

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX CREDIT UNION

Docket No. BD-01-19

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 XXXX (formerly XXXX) to be reinstated as Mortgage Loan Processor, notwithstanding XXXX' previous participation in a pretrial diversion program in connection with a crime involving dishonesty or breach of trust.

Background. Section 205(d) of the Federal Credit Union Act (FCU Act) specifies that an individual convicted of a crime involving dishonesty or breach of trust, or who has agreed to enter a pretrial 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 the Regional Director of the Southern Region pursuant to this provision in the FCU Act.

XXXX has been employed at XXXX for the past two-and-a-half years, and was recently promoted to the credit union's mortgage department. In the course of registering for a national Mortgage Licensing System number, a background check on XXXX revealed a criminal offense, which prompted the credit union to place her on administrative leave. XXXX went through a standard pre-employment background check when she was first hired, but this preliminary check did not reveal her criminal record.

Criminal Charge. As set forth in the request, XXXX was 17 years old in 2004 when the offense occurred. She was with a group a friends at a department store and other members of the group were shoplifting. XXXX was charged with the offense of theft of property between \$500 and \$1500, at that time a Class A misdemeanor under Texas law, punishable by (1) a fine not to exceed \$4,000; (2) confinement in jail for a term not to exceed one year; or (3) both such fine and confinement.² Her sentence included 100 hours of community service, a fine of \$200, court costs in the amount of \$243, and payment of \$40 per month during 18 months of community supervision. An Order Deferring Adjudication of the misdemeanor offense was dismissed on November 14, 2005, and XXXX was discharged from community supervision after successfully completing the

¹ 12 U.S.C. §1785(d).

² See Tex. Penal Code §§ 12.21 and 31.01 (1994).

community supervision term. According to the application, XXXX entered into the deferred adjudication *pro se* and did not fully understand its lasting consequences. It does not appear that XXXX willfully misstated facts or concealed her record from the credit union.

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).³ 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 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.⁴

In this case, four of the five criteria outlined above are met. However, the potential punishment XXXX faced included a fine not to exceed \$4,000. This exceeds the standard set forth by the IRPS. Thus, even though XXXX' offense was punishable by imprisonment for a term less than one year, her punishment did not include incarceration, and she successfully completed a pre-trial diversion program, 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, outlined in greater detail in his memorandum to the General Counsel dated January 16, 2019, the Regional Director notes that the incident occurred approximately 14 years ago when XXXX was a teenager. In the Regional Director's opinion, the incident demonstrates all the hallmarks of a youthful mistake. XXXX is now 32 years old and has avoided additional incidents with law enforcement since that time.⁵ The Region notes that XXXX has worked at XXXX for over two years and has been a very dependable and trustworthy employee. The federally insured state-chartered credit union is generally well-run, with a net worth ratio of XXXX, assets of over XXXX, and a XXXX rating, and the Region has not raised any safety and soundness concerns about the reinstatement of XXXX in the role of Mortgage Loan Processor. The position is effectively entry-level and largely clerical, and her work will be highly regulated by procedure and closely supervised. XXXX would not exercise supervisory or managerial authority in her position. The Region confirmed that the Texas Credit Union Department is aware of XXXX's application for consent to reinstate XXXX and the state regulator poses no objection to the application.

³ 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).

⁴ IRPS 08-1, at 21.

⁵ The Region conducted a background check and found no adverse information.

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

Time elapsed. XXXX was a teenager at the time of the offense and is now 32 years old. Approximately 14 years have elapsed since her successful completion of the pretrial diversion program. XXXX successfully completed 18 months of community service and all other conditions specified in the court order. The Region indicates there was no subsequent adverse information on XXXX found after a background check performed by its office.

Evidence of rehabilitation. XXXX has demonstrated productive living in the considerable time that has elapsed since the indiscretion. She has been employed at XXXX for over two years and the credit union reports that she has been a dedicated and trustworthy employee, demonstrating both high ethics and performance. Although XXXX went through a standard pre-employment background check upon hire and did not disclose the offense it does not appear XXXX willfully concealed her record; rather, she seems to have misunderstood the long term implications of the deferred adjudication, which she entered into without the benefit of legal counsel.

Amount of influence and control. XXXX will be reinstated to employment as a Mortgage Loan Processor at XXXX. In this position, XXXX will not exercise influence or control over the management or affairs of the credit union. The position is essentially an entry-level, clerical position that will offer limited to no opportunity to influence credit union policy. While she may contribute suggestions to management for mortgage processing procedures, XXXX will not have unilateral authority to shape credit union procedure.

Other relevant factors. At the time of the offense, XXXX had only recently turned 17, making her eligible to be charged as an adult. Had she been one month younger, it would have been a juvenile offense. Additionally, XXXX claims she did not actually take any of the store merchandise, but was with a group of friends, some of whom were shoplifting. Nevertheless, she appears to have accepted responsibility for the offense and successfully completed the terms of a pretrial diversion program. In this case, XXXX' denial of actually having committed the crime presents another factor that supports a favorable consideration by the Board.

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 Credit Union to reinstate XXXX to serve as Mortgage Loan Processor.

So **ORDERED** this 14th day of March, 2019, by the National Credit Union Administration Board.

Gerard Poliquin
Secretary of the Board