

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**XXXX**

Docket No. BD-10-19

Appeal from determination by the  
XXXX Region

**Decision and Order on Appeal  
Decision**

This matter comes before the National Credit Union Administration Board (Board) under 12 C.F.R. Part 746, Subpart B, as an administrative appeal of XXXX (Petitioner)<sup>1</sup> of the determination by the Acting Regional Director for the XXXX Region (Region) denying his application to serve as Chief Executive Officer (CEO) for XXXX (XXXX), a credit union in troubled condition.<sup>2</sup>

**Background**

Petitioner is appealing the determination by the Region to deny his change-in-official application to serve as CEO of XXXX, a troubled credit union. Pursuant to Section 212 of the Federal Credit Union (FCU) Act and §701.14 of the NCUA’s regulations, a credit union in troubled condition must notify the NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff.<sup>3</sup> The NCUA may disapprove an individual’s service if it finds that the competence, experience, character, or integrity of the individual indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union.<sup>4</sup>

Petitioner’s application was initially denied by the Region on October 1, 2019 based on concerns about his character and integrity, primarily stemming from his conduct while serving as CEO at XXXX (XXXX) in XXXX, XXXX from XXXX to XXXX. He subsequently requested

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<sup>1</sup> Also known as XXXX, XXXX, or XXXX.

<sup>2</sup> In the case of an insured natural person credit union, “troubled condition” means: (1) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or (2) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA, after an on-site contact, or its state supervisor; or (3) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the FCU Act, 12 U.S.C. 1788, that remains outstanding and unextinguished. *See* 12 C.F.R. §701.14(b)(3).

<sup>3</sup> *See* 12 U.S.C. §1790a; 12 C.F.R. §701.14.

<sup>4</sup> *See* 12 C.F.R. §701.14(e).

reconsideration, and the Region upheld its initial decision and issued a determination on November 14, 2019, again denying Petitioner's application due to concerns about his character and integrity based on past performance during his tenure as CEO of XXXX, and "what appears to be a lack of full candor in connection with [his] application for CEO of [XXXX]." Petitioner appealed the Region's determination by letter to the Secretary of the NCUA Board on December 2, 2019.<sup>5</sup> His appeal is moot, however, because the CEO position at XXXX has been filled by another candidate. Petitioner acknowledges the matter is no longer in controversy in his notice of appeal, noting at the outset that "it is no longer viable (from a practical standpoint) for me to continue to pursue the specific position as CEO of [XXXX]."

## **Discussion and Analysis**

Under §746.205(a) of the NCUA's regulations, the Special Counsel shall conduct an initial review of all appeals filed with the Secretary of the Board for conformance with the agency's appeal rules, and "shall also make an evaluation concerning whether an appeal is moot or is otherwise not in good order, and shall make a recommendation for the disposition of all such appeals to the Board."<sup>6</sup>

Based on an initial review, the appeal is not in good order. The senior executive position for which Petitioner applied for the NCUA's approval is no longer available; thus, the matter is moot and no longer in controversy and should be dismissed. Here, dismissal is proper because even if the Board made a determination on the merits of this case, there would be no practical remedy for Petitioner. That is, if the Board were to overturn the Region's determination, grant the appeal, and consider the appeal on the merits, the Board could not provide any remedy to Petitioner in any case because the senior executive position at issue is now filled.

## **Conclusion**

Based on an initial review of Petitioner's notice of appeal, the appeal is not in good order. The senior executive position for which Petitioner applied for the NCUA's approval is no longer available; thus, the matter is moot.

## **Order**

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

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<sup>5</sup> Section 746.204(b) of the NCUA's regulations requires that "an appeal of an initial agency determination disapproving an individual serving as a director, committee member or senior executive officer pursuant to §701.14 of this chapter must be filed with the Secretary of the Board within 15 calendar days of the date of the initial agency determination." 12 C.F.R. §746.204(b). Petitioner's appeal of the Region's November 14, 2019 determination (received by Petitioner on November 15, 2019) was received by the Secretary of the Board on December 9, 2019; however, tracking information from the U.S. Postal Service indicates Petitioner's appeal was delivered to the NCUA's central office mailroom on December 2, 2019. Thus, we consider the appeal timely.

<sup>6</sup> 12 C.F.R. §746.205(a).

The appeal of XXXX of the determination by the Acting Regional Director for the XXXX Region denying his application to serve as CEO for XXXX is DISMISSED, with prejudice, for mootness.

The Board's decision constitutes a final agency determination, which is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code. Such action must be filed within 60 days of the date of this final determination.

So **Ordered** this 20<sup>th</sup> day of February, 2020, by the National Credit Union Administration Board.

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Gerard Poliquin  
Secretary of the Board