

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**XXXX**

Docket No. BD 01-14

Share Insurance Appeal  
Taupa Lithuanian Credit Union

**Decision and Order on Appeal**

**Decision**

This matter comes before the National Credit Union Administration Board (Board) pursuant to §745.202 of NCUA Regulations (12 C.F.R. §745.202), as an appeal of the determination made by the Agent for the Liquidating Agent for Taupa Lithuanian Credit Union (Taupa). The determination involves the amount of share insurance available to the traditional Individual Retirement Account (IRA) maintained by XXXX (Claimant) at Taupa.

**Background and Initial Determination**

The Director of the Ohio Department of Financial Institutions closed Taupa on July 12, 2013, and appointed the Board as Liquidating Agent. Taupa, located in suburban Cleveland and having assets of approximately \$24 million, had been victimized by fraud perpetrated by its former manager, who embezzled a substantial sum of money over several years. In connection with this fraud, the former manager has been convicted of federal criminal charges and awaits sentencing. There was no conservatorship in this case; instead, Taupa was placed immediately into liquidation. The Agent for the Liquidating Agent arranged a sale of most of the Taupa loans to another Cleveland area credit union, but its share accounts were simply paid out to the members.

Following the appointment of the Liquidating Agent, representatives of NCUA's Asset Management and Assistance Center (AMAC), acting as Agent for the Liquidating Agent, conducted a review and evaluation of all share accounts at Taupa to determine the scope and extent of share insurance coverage. As determined by the Agent for the Liquidating Agent, the balance in Claimant's IRA as of the date of liquidation was \$320,514.53. The Agent for the Liquidating Agent determined that the amount of insurance available to Claimant's IRA was \$250,000. This left \$70,514.53 uninsured, for which Claimant was issued a liquidation certificate. Claimant challenged this determination and appealed the Agent for the Liquidating Agent's final determination to the Board.

## Analysis

In accordance with applicable NCUA regulations, funds held in a traditional individual retirement account (IRA) described in §408(a) of the Internal Revenue Code (26 U.S.C. §408(a)) are insured in the aggregate to a maximum of \$250,000. 12 C.F.R. §745.9-2(c)(1)(i).

Claimant has advanced two arguments in support of his view that the foregoing limit should not be applied in his case. First, he states that he relied on Taupa's Call Report as of December 31, 2012, which indicated that Taupa did not have any funds that were uninsured. He included a copy of page four of the filed report with his appeal, which contains a schedule titled "NCUA Insured Savings Computation." The first line of the schedule purports to show "Uninsured IRA and KEOGH Member Shares and Deposits" and depicts no uninsured amounts, as evidenced by the zero Taupa had inserted for the column marked "Uninsured Amount." In fact, Taupa inserted zeroes for all of the possible types of uninsured shares and deposits, including those owned by both members and non-members. Claimant states that he relied on this information, which he asserts was "reviewed and verified" by the NCUA and state regulators, in deciding whether to keep his IRA at Taupa. In effect, Claimant's argument is that Taupa represented to him that his IRA was fully insured. Because the filing on which the representation was made was submitted to NCUA, Claimant argues that the agency essentially vouched for and confirmed the accuracy of that representation.

There are several problems with this argument. The law in this area is quite clear: account holders are responsible for assuring that their funds are adequately insured. Mistakes or deliberately misleading advice by credit union employees concerning account configuration do not afford a basis for extraordinary insurance coverage outside the parameters and limits prescribed by rule. *See, e.g., Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947) (holding that a Federal insurance program cannot be bound by representations as to the scope of insurance coverage that were contrary to regulations); *see also Mendrala v. Crown Mortgage Co.*, 955 F.2d 1132, 1141 (7th Cir. 1992) (court refused to bind Federal instrumentality to representations made by a contractor that were contrary to terms in written promissory note assigned to the instrumentality). This doctrine would apply even if the mistaken advice came from one of NCUA's own employees, for example in the case of a conservatorship. *See Kershaw v. Resolution Trust Corp.*, 987 F.2d 1206, 1210 (5th Cir. 1993) (even where a Resolution Trust Corporation (RTC) agent allegedly gave assurance of insurance on a petitioner's account, the RTC did not become liable for the petitioner's failure to properly determine insurance coverage); *see also Heckler v. Community Health Services of Crawford County*, 467 U.S. 51, 63 (1984) ("[T]hose who deal with the Government ... may not rely on the conduct of Government agents contrary to law.")

The law is also clear with regard to Claimant's assertion that NCUA, by virtue of accepting and posting Taupa's Call Report filing, essentially verified its accuracy, and that he was entitled to rely on that verification. Case law on this point establishes that a financial regulator's conduct in connection with regulating or examining an insured institution does not give rise to a claim or defense on behalf of a third person. *See, e.g., Harmsen v. Smith*, 586 F.2d 156, 157 (9th Cir. 1978) (in response to a claim that the Office of the Comptroller of the Currency (OCC) had been negligent in conducting an examination, court found that OCC owed no duty to the bank or its

shareholders) and *First State Bank of Hudson County v. United States*, 599 F.2d 558 (3d Cir. 1979) (finding that the Federal Deposit Insurance Corporation (FDIC), in conducting its examination, was not acting for the benefit of the bank or the bank's depositors and other creditors). The court in *Hudson County* noted that, although an examination by the FDIC might reveal irregularities that might inure incidentally to the benefit of the bank, its primary purpose is for the protection of the bank insurance fund. *Id.* at 563. The court ultimately held “that the Federal Deposit Insurance Act imposes no duty on the FDIC to warn the officers and directors of a bank about wrongdoing committed by one of its officials and discovered by the FDIC. The duty to discover fraud in their institution is upon bank directors. . . .” *Id.* at 563-64.

NCUA had no duty to identify or correct alleged mistakes in the call reports filed by Taupa, nor did its failure to do so give rise to any claim by Taupa’s members. Accordingly, the issue has no bearing on the amount of share insurance available to those members, including Claimant.

In addition to the foregoing, policy considerations have a bearing on the determination of this appeal. Claimant was on the board of Taupa at the time of its liquidation. As such, he had a fiduciary obligation to oversee and manage its affairs. Although directors are not typically expected to sign off on the quarterly filing of the call report, they have some obligation to understand and approve of the financial statements on which the call report is based. The Board discounts Claimant’s assertion that he was misled by inaccuracies in a call report filed by the very credit union for which he served as a director.

Claimant’s second argument is equally unavailing. He asserts that, following the liquidation, he met with specified NCUA personnel who informed him there were no uninsured balances at Taupa, including specifically his own IRA. The Board understands, however, based on staff follow-up with the NCUA employee identified by Claimant, that agency personnel made no such assurances. Instead, that employee recalled a meeting with Claimant in which she discussed the circumstances involving the closing of Taupa in general terms. She recalled specifically that she had not made any determinations as to the availability of share insurance concerning any accounts, including any owned by Claimant. This information was confirmed by another NCUA employee who was in the same meeting with Claimant, who specifically recalled making no assurances to Claimant that all accounts at Taupa were fully insured. According to this employee, when Claimant raised the issue concerning his own account, the employee did specifically advise that his account appeared to be above the share insurance limit. The employee informed Claimant that AMAC personnel would conduct a thorough review before any final determination was made.

Even if an NCUA employee had informed Claimant, post liquidation, that his IRA was fully insured, it would have had no impact. Only the Board, acting through a duly authorized Liquidating Agent or duly appointed Agents for the Liquidating Agent, has authority to make insurance determinations. 12 U.S.C. §1787(d); 12 C.F.R. §745.200(a). As noted above, moreover, timely but erroneous advice concerning insurance coverage, whether from a credit union employee or an employee of the government, is not sufficient to support a finding of share insurance that is inconsistent with the rules contained in Part 745 of NCUA’s regulations. The regulations precisely delineate the procedures for calculating and paying share insurance. Under this authority, matters relevant to an insurance determination are limited and include whether the agency: (i) properly determined a claimant’s account balance at liquidation (for example, if the

credit union's records properly reflected whether dividends that had been declared were properly posted to the account); (ii) properly characterized the account (e.g., single ownership, joint account, or trust account); or (iii) properly withheld payment of a portion of the insured account based on a liability of the account holder to the insured credit union. *See* 12 C.F.R. §§745.3 – 12; 745.200(a)-(b); and 12 U.S.C. §§1787(d)-(o). Matters outside of this arena are simply not relevant to the determination of the amount of share insurance available to a given account relationship.

### **Order**

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

The appeal by XXXX seeking Federal share insurance coverage in excess of \$250,000 for the traditional individual retirement account he maintained at Taupa Lithuanian Credit Union is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 745.203(c), this final determination is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code, by the United States District Court for the Federal judicial district where Taupa Lithuanian 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 4<sup>th</sup> day of June, 2014, by the National Credit Union Administration Board.

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Gerard Poliquin  
Secretary of the Board