

XXX STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXX FEDERAL CREDIT UNION

Docket BD 05 -13

Request for Consent from NCUA to Reinstate XXX

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 Federal Credit Union (“XXX”) for consent to reinstate Ms. XXX as lead loan officer, notwithstanding her previous conviction of a crime involving dishonesty.

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).

Criminal Conviction; Suspension. On June 23, 2009, Ms. XXX was arrested and charged with grand larceny in the third degree, welfare fraud in the second degree, and three counts of offering a false instrument for filing. The charges pertained to her failure to disclose all the members of her household in connection with her application for public assistance benefits for child care support. Specifically, between July 2004 and January 2009, Ms. XXX repeatedly failed to make appropriate disclosures concerning her household circumstances, which is used in determining eligibility for benefits under New York Social Services law. This ongoing failure to properly disclose resulted in her receipt of benefits to which she was not entitled. On July 23, 2010, she entered a guilty plea to fourth-degree grand larceny. On August 30, 2010, the Jefferson County (NY) Court sentenced her to five years probation and ordered her to pay \$22,216 in restitution, representing the benefits that she had illegally obtained. The Board understands that she is current in paying restitution in the amount of \$25 per month to the state of New York and making monthly visits to her probation officer, as required by her sentence.

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 describes the pertinent factors that NCUA will consider in evaluating a request for consent under §205(d) of the FCU Act. These include whether the person has demonstrated his or her fitness to participate in the conduct of

the affairs of an insured credit union, and whether the employment, affiliation, or participation by the person in the conduct of the affairs of the insured credit union may constitute a threat to the safety and soundness of the institution or the interests of its members, or threaten to impair public confidence in the insured credit union. Additional considerations identified in IRPS 08-1 include the following:

- The nature of the covered offense;
- Evidence of the affected individual's rehabilitation, including specifically the person's reputation, the amount of time that has elapsed since the conviction, and the person's age at the time of the conviction;
- Whether the person's proposed service on behalf of the credit union poses a potential threat to its safety and soundness, taking into account the position to be held, the amount of influence or control over the affairs of the credit union the individual is likely to exert, and the capability of the credit union to supervise and control the individual;
- The availability of bond coverage; and
- Any other additional factors in the specific case that appear relevant.

NCUA's Region I Director conducted an initial evaluation of the request using the criteria outlined in IRPS 08-1 and determined he could not support the request. As discussed in detail below, the Board accords substantial weight to the analysis and recommendation of the Regional Director.

The main concern of the Regional Director is the potential threat to the safety and soundness of XXX that reinstatement of Ms. XXX represents. XXX is a small credit union (assets of \$4.9 million as of the June 30, 2013 Call Report), with only three employees and limited control systems. Ms. XXX would occupy a relatively senior position, with a broad range of access to credit union systems and resources. Given its size and relatively small staff, XXX's ability to exercise supervision and control over Ms. XXX is diminished.

The Regional Director's sensitivity to this issue is heightened because each of XXX's last two managers was fired after having been caught embezzling funds from the credit union. In the first, more significant case, former manager XXX confessed to embezzlement of over \$35,000 from XXX over the course of several months during 2011.¹ Her successor, XXX, was arrested in July 2013 following the discovery by the assistant manager of suspicious transactions. Mr. XXX admitted to inappropriately funding his own personal account by booking fictitious expenses in the approximate amount of \$600.² The notoriety of these incidents, coupled with the fact that Ms. XXX's conviction was also widely known throughout the community in which XXX operates, led the Regional Director to conclude that employment of Ms. XXX could pose a threat to the safety and soundness of XXX.

The Regional Director has also noted that the nature and extent of the crime itself is significant, including both the dollar amount involved and the fact that Ms. XXX's dishonesty extended over a period of several years.

¹ Ms. XXX pleaded guilty to charges of third degree larceny on May 8, 2012, and was sentenced to five years probation and ordered to pay restitution. NCUA issued a prohibition order against her in March 2013.

² Mr. XXX was immediately terminated.

The Regional Director has also addressed the question of rehabilitation. He first noted that Ms. XXX was 39 at the time of her arrest, an indication that this was not a youthful indiscretion. Furthermore, only three years have elapsed since Ms. XXX was convicted, which creates doubt as to whether enough time has passed to support the conclusion that Ms. XXX has been rehabilitated.

The Board has also considered the arguments put forward by XXX in support of its request, including that Ms. XXX rose through the ranks while working for XXX and performed the duties of her position well, as reflected in recommendation letters from individuals familiar with Ms. XXX's work that were included with the request. XXX also advocates that Ms. XXX has established her rehabilitation, as evidenced by her continued, faithful performance of the obligations of her sentence, including regular meetings with her probation officer and her timely restitution payments. XXX also points to the fact that Ms. XXX has obtained, with the support of her probation officer, a temporary Certificate of Relief from Disabilities, issued by the Jefferson County (NY) Court. The effect of the Certificate of Relief is to render inoperative certain provisions in the criminal law, such as forfeiture of the right to vote, that would otherwise automatically apply to an individual convicted of a felony.

XXX also notes that Ms. XXX has supported civic involvement initiatives of XXX, including work on behalf of the American Heart Association, quarterly food drives for the benefit of a local food bank, and volunteer work on behalf of the Salvation Army soup kitchen and pancake breakfast.

Given that compliance by Ms. XXX with the terms of her sentence is mandatory, the Board does not ascribe too much weight to the fact that she has been and is presently in compliance with those terms. The Certificate of Relief is explicitly revocable at any time before the five year anniversary of her conviction if Ms. XXX should fail to fulfill all of the conditions of her sentence. Ms. XXX's charitable and volunteer work is admirable and does speak well of her. However, the Board believes it is simply not clear in this case that enough time has passed since the conviction to support a definitive judgment as to her rehabilitation.

Another, potentially more significant consideration tends to undermine the value of these recommendation letters and XXX's assessment of Ms. XXX and her performance. XXX commissioned a forensic CPA audit following the arrest of Ms. XXX, as discussed above. As more fully discussed in the CPA's report, there are questions concerning whether Ms. XXX may have breached certain internal control protocols and whether these actions may have facilitated and enabled Ms. XXX in the commission of her crime. Specifically, these involve whether Ms. XXX allowed Ms. XXX to use the key to her teller drawer on certain occasions. The Audit Report also describes several failures to effect proper balancing and cash counting procedures pertaining to the ATM located at the branch where Ms. XXX worked with Ms. XXX, from which Ms. XXX admitted stealing \$18,000. The Audit Report concludes that controls that were in place were not being utilized, and that this created an environment in which "misappropriation of funds can and did take place." Of particular concern to the Board is the observation, as noted in the Audit Report, that Ms. XXX had previously executed proper dual controls when working with other employees.

Conclusion. The failure by Ms. XXX to make appropriate disclosures in connection with her applications for welfare benefits was ongoing for a period of almost five years. Ms. XXX was convicted only three years ago, when she was age 39. She is still bound by provisions of the sentence, including payment of restitution and visits to her probation officer. The credit union for which she seeks to work is small, with only three employees and limited resources devoted to internal control. Victimized by embezzlement by its last two managers, it is a CAMEL 4 and operates under an LUA. There are questions about whether Ms. XXX's apparent failure to follow established internal control protocols facilitated or enabled some of that embezzlement to occur. The position to which Ms. XXX would be reinstated is relatively senior, with broad access and control over credit union business and systems. The Regional Director believes her appointment presents a potential threat to the safety and soundness of the institution.

Order

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

The Board hereby DENIES the request filed by XXX Federal Credit Union for consent to reinstate Ms. XXX as lead loan officer.

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

Gerard Poliquin
Secretary of the Board