).
- Appellant filed suit against Oakland FCU on June 30, 1993. This suit was dismissed on July 24, 1994. Ronald Foreman was retained by Appellant for purposes of this action on April 27, 1993. Mr. Foreman served in that capacity at least until January 31, 1994, the date set for a hearing on his motion to withdraw as counsel. In connection with this litigation, according to counsel for Oakland FCU, Mr. Foreman was notified of the liquidation by letter dated November 1, 1993. This was six days after Mr. Foreman acknowledged the liquidation in his letter to NCUA's Jacobsen. *See*, footnote 8, *supra*.
- [13] See, People v. Amerson, 198 Cal. Rptr. 678, 681, 151 Cal. App. 3d 165, 169 (1984) ("It is axiomatic that knowledge to the attorney is knowledge to the client."); Freeman v. Superior Court, County of San Diego, 44 Cal. 2d 533, 537, 282 P.2d. 857, 860 (1955). The United States Supreme Court and other Federal courts have also acknowledged the principle. See, e.g., Irwin v. Dept. of Veterans Affairs, 498 U.S. 89, 92 (1990); Mosley v. Pena, 100 F. 3d 1515, 1518 (10th Cir. 1995); Parich v. State Farm Mut. Auto. Ins. Co., 919 F. 2d 906, 916 (5th Cir. 1990).