

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXX

Docket BD 06 -13

Request for consent from NCUA to obtain employment
with a federally insured credit union

Decision and Order

Decision

This matter comes before the National Credit Union Administration Board (“Board”) pursuant to 12 U.S.C. §1785(d) as a request by XXX for consent to obtain employment with a federally insured credit union, notwithstanding his previous conviction of a crime involving dishonesty.

Background. According to his application materials, Mr. XXX was tried and convicted of grand theft committed by an employee, a misdemeanor under California law. Mr. XXX was convicted in December 2000, when he was 21 years old. His conviction pertained to his employment as a retail clerk for a sporting goods store, during which time he illegally allowed non-employees to receive employee discounts on sales. He spent one night in jail following his arrest. He did not contest the charge, was fined \$1,000 and was ordered to pay restitution to his employer of \$2,300. According to his application, he paid the restitution and also completed thirty days of community service. Ten years after the conviction, upon Mr. XXX’s request, the judge ordered the conviction vacated.

Applicable Law. Section 205(d) of the Federal Credit Union Act (“Act”) provides that no one who has been convicted of a crime involving dishonesty or breach of trust, or who has agreed to participate in a pre-trial diversion program in connection with such a crime, may serve in any capacity as an employee or a director of an insured credit union without first having obtained the consent of the Board. 12 U.S.C. §1785(d).

Analysis. In 2008, the Board issued an Interpretive Ruling and Policy Statement (“IRPS”) describing the offenses covered, and not covered, under Section 205(d). IRPS 08-1, *Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act* (July 24, 2008); 73 Fed. Reg. 48399 (Aug. 19, 2008). The IRPS provides that a Section 205(d) application is not required, and approval is automatically granted, when a covered offense is *de*

minimis. A covered offense is considered *de minimis* if all of the following requirements are met:

- there is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- punishment for the offense is imprisonment for a term *less than* one year and/or a fine *less than* \$1,000, and the court did not incarcerate the offender;
- the conviction date or entry date for a pretrial diversion program precedes the Section 205(d) application by at least five years;
- the offense did not involve an insured depository institution or insured credit union; and
- neither the NCUA Board, under Section 205(d), nor any other federal financial institution regulatory agency, under Section 19 of the Federal Deposit Insurance Act, has previously denied consent for the same conviction or participation in a pretrial diversion program.

IRPS 08-1, at 21 (emphasis added). In this case, Mr. XXX was convicted nearly thirteen years ago of a misdemeanor crime involving dishonesty and was fined \$1,000 and ordered to pay restitution. No incarceration (other than one night in jail following his arrest) was imposed and the offense did not involve an insured depository institution. Further, as more fully discussed below, the FDIC consented to Mr. XXX's employment with an insured bank despite his criminal background. However, the crime for which Mr. XXX was convicted was punishable by a fine in an amount up to \$1,000 (which Mr. XXX was assessed). Mr. XXX could have also been sentenced to up to a year in jail. Based on these factors, the circumstances here do not meet the *de minimis* requirements as set out in IRPS 08-1.

The Board notes several considerations in this case that support approval of Mr. XXX's request. As noted above, the fine and the potential incarceration provisions for this offense are only slightly above the *de minimis* standards established by IRPS 08-1. But for these two factors, the case would qualify for automatic approval under the *de minimis* exception. The jail time served by Mr. XXX was an incident of his arrest, and not part of the sentence handed down following the conviction. As such, and as reflected in IRPS 08-1, that incarceration does not serve as a disqualifier regarding the *de minimis* exception. IRPS 08-1, at 21.

Since the time of the conviction, Mr. XXX completed his education and has held several different positions with various employers, including his current position as acting branch manager for XXX Bank. He has been active in his community, including serving as a youth athletic coach and as a referee in youth sporting events sponsored by a local Methodist church. All things considered, including Mr. XXX's age at the time of the offense and the length of time that has elapsed since then, the Board is persuaded that Mr. XXX's effort to rehabilitate himself has been successful.

Applying the considerations identified in the IRPS suggests that approval of the request is appropriate. The crime occurred almost 13 years ago, when Mr. XXX was a young man. Since the incident, Mr. XXX has maintained a clean record and has, in fact, served as an employee at an FDIC-insured bank. Although Mr. XXX has not identified a particular credit union for which he seeks employment, his application indicates he is interested in a branch manager position, which is, according to the application, the position he currently holds with XXX Bank. If he

succeeds in obtaining a branch manager position, that employment would place him in a position to influence policy and overall direction of the credit union. He would, moreover, be in an operational position with direct access to both funds and records. In view of the evidence he has provided supporting his rehabilitation, such service by Mr. XXX on behalf of a credit union is unlikely to constitute a threat to the safety and soundness of the institution or the interests of its members. Given the nature of the crime, the amount of time that has elapsed since then, and the fact that the official criminal record involving it has been vacated, such service is also unlikely to undermine public confidence in the credit union.

Another compelling factor in this case is the action taken by FDIC in response to Mr. XXX's request for approval from that agency. Within the context of insured banks, FDIC administers a statute that is essentially identical to §205(d) of the Act. Thus, FDIC must review and make determinations on matters involving proposed employment in the banking sector of individuals with criminal backgrounds. 12 U.S.C. §1829. In response to Mr. XXX's request, FDIC issued its determination on March 26, 2012, approving his proposed employment. Although the Board has considered this matter independently and rendered its own judgment, the Board considers the fact that FDIC has already made a favorable determination on Mr. XXX's request to be significant.

Waiver. IRPS 08-1 indicates that consent requests are to be submitted by an insured credit union on behalf of the person who will participate in its affairs. On a case-by-case basis, however, the Board may grant a waiver and allow the person to file an application in his or her own right where substantial good cause exists for granting a waiver. IRPS 08-1, at 24. In this case, Mr. XXX has already sought and obtained the consent of the FDIC, and he is already employed as a bank branch manager. Given his current position, he is distinguishable from someone who merely has a vague intention to seek a position in the financial sector. In view of that, along with the fact of FDIC's earlier decision, the Board is comfortable in exercising its discretion in this case and proceeding with its own determination at this time.

Limitation. The Board's decision in this case is expressly limited to its consent under §205(d) of the Act. Should Mr. XXX propose to obtain employment with an insured credit union characterized as newly chartered or in troubled condition, as those terms are defined in NCUA regulations, he and his prospective employer will be required to comply with applicable guidelines and procedures for obtaining NCUA's consent under those circumstances, as contemplated by §212 of the Act and §701.14 of NCUA regulations. 12 U.S.C. §1790a; 12 CFR §701.14.

Order

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

The Board finds sufficient good cause to, and does hereby WAIVE, the requirement that the application for consent must be submitted by an insured credit union on behalf of XXX.

The Board hereby APPROVES the request filed by XXX and grants its consent pursuant to §205(d) of the Act for him to seek employment with a federally insured credit union.

So **ORDERED** this 1st day of November, 2013, by the National Credit Union Administration Board.

Gerard Poliquin
Secretary of the Board