



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. [11] 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. [12] 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 upholds the liquidating agent’s denial of xxxxxxxxxxxxxxxxxxxx claim on the basis that the claim was not filed within the required statutory period, and the Board denies Appellant’s appeal.

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 Administration Board.

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Becky Baker

