UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD
ALEXANRIA, VIRGINIA

In the Matter of Eric Majette Institution-affiliated party of the NYB & FMC Federal Credit Union	Docket No. 98-0401-11

Final Decision and Order

Final Decision

This case is before the National Credit Union Administration (NCUA) Board for a final decision, following Administrative Law Judge (ALJ) Walter M. Alprin's issuance of a Recommended Decision to prohibit Eric Majette (Respondent) from participation in the conduct of the affairs of any insured credit union under section 206(g) of the Federal Credit Union Act, 12 U.S.C. § 1786(g).

I. Procedural Background

On May 28, 1998, the NCUA Board issued a Notice of Intent to Prohibit, under 12 U.S.C. § 1786(g), against Respondent Eric Majette, former manager of the NYB & FMC Federal Credit Union (credit union), Jersey City, New Jersey. The Notice charged that Respondent, while the manager of the credit union, engaged in lending activity that was in violation of the Federal Credit Union Act (the Act), 12 U.S.C. 1751 *et seq*., and the National Credit Union Administration Rules and Regulations (12 C.F.R. 700 *et seq*.). The case was submitted to the Office of Financial Institution Adjudication and assigned to ALJ Alprin.

A hearing was held on September 3, 1998. On September 18, ALJ Alprin issued a Notice that post-hearing briefs were due by October 19, 1998, and reply briefs were due by November 3, 1998. Enforcement Counsel filed a post-hearing brief on October 14, 1998. Respondent Counsel filed an undated post-hearing brief that was received in ALJ Alprin's office on October 19. No reply briefs were filed.

On November 24, 1998, ALJ Alprin issued a Recommended Decision to Prohibit and Proposed Order of Prohibition.

Upon issuance of his Recommended Decision, ALJ Alprin certified the record to the NCUA Board. 12 C.F.R. 747.38. The parties were then given the opportunity to file exceptions to the Recommended Decision. 12 C.F.R. 747.39. No exceptions were filed. By letter dated December 30, 1998, the parties were notified that the proceeding was submitted to the NCUA Board for final decision. 12 C.F.R. 747.40.

II. Board Adoption of Recommended Decision; Issuance of New Order

The NCUA Board hereby adopts, and incorporates herein as Appendix A, the Recommended Decision issued by ALJ Alprin, including the findings of fact, discussion of law and facts, and conclusions of law, with the following correction: on page 7, Finding of Fact 11, "income at $32,00" is corrected to read "income at $32,000."

ALJ Alprin also recommended the issuance of an order pursuant to Section 206(g) of the Act, prohibiting the Respondent from participation in the conduct of the affairs of any insured credit union. However, ALJ Alprin's Proposed Order does not specifically set forth the automatic industry-wide prohibition found in Section 206(g)(7) of the Act. Therefore, the NCUA Board does not adopt the Proposed Order. The Order of Prohibition issued by this Board is set forth below and includes the automatic industry-wide prohibition. It prohibits Respondent's participation in any manner in the conduct of the affairs of any institution - including any federally-insured credit union or other insured depository institution - entity or agency specified in 12 U.S.C. § 1786(g)(7).

III. Findings of Fact

The following is a summary of ALJ Alprin's Findings of Fact as set forth in his Recommended Decision and adopted by the NCUA Board.

NYB & FMC Federal Credit Union was chartered by NCUA on June 14, 1974. Respondent served as an NCUA examiner from 1983-1988. Respondent served as credit union manager from May 1988 until March 1995. On April 12, 1994, Respondent issued a $30,000 check in the name of his half brother Melvin Tucker and deposited the funds into Tucker's account. On the same day, Respondent purchased a 1992 Lexus for a total price of $30,600. A $6000 deposit had been made on the Lexus; Respondent paid the $24,600 balance with funds drawn from the Tucker account. The Lexus was registered in Respondent's name. On April 18, 1994, Respondent, as credit union loan officer, approved a $30,000 automobile loan for Melvin Tucker. The loan application lists the Lexus as security for the loan. The loan application was incomplete and information on Mr. Tucker's income was not verified. Mr. Tucker did not have a driver's license. The Lexus was registered in Respondent's name and Respondent obtained insurance for it. The credit union was never issued title for the Lexus. Respondent used the Lexus and made the payments on the loan. Respondent resigned from the credit union in March 1995. The loan on the Lexus went into default shortly after that. In March of 1996, the credit union repossessed the Lexus and sold it at a substantial loss.

IV. Grounds for Prohibition

Respondent's actions support the issuance of a prohibition. Respondent engaged in an unsafe and unsound practice in approving the Lexus loan in his half brother's name. In addition, Respondent used his position at the credit union to benefit himself at the expense of the members, and breached his fiduciary duty to the credit union in approving the Lexus loan. Respondent's actions caused more than a minimal loss to the credit union and resulted in a his own pecuniary gain. His

actions involve personal dishonesty and demonstrate his unfitness to participate in the affairs of an insured credit union.

Section 206(g) of the Act, 12 U.S.C. 1786(g), sets forth the requirements for the NCUA Board to issue an order of prohibition and, as fully addressed in ALJ Alprin's Recommended Decision incorporated herein, those requirements have been met. In addition, Section 206(g) imposes an industry-wide prohibition upon one who has been prohibited from participating in the conduct of the affairs of an insured credit union.

V. Conclusion

ALJ Alprin concluded, *inter alia*, that Respondent engaged in unsafe and unsound credit union practices; he breached his fiduciary duty to the credit union; his misconduct resulted in a loss to the credit union and a personal benefit to himself; and he demonstrated personal dishonesty and an unfitness to serve. The Board affirms ALJ Alprin's Conclusions of Law and issues the following order.

Order of Prohibition

Based upon the record of the administrative hearing held pursuant to the Notice of Intent to Prohibit issued by the National Credit Union Administration Board on May 28, 1998, and upon the Recommended Decision of Administrative Law Judge Walter J. Alprin, incorporated in the Final Decision of the National Credit Union Administration Board, and

Pursuant to the authority vested in the National Credit Union Administration Board by Section 206(g) of the Federal Credit Union Act, 12 USC § 1786(g), and in accordance with Part 747 of the NCUA Rules and Regulations,

IT IS HEREBY ORDERED that Eric Majette is prohibited from participating in any manner in the conduct of the affairs of any federally insured credit union. As provided in Section 206(g)(7) of the Federal Credit Union Act, 12 U.S.C.

§ 1786(g)(7), Eric Majette may not, while this Order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in that section. In accordance with Section 206(g)(4) of the Federal Credit Union Act, 12 U.S.C. § 1786(g)(4), this Order shall become effective thirty days after service upon Eric Majette.

SO ORDERED, this 18th day of March, 1999, by the National Credit Union Administration Board.

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Becky Baker
Secretary, NCUA Board

UNITED STATES OF AMERICA
NATIONAL CREDIT UNION ADMINISTRATION
ALEXANDRIA, VIRGINIA

In the Matter of Eric Majette Institution-affiliated party of the NYB & FMC Federal Credit Union	Docket No. 98-0401-11

RECOMMENDED DECISION TO PROHIBIT

(Issued November 24, 1998)

I. INTRODUCTION

On May 28, 1998, the National Credit Union Administration Board issued a Notice of Intent to Prohibit ("Notice") against Respondent Eric Majette ("Respondent") under section 206(g) of the Federal Credit Union Act, 12 U.S.C. § 1786(g). Respondent served as manager of NYB & FMC Federal Credit Union (the "credit union") from May 1988 until March 1995. The National Credit Union Administration ("NCUA" or "agency") is seeking to have Respondent permanently prohibited from participation in the affairs of any insured credit union due to his alleged unsafe or unsound practices and breach of fiduciary duty.

This case involves the propriety of a $30,000 loan to a relative without the means to support the debt in order to purchase a luxury automobile for Respondent's use. Enforcement Counsel allege that Respondent, former manager of the credit union, created a straw loan in the name of his half-brother, Melvin Tucker, for the purchase and title of a used 1992 Lexus for Respondent's, not Tucker's, personal benefit.

II. PROCEDURAL HISTORY

On June 18, 1998, the last day for filing an Answer to the Notice, Respondent's counsel advised the undersigned that he had recently been retained by Respondent and sought an unopposed 20 day extension of time in which to file. The undersigned granted the unopposed request for a continuance until July 8, 1998. Respondent filed a timely answer.

On June 29, 1998, the undersigned issued a Report of Conference and Order Establishing Hearing Schedule. Pursuant to item number 3 of the Order, Witness and Exhibit Lists were due on August 5, 1998. Under 12 C.F.R. § 747.32(b), the effect of a party's failure to comply with the requirements is that no witness may testify and no exhibits may be introduced at hearing. On August 3, 1998, Enforcement Counsel

complied with the order but Respondent failed to file timely lists. On August 11, 1998, after receiving no filing from Respondent, Enforcement Counsel filed a Motion To Preclude Testimony Of Respondent's Witnesses And Introduction Of Documents.

In the motion, Enforcement Counsel advised that he had telephoned Respondent's counsel, who stated that he was going on vacation and would file the lists after his return. Respondent's counsel also mentioned that he would be calling Respondent and his half-brother, Melvin Tucker as witnesses at hearing. Enforcement Counsel argued that a vacation did not constitute "good cause" under 12 C.F.R. § 747.32(b) for failing to provide witness and exhibit lists.

With a cover letter dated August 18, 1998 and conflicting service list dated a week earlier, August 11, 1998, Respondent filed Witness and Exhibit Lists and a prehearing statement. As stated above, the Scheduling Order required the lists to be filed by August 5, 1998, so that the documents filed were out-of-time no matter which date was correct. As well as being out of time, Respondent's Witness List failed to comply with the criteria of 12 C.F.R. § 747.32(a)(2) requiring addresses of the individuals. The filing contained no reference to its lateness or the pending agency motion to preclude testimony or exhibits. The witness list also included several individuals not previously mentioned to Enforcement Counsel.

On August 20, 1998, Respondent filed an opposition to Enforcement Counsel's Motion to Preclude evidence at hearing due to the untimeliness of the lists. On August 28, 1998, Enforcement Counsel filed a Response to Opposition and Supplemental Response. In the opposition, Respondent asserts four reasons for the lateness of the lists: 1) counsel had difficulty obtaining prior counsel's file; 2) counsel was on vacation during the week of August 3, 1998; 3) counsel was at trial from August 11 - 14, 1998; and, 4) counsel's fax machine was out of order for a number of days, delaying communication with Respondent. Respondent's counsel makes an additional statement that this matter was on a fast track because trial was scheduled within 90 days of service of the Notice. The undersigned is unclear as to whether the last statement insinuates that counsel could not meet the fast track schedule which was too demanding and is offering this as a reason for the lateness of the filings. In any case, Respondent's counsel had many opportunities to take issue with the prehearing dates and even more for an extension of time of filing dates if so desired.

The undersigned did not then, and does not now consider that the reasons presented constitute good cause for late filing. The undersigned finds it alarming that counsel did not have Respondent's prior counsel's file one month after submitting an answer to the charges in this matter and nearly two months after entering an appearance in the case. Respondent's Counsel certainly knew how to request an extension of time to file an answer, which was ruled on and granted by the undersigned on June 18, 1998. It is extremely odd that counsel would allow the time to lapse for filing lists when the rules clearly state that the consequences of such a failure is the inability to introduce witnesses or exhibits.

The parties and the undersigned had a scheduling conference on June 25, 1998. If Respondent's counsel had scheduling conflicts, the conference call was the time to raise the issue. Or, of course, Respondent's counsel could have raised the issue or requested an extension any time prior to the deadline. Counsel's filing the lists two weeks late without good cause and only after Enforcement Counsel's Motion to Preclude is not acceptable. On September 2, 1998, the undersigned granted Enforcement Counsel's Motion to Preclude Testimony and Exhibits.

On September 3, 1998, a hearing was held in Newark, New Jersey. At hearing, Respondent was permitted to offer evidence which was then marked as "Rejected" and placed in the record. Hearing Transcript 116.

On October 14, 1998, Enforcement Counsel filed a Post-Hearing Brief consisting of findings of fact and conclusions of law. Respondent filed a two-page brief without a certificate of service in noncompliance with 12 C.F.R. § 747.10(c) setting forth when and how service was made. The cover letter to the filing is dated October 13, 1998, and was received in the undersigned's office on October 19, 1998. On October 16, 1998, Enforcement Counsel advised the undersigned that he had received an undated and unsigned copy of Respondent's Brief and the NCUA would not be filing a Reply. By order dated September 18, 1998, Reply Briefs were due on or before November 3, 1998. No Reply Briefs were filed.

III. FINDINGS OF FACT

1. NYB & FMC Federal Credit Union is a credit union which was chartered by NCUA under the Act on June 14, 1974, and assigned charter number 21702. The credit union's address is 80 County Road, Jersey City, New Jersey, 07097. Answer ¶3.

2. Majette served as credit union manager from May 1988 until March 1995. Answer ¶4, NCUA Exh. 1.

3. Prior to becoming credit union manager Majette was employed as an examiner for the NCUA from 1983 to 1988. Answer ¶5; Majette TR. 127.

4. While employed by NCUA, Majette was the examiner for the credit union. Answer ¶6.

5. On April 4, 1994, Majette made a $6,000 deposit to purchase a 1992 Lexus SC 400 coupe from Power Motorcar Company of Roslyn, New York. NCUA Exh. 9.

6. On April 12, 1994, Majette purchased the 1992 Lexus SC 400 Coupe for a total of $30,600. He paid the balance with a credit union check for $24,600. NCUA Exh. 4.

7. The 1992 Lexus was registered in Majette's name.

NCUA Exh. 9.

8. Majette obtained insurance for the 1992 Lexus effective April 17, 1994. Majette TR. 154-155.

9. Six days after purchasing the 1992 Lexus, on April 18, 1994, Majette, as loan officer, approved an application for $30,000 Automobile loan to the credit union in the name of his half-brother Melvin Tucker. The automobile was the collateral for the loan. The loan was for a period of 60 months, with payments of $600 per month to be made by payroll deduction. NCUA Exh. 2; NCUA Exh. 9 (Retail Certificate of Sale); Rajsz TR. 25; Majette TR. 138.

10. Tucker's loan application stated that the security for the loan was the 1992 Lexus that Majette had purchased six days earlier. Information such as Tucker's employment title or grade, his supervisor's name, the date he started, and the hours worked, is not provided in the appropriate spaces on the loan application. NCUA Exh. 2.

11. Tucker listed his income at $32,00 even though he had no fixed salary and was only a part-time employee of the U.S. Post Office being paid $8.00 per hour. The actual amount of hours he worked is not provided, no other income is shown, and no assets are reported. NCUA Exh. 2; Rajsz TR. 30; Majette TR. 138-140.

12. Majette knew that Tucker did not have a driver's license when the Lexus loan was approved. Majette TR. 144-146, 150-151; NCUA Exh. 10 at 33.

13. The Application For Certificate of Ownership for the New Jersey Division of Motor Vehicles is in the name of Eric Majette and falsely indicates that the 1992 Lexus does not have a lien on it. NCUA Exh. 9.

14. The credit union was not issued title to the 1992 Lexus because it was not listed as a lienholder on the registration with the New Jersey Division of Motor Vehicles under Eric Majette's name. Rajsz TR. 77.

15. Tucker never owned or possessed the 1992 Lexus. Majette TR. 154-155. NCUA Exh. 9.

16. On June 23, 1994, Majette, as credit union manager, signed a letter to Tucker requesting a copy of proof of automobile insurance for the 1992 Lexus. NCUA Exh. 5.

17. On June 23, 1994, Majette knew that the 1992 Lexus was not insured to Tucker but to himself. Majette TR. 154-155.

18. On August 23, 1994, Majette, as credit union manager, signed a letter to Tucker requesting a copy of the title for the 1992 Lexus. NCUA Exh. 5.

19. Majette resigned from the credit union on or about March 3, 1995. NCUA Exh. 1.

20. Right after Majette's resignation, on or about March 7, 1995, the Tucker loan went into default. Rajsz TR. 83.

21. On July 17, 1995, Tucker signed a letter to the credit union's attorney stating that he was not in possession of the title for the 1992 Lexus. NCUA Exh. 7.

22. On July 17, 1995, Majette signed a letter to credit union's attorney stating that he was not in possession of the title for the 1992 Lexus and that he did not have a loan at the credit union. NCUA Exh. 7.

23. On September 13, 1995, a Show Cause Order issued against Melvin Tucker and Eric Majette in the Superior Court of New Jersey seeking their appearance regarding why an interlocutory injunctive order should not restrain them from selling or transferring title to the 1992 Lexus. NCUA Exh. 6.

24. In March of 1996, and one year after the default of the Tucker loan, the credit union repossessed the Lexus and sold it for approximately $14,000 at a substantial loss. Rajsz TR. 89-90.

IV. DISCUSSION OF LAW AND FACTS

A. STATUTORY OVERVIEW

Under 12 U.S.C. § 1786(g) of the Federal Credit Union Act, the NCUA Board has the authority to remove or prohibit an institution-affiliated person from participation whenever it determines the following:

(A) There is a specified type of misconduct - violation of a law, unsafe or unsound practice, or breach of a fiduciary duty;

(B) The misconduct must have the effect of financial loss or damage to the credit union, prejudice to its members, or financial gain or benefit to Respondent; and

(C) The misconduct must involve personal dishonesty or the Respondent must demonstrate an unfitness to serve as director or officer or otherwise participate in the conduct of the affairs of the credit union.

B. MISCONDUCT

Enforcement Counsel argues that Respondent engaged in an unsafe or unsound practice by approving the $30,000 straw loan in the name of Melvin Tucker. Unsafe or unsound practices are defined as any action, or lack of action, which is contrary to generally accepted standards of prudent banking operation which if continued, may result in abnormal loss to the institution or its shareholders. Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 Before the House Committee on Banking and Currency, 89th Congress, 2nd Sess., at 49-50 (1966).

The record supports a finding that Melvin Tucker was a straw man who permitted the use of his name, rather than his credit, to be used on the loan application at the credit union. See, United States v. Gens, 493 F.2d 216 (1st Cir. 1974) (Borrower permitted use of his name, rather than his credit, to be used to enable a de facto delivery of loan proceeds to a third party to whom the bank was unwilling to grant a direct loan, but such a finding was insufficient to constitute willful misapplication of bank funds. On an evidentiary issue the Circuit Court reversed and remanded for a new trial.) Tucker was a part-time postal employee making $8 an hour and who did not qualify for a $30,000 loan. NCUA Exh. 2; Rajsz TR. 49. He was a temporary or casual employee without benefits who could work a maximum of 89 days and then either be laid off or required to have a break in service before being reinstated. Rajsz TR. 28.

Even if Tucker were working full time on that hourly basis, his annual salary would still have been only about $17,000. NCUA Exh. 2. Based on the documentation in the loan file including Tucker's pay stub, he only worked part time and made far less than $17,000 a year. There is no evidence of any other source of income or any assets whatsoever, and to put it mildly, he appeared unable to service a loan of $30,000.

At hearing, Myron Rajsz, treasurer and member of the board of directors of the credit union, testified that an individual's credit history, employment history, and ability to repay the loan are serious considerations in approving a loan. Rajsz TR. 22. In the instant case, Respondent approved the Tucker loan application with incomplete employment history, little to no prior credit history, and documentation showing Tucker could not credibly repay the loan. NCUA Exh. 2; Rajsz TR. 26, 36.

Aside from not being able to service the debt, the record also supports a finding that Tucker was never expected to repay the loan. See, United States v. Parekh, 926 F.2d 402 (5th Cir. 1991) (Consideration must be given to the likelihood or expectation that the debtor actually intends to service and repay the loan.) In the instant case, Tucker never even had a driver's license. Respondent concedes that Tucker never owned or possessed the 1992 Lexus and that car insurance was taken out in his own name, not his brother's. Majette TR. 154-155. Respondent freely admits to using the car and being the one responsible for repaying the loan. Majette TR. 147; NCUA Exh. 10 at 29. The Lexus was registered in the state of New Jersey in Respondent's name and his name appears on the certificate of sale. NCUA Exh. 9. Melvin Tucker's credit report for September 1994, does not even reflect a $30,000 car loan due to an incorrect social security number for Tucker at the credit union. Rajsz TR. 36, 51-53; NCUA Exh. 2 ,3.

Despite all of the above, Majette insists the loan was not his but his brother's. Respondent's rationale for why the car and insurance had to be put in his own name rather than his brother's is incredible. Majette asserted at hearing that Tucker was unable to obtain a driver's license because someone was assuming his name and had accumulated many tickets. Majette TR. 144. The car dealer would not sell Tucker the car without a valid driver's license. Majette TR. 145. However, on January 14, 1998, Respondent was deposed and at that time claimed that all the paperwork was put in his name at the dealer because Tucker either had not taken or failed his driver's test. NCUA

Exh. 10 at 29-30. Respondent never mentioned that Tucker was unable to get the license because of a problem with someone assuming and ruining Tucker's good name.

It seems hard to believe that an individual applying for a $30,000 car loan, and whose annual income at best is roughly half that, would not obtain a driver's license prior to buying a luxury car. In fact, even for the two years the car was in use before it was repossessed, Tucker still had not managed to obtain a driver's license. All the evidence overwhelmingly points to a finding that the car was always intended for Respondent.

The undersigned finds that Respondent engaged in unsafe or unsound practices. At the very least, Respondent is liable for sloppy underwriting of a loan to Tucker who was not creditworthy and, as a result caused loss to the credit union. FOF 11, 24. At most, which the undersigned finds to be the case, Respondent is liable for concealing the true borrower, himself, by approving a sham loan to his brother. In doing so, Majette impeded a proper determination by the credit union of the true borrower's creditworthiness. Either scenario places the credit union at risk and is an unsafe or unsound practice and resulted in actual loss to the institution.

An alternate requirement of the "misconduct" prong is a showing of a breach of a fiduciary duty. It is well accepted law that officers and directors of depository institutions are held by a strict fiduciary duty to act in the best interest of the institution, its shareholders and its depositors. Grubb v. Federal Deposit Insurance Corp.,3 F.3d 956 (10th Cir. 1994). See also, In the Matter of Bush, OTS AP 91-16 (1991), 1991 WL 540753, 1991 OTS DD LEXIS 2 (April 18, 1991). As an officer of the credit union, Respondent had a duty to act in the institution's best interest and that of its members.

In the case at hand, Respondent as manager and loan officer of the credit union approved a loan for a car, presumably for a brother without a driver's license, but in reality for his own personal use. The car was never titled in the credit union's name which would have, at least, protected its interests in the car. It is clear that Respondent used his position at the credit union to benefit himself at the expense of the members. Majette was responsible for the proper operations of the credit union and he betrayed the trust given him. The undersigned finds that Respondent breached his fiduciary duty to the credit union.

C. EFFECTS

The misconduct charged must have a prescribed effect such as either financial gain or benefit to Respondent, or financial harm to the institution. In this case, the record supports a finding of both alternatives.

As a result of the improper loan in Tucker's name, Respondent obtained a $30,000 car loan and enjoyed the use of the 1992 Lexus for the two years he possessed it. Another effect of the misconduct is the financial loss to the credit union. About two years after the approval of the loan, in March 1996, the credit union repossessed the Lexus and sold it for only $14,000. Rajsz TR. 89-90.

Majette offered to repay the balance of the loan without paying the legal fees he caused the credit union to incur. However, credit union refused Respondent's offer in October 1995 and had to repossess the car in March 1996. Majette TR. 148. At hearing, Treasurer Rajsz stated, "For us to agree to his term would legitimately give him this vehicle when he did not have the right to have it in the first place." Rajsz TR. 109.

If Majette was legitimately attempting to reduce the financial loss to the institution by offering to repay the balance, he could have surrendered the car and cooperated in transferring title. Instead, he forced the credit union to repossess the car and continued driving the car for eleven months after defaulting, reducing the value of the car and generating additional expenses.

D. CULPABILITY

The final issue is whether Respondent acted with the necessary culpability to satisfy the third prong of the prohibition statute. The misconduct must involve personal dishonesty or an unfitness to serve the institution.

Case law provides that "personal dishonesty" includes a disposition to lie, cheat, defraud, deceive, or misrepresent. Van Dyke v. Bd. Of Gov. Of Federal Reserve System, 876 F.2d 1377, 1379 (8th Cir. 1989) (Court held that bank president's check-kiting scheme showed personal dishonesty and willful disregard for bank's safety and soundness warranting his removal and prohibition). An "unfitness to serve" has been held to require a finding of equal gravity to a finding of personal dishonesty and to require a showing of more than just a director or officer violating a law or breaching a fiduciary duty. Doolittle v. National Credit Union Admin., 992 F.2d 1531 (11th Cir. 1993). (Circuit Court vacated order to prohibit credit union president based on an unfitness to serve and remanded to the NCUA Board for reconsideration.)

This is a case where a fiduciary engaged in imprudent lending activities and stood idle and allowed damage to the credit union to increase. Respondent's idea of minimizing the loss to the credit union by proposing to repay the balance of the loan was really an attempt to avoid liability and legitimize an illegitimate loan.

The record evidences Respondent's lack of integrity and misrepresentations. On April 4, 1994, Respondent wrote a check, with his name and correct address and signature, to Power Motors in the amount of $3,500 for a 1992 Lexus. NCUA Exh. 9; Majette TR. 135. Power Motor's Sales and Leasing slip dated on that day, April 4, 1994, reflects that a balance of $24,600 was due on the car purchased by "Eric Majette". NCUA Exh. 9. On April 12, 1994, Respondent issued a $30,000 check in the name of Melvin Tucker without a loan document and deposited the funds into an account for Tucker. NCUA Exh. 4. On the same day, Majette withdraws $24,600 of the Tucker account to pay off the balance and buy the Lexus. NCUA Exh. 4. The car loan application for Tucker is not even approved by Majette until six days after purchasing the Lexus, on April 18, 1994. NCUA Exh. 2. On the earlier dates, Respondent had access to credit union checks signed in blank without the date or name of the payee.

The facts show a manager of a credit union disbursing funds from the institution for a car before an application for a car loan is even submitted let alone approved. The evidence also demonstrates that Respondent attempted to conceal the extent of his involvement in the transaction. Respondent never revealed that he had used a personal check to pay a portion of the car and that the car was purchased in his own name. In fact, in a July 17, 1995 letter, Respondent adamantly denied being in possession of the car title, despite evidence to the contrary, and claims not to have a car loan with the credit union. NCUA Exh. 7, 9. The record supports a finding that Respondent in effect illegitimately approved his own car loan and purposefully concealed that fact from the credit union.

The undersigned finds Respondent unqualified to continue participating in the affairs of any credit union. Respondent not only engaged in unsafe or unsound practices and breached his fiduciary duty but showed a complete lack of remorse and understanding for the gravity of his misconduct. He not only failed to timely minimize any loss to the institution, but brazenly caused it to incur additional expenses and legal fees by failing to return the car after repeated requests to do so. In the face of overwhelming evidence to the contrary, Respondent never admitted to any wrongdoing. The undersigned finds Majette unfit to serve as manager of the credit union.

All three prongs of the prohibition statute have been fully met and the undersigned recommends the issuance of a Prohibition Order.

V. CONCLUSIONS OF LAW

1. At all times relevant to this proceeding, NYB & FMC Federal Credit Union was a "federal credit union" as is defined in 12 U.S.C. § 1752(1).

2. Majette is an institution-affiliated party under the Act,

12 U.S.C. § 1751 et seq.

3. NCUA has jurisdiction over institution-affiliated parties and this action pursuant to 12 U.S.C. § 1751 et seq. and NCUA Rules and Regulations, 12 C.F.R. 700 et seq.

4. Respondent has engaged in unsafe or unsound credit union practices under 12 U.S.C. § 1786(g)(1)(A)(ii).

5. Respondent has breached his fiduciary duty to the credit union under 12 U.S.C. § 1786(g)(1)(A)(iii).

6. The above misconduct resulted in a loss to the credit union and a personal benefit to Respondent under 12 U.S.C. § 1786(g)(1)(B)(i) and(iii).

7. Respondent has demonstrated personal dishonesty and an unfitness to serve as an officer under 12 U.S.C. § 1786(g)(1)(C)(i) and (ii).

For all the above reasons, the undersigned recommends the issuance of an Order Prohibiting Eric Majette from participation in the conduct of the affairs of any insured credit union. A Proposed Order is attached hereto.

Walter J. Alprin

Administrative Law Judge

Office of Financial Institution

Adjudication

UNITED STATES OF AMERICA
NATIONAL CREDIT UNION ADMINISTRATION
ALEXANDRIA, VIRGINIA

In the Matter of Eric Majette Institution-affiliated party of the NYB & FMC Federal Credit Union (May 28, 1998)	Docket No. 98-0401-11

PROPOSED ORDER OF PROHIBITION

On May 28, 1998, the National Credit Union Administration Board issued a Notice of Intent to Prohibit under section 206(g) of the Federal Credit Union Act, 12 U.S.C. § 1786(g), seeking to prohibit Respondent Eric Majette from participation in the conduct of the affairs of any insured credit union.

Based upon the record of the hearing and the Recommended Decision of the Administrative Law Judge Walter J. Alprin, the National Credit Union Administration Board ("Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that an Order of Prohibition should issue.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 206(g) of the Federal Credit Union Act, 12 U.S.C. §1786(g), that Eric Majette is hereby prohibited from participation in the conduct of the affairs of any insured credit union.

This Order shall become effective upon the expiration of thirty days after service is made shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

BECKY BAKER DATE

SECRETARY TO THE BOARD

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 1998, I caused a true copy of the above to be served on each of the following by Federal Express Overnight Delivery:

Richard Schulman
Enforcement Counsel
Office of General Counsel
National Credit Union Administration

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Charlene C. Pierce
Secretary to Judge Alprin