

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX CREDIT UNION

Docket BD 03 -17

Request for Consent from NCUA Board to reinstate
XXXX

Decision and Order

Decision

This matter comes before the National Credit Union Administration Board (Board) as a request by XXXX Credit Union (XXXX) for consent to reinstate XXXX as an assistant branch manager, notwithstanding XXXX's previous conviction of a crime involving dishonesty.

Background. Section 205(d) of the FCU Act specifies that an individual convicted of a crime involving dishonesty or breach of trust, or who has agreed to enter a pre-trial diversion or similar program in connection with prosecution for such an offense, may not serve as an employee or director of an insured credit union without first having obtained the written consent of the NCUA Board.¹ XXXX submitted its request to Region IV pursuant to this provision in the FCU Act.

Conviction. As set forth in the request, XXXX was 22 in 1996 and employed as a cashier at a building supply store. Store security confronted her with an accusation that she had processed a merchandise return improperly, resulting in a loss to the store. XXXX denied any wrongdoing but was persuaded to admit to theft of more than \$150, for which she was then immediately arrested and charged with a Class C felony under Missouri law. She pled guilty to the charge and was sentenced to probation and ordered to pay restitution (\$259) and court costs (\$91), along with 40 hours of community service. After completing her community service and serving two years of her four-year probation, the court granted an early discharge from probation and ordered the record sealed. The conviction was revealed to XXXX after XXXX was promoted to a position that required her to undergo the relatively more extensive background check associated with obtaining a federal mortgage loan originator license.

IRPS 08-1. In 2008, the Board issued an Interpretive Ruling and Policy Statement (IRPS) describing the scope of offenses covered under Section 205(d).² The IRPS provides that a Section 205(d) application is not required, and approval is automatically granted, when a covered

¹ 12 U.S.C. §1785(d)

² 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)

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 punishment imposed by the court did not include incarceration;
- 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. In this case, four of the five criteria outlined above are met. However, the potential punishment XXXX faced included imprisonment for a term of up to seven years, which is significantly greater than that set forth by the IRPS. Thus, even though XXXX received probation, rather than incarceration, and even though the fine she was assessed was significantly less than \$1,000, the IRPS refers to the potential range of punishment, not the sentence actually handed down to the defendant. Accordingly, the *de minimis* exception is not available.

Regional Office Evaluation. The Regional Director supports this application. As documented in the case file, the Regional Director notes that XXXX's conviction occurred almost 21 years ago, when she was a young woman, and involved a relatively small amount of money. She has avoided additional clashes with law enforcement since that time, and has, in fact, successfully served as an employee of XXXX for approximately five years.³ The Region notes that, while the position to which she was promoted (assistant branch manager) entails significant responsibility and direct interaction with other employees and members, XXXX is an extremely well-run credit union, with excellent ratings and a strong net worth ratio in excess of 14 percent. The Region characterizes XXXX's management team as "tenured and knowledgeable," and the Region believes management will have no difficulty in supervising XXXX. The Region notes that the credit union's bonding company has confirmed that XXXX's fidelity coverage remains in place, and that the bonding company has waived any right to terminate the bond based on the conviction. Finally, the Region also notes that the state supervisor has posed no objection to the proposed employment for XXXX.

Analysis. The Board notes that three aspects of this case support approval of XXXX's service on behalf of XXXX. Each of these is outlined below.

Time elapsed. XXXX's conviction occurred over twenty years ago. At age 22, she was a young woman at the time of the arrest, with limited knowledge and life experience. She completed her sentence, including payment of the fine and restitution, as well as community service, and the judge closed out her probation after less than two years (of an initial sentence of four years).

³ Her conviction did not show up on the initial background check because the record was sealed following her completion of probation.

Since then she has avoided any further encounters with law enforcement, and has engaged in several community service projects on behalf of XXXX. According to the request for consent submitted by XXXX, XXXX has been engaged in supporting local education, including an “adopt a school” program and a local education foundation gala. She has also represented the credit union at a local chamber of commerce networking breakfast and has served as a Special Olympics volunteer.

Performance as an employee. XXXX has been employed with XXXX for five years. Her performance during that time has been exemplary. Within the past year, she was selected to be part of XXXX’s leadership program, which provided her an opportunity to work with senior management on special projects. According to XXXX’s request for consent, she seized this opportunity and demonstrated in one such project presentation that she had definite leadership qualities, including hard work, research skills, and dedication to the project. As a manager, she has shown promise as well, mentoring and encouraging her staff to perform at their best. She gets along well with both staff and management and represents the credit union in various community service projects. Insofar as the record of her conviction is sealed, there is little to no likelihood that it would come to light later in a way that could create a poor reflection on XXXX or cast it in a negative light.

Coerced confession and guilty plea. The foregoing considerations are sufficient, in themselves, to warrant favorable consideration of this case by the Board. Approval would be consistent with the approach adopted by the Board in other recent cases involving criminal convictions, which are typically cases of youthful indiscretion followed by years of productive living and avoidance of further criminal conduct. In this case, however, there is reason to suspect whether there was any criminal behavior at all.

As noted above, XXXX was 22 at the time of the incident. Working as a cashier, she was confronted by store security personnel where she worked and accused of collaboration in an illegal scheme to fraudulently process a merchandise return. She denied any knowledge of the scheme and pointed out that a local store manager would have had to approve of the return. She was told that the store manager had left the employ of the store and that she was therefore the only suspect. Despite her denial, she was told that, as a young African-American woman, her word as against store management would never prevail. She was also told that she need only confess so that the matter could be closed out, and that having done so the matter would be considered resolved. Instead, however, following her confession she was immediately arrested and charged with a felony. At trial she initially pled not guilty but changed her plea to guilty for fear that a conviction would jeopardize the security clearance that her father needed for his job.

Order

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

The Board hereby APPROVES the request filed by XXXX Credit Union and grants its consent for XXXX to reinstate XXXX as an assistant branch manager.

So **ORDERED** this 19th day of July, 2017, by the National Credit Union Administration Board.

Gerard Poliquin
Secretary of the Board