

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

LINDA-FAY MASON HOUSING MANAGEMENT, INC. Docket No. BD 6 -12

Creditor Claim
Hmong American Federal Credit Union

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) pursuant to §709.8 of NCUA Regulations (12 C.F.R. §709.8), as an appeal of the denial by the Agent for the Liquidating Agent for Hmong American Federal Credit Union (HAFCU) of a creditor claim filed by Linda-Fay Housing Management, Inc. (Claimant).

Background and Initial Determination

On July 1, 2010, HAFCU, Claimant, and Minnesota Multicultural Media Consortium, LLC (MMMC) signed a “General Agreement” establishing Multicultural Share, LLC, (LLC), a limited liability company organized under the laws of Minnesota (General Agreement). The LLC, registered with the state on October 18, 2010, was formed for the purpose of providing loans and credit to low-income neighborhoods in the St. Paul area through participation in government-sponsored programs administered by the Small Business Administration and the U.S. Treasury, including the New Markets Tax Credit program and the Community Development Financial Institutions Fund.

As specified in the General Agreement, HAFCU, on behalf of the LLC, committed to provide loans, financial products, and related financial services throughout its low-income designated service area. MMMC agreed to provide marketing and financial

education to low-income residents, and Claimant agreed to offer affordable housing properties for rent in low-income neighborhoods. Other materials submitted by Claimant indicate that Claimant provided other support services for the LLC, including applications and support documentation in connection with participation in various programs.

The Board placed HAFUCU into liquidation on May 18, 2011, due to insolvency, and appointed NCUA's Asset Management and Assistance Center (AMAC) as Agent for the Liquidating Agent.

On July 26, 2011, attorney Daniel Le filed a claim for \$219,048 with AMAC on behalf of MMMC, alleging that HAFUCU had agreed to pay its staffing expenses. On August 10, 2011, Mr. Le sent another letter to AMAC in which he requested that AMAC disregard his first letter, sent on behalf of MMMC. This second letter stated that MMMC was "not a creditor which I represent" and that "Linda-Fay is the proper creditor of record." In this letter, Mr. Le requested that AMAC instead pay \$280,184 to Claimant, representing staffing and payroll expenses incurred by Claimant and for which, Mr. Le asserted, HAFUCU had agreed to pay. AMAC sent two follow-up letters to Mr. Le asking that he provide documentary support for the claim. Shortly after the second such letter was sent, Claimant submitted additional material in support of the claim. AMAC determined that none of the materials that had been provided lent any support for the claim, and so rejected the claim by letter of March 13, 2012. Claimant appealed that determination to the Board.

Claim

Claimant has asserted that HAFUCU was obligated to pay for staffing expenses that Claimant incurred on behalf of the LLC. In its appeal, Claimant acknowledged the absence of an operating agreement or other financial statement that would document the alleged obligation of HAFUCU, and NCUA personnel have not found anything in the file materials that could be construed as documentation for such an agreement.

In support of its position, Claimant has asserted that it provided services to HAFUCU before its failure for which Claimant is entitled to be paid, based on §207(c)(7) of the Federal Credit Union Act. 12 U.S.C. §1787(c)(7). According to Claimant, HAFUCU did not have staff to support the creation of the LLC or the day-to-day operation of a New Market Tax Credit program, so Claimant was "voted to performed [*sic*] staff services and receive salaries" on behalf of HAFUCU. Claimant has provided nothing to support or document that arrangement, and, through Mr. Le, has produced only a one-page summary purporting to identify certain staff members by name and title and the payroll expense associated with each of them.

Claimant also referred to the LLC's Articles of Incorporation and indicated that the Articles state that HAFUCU "paid staff of [Claimant]." In fact, the Articles make no mention of such a commitment. Claimant also pointed to a Memorandum of Understanding as further evidence of HAFUCU's responsibility to the LLC and Claimant.

This document, however, contains nothing that would support the position that HAFUCU made any commitment to cover expenses incurred by other LLC members. Claimant provided several other documents pertaining to the business of the LLC, but none of these included any reference to a commitment by HAFUCU to cover Claimant's payroll expense. Indeed, the General Agreement creating the LLC expressly indicated that "[a]ll partners will provide their financial part in the developing of this partnership," which language could certainly be read to mean that each LLC member would bear its own expenses in fulfilling its role in the LLC.

Analysis

Claimant asserted that the members of the LLC agreed that HAFUCU would pay Claimant's payroll expenses. Claimant has not provided minutes from any meeting in which such an agreement was discussed, any written statements acknowledging such an agreement, or any written document evidencing an intention of HAFUCU to be bound to such terms. There is no operating agreement that evidences such a payment arrangement. Claimant admitted in its own appeal letter that the purported obligation of HAFUCU is not reflected anywhere in writing.

Claimant's claim exceeds ten percent of HAFUCU's total assets at the time of its liquidation. It is difficult to imagine that a commitment of that magnitude, if it existed, would not have been clearly reflected in writing, either in an operating agreement or elsewhere. Given the absence of anything in writing reflecting a commitment by HAFUCU to cover this expense, together with Claimant's admission that such documentation is absent, Claimant has failed to prove its claim.¹

Under the Federal Credit Union Act and NCUA Regulations, the burden of proof in establishing a claim is on the Claimant. 12 U.S.C. §1787(b)(5)(D); 12 C.F.R. §709.6(a)(1). Claimant has failed to meet this burden.

Order

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

The decision of AMAC denying Linda-Fay Mason Housing Management, Inc.'s claim in the amount of \$280,184 is affirmed and the appeal of Linda-Fay Mason Housing Management, Inc. is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 709.8(c)(1)(iv)(B), this final determination is reviewable in accordance with the

¹ There are several insurmountable hurdles confronting Claimant should it attempt to argue that the agreement on which its claim relies was oral. See 12 U.S.C. §1787(d)(9)(A) and cases construing similar language in the Federal Deposit Insurance Act, e.g., *Winterbrook Realty, Inc. v. FDIC*, 820 F.Supp. 27, 30-31 (D.N.H. 1993) (finding that claim against a failed bank based on unwritten agreement should be barred where "plaintiffs could have protected themselves with a written agreement and failed to do so"); *In re NBW Commercial Paper Litigation*, 826 F.Supp. 1448, 1456 (D.D.C. 1992).

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 within 60 days of the date of this final determination.

So **Ordered** this 20th day of September, 2012, by the National Credit Union Administration Board.

Mary F. Rupp
Secretary of the Board