

**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD**

**ALEXANDRIA, VIRGINIA**

<b>In the Matter of</b>  FRANK J. JESS A Person Participating in the Affairs of the United Poles Perth Amboy Federal Credit Union Charleston, South Carolina	Docket No. 97-11-01-II
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**Final Decision and Orders**

**Final Decision**

This case is before the National Credit Union Administration (NCUA) Board for a final decision, following Administrative Law Judge (ALJ) Walter M. Alprin's issuance of a Recommended Decision: 1) prohibiting Frank J. Jess (Respondent) from further participation in any manner in the conduct of the affairs of any federally insured depository institution and any other institution, credit union, agency and entity referred to in 12 U.S.C. 1786(g); and 2) imposing a civil money penalty against Respondent in the amount of \$100,000 pursuant to

12 U.S.C. 1786(k)(2)(B).

**I. Procedural Background**

On November 24, 1997, the NCUA Board issued a Notice of Charges and Hearing for an Order to Prohibit under 12 U.S.C. 1786(g), against Respondent Frank J. Jess, former director of the United Poles Perth Amboy Federal Credit Union (credit union), Perth Amboy, New Jersey. A Notice of Assessment of Civil Money Penalty was issued against Respondent at the same time. The Notices charged that Respondent, while an official of the credit union, collected fees in violation of NCUA Regulations, engaged in unsafe and unsound practices, breached his fiduciary duty and exposed the credit union to abnormal risk of loss. The case was submitted to the Office of Financial Institution Adjudication and assigned to ALJ Alprin.

A consolidated hearing on the two Notices was set for April 28, 1998. At the request of both parties, the hearing was continued until May 20, 1998. On April 27, 1998, an order was issued providing notice of the change in hearing date and location. Respondent failed to appear at the hearing on May 20. Section 747.21 of the NCUA Regulations (12 C.F.R. 747.21) addresses failure to appear at a hearing:

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as

alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice.

On June 17, 1998, the ALJ issued a Recommended Decision based on Respondent's failure to appear at the hearing. The Recommended Decision is adopted and incorporated into this Decision and is found at Appendix A. Pursuant to Section 747.21, the ALJ stated that Respondent had waived his right to a hearing, deemed the facts alleged in the Notices to be true and recommended the relief sought in the Notices. The ALJ recommended prohibiting Respondent from further participation in any manner in the conduct of the affairs of any federally insured depository institution and any other institution, credit union agency and entity referred to in 12 U.S.C. 1786(g). The ALJ recommended imposing a civil money penalty against Respondent in the amount of \$100,000.

Upon issuance of his recommended decision, the ALJ certified the record to the NCUA Board. 12 C.F.R. 747.38. The parties were then given the opportunity to file exceptions to the recommended decision. 12 C.F.R. 747.39. No exceptions were filed. By letter dated July 27, 1998, the parties were notified that the proceeding was submitted to the Board for final decision. 12 C.F.R. 747.40.

## II. Factual Background

The facts, as alleged in the two Notices, are deemed to be true. The Notices are incorporated into this Decision and are found at Appendix B. Briefly, the facts are as follows. Respondent was a director of the credit union for approximately twelve years. He was removed by the credit union's board of directors in February 1993 for failure to attend three consecutive board meetings. Respondent is also an attorney admitted to practice in the state of New Jersey, where the credit union is located. Respondent acted as both loan officer and settlement attorney for several mortgage loans made by the credit union. Respondent collected fees from borrowers on several of these mortgage loans. Respondent was involved with credit union loan originating, processing, underwriting, and recommendation for approval. Respondent's involvement in specific lending transactions as well as general lending practices that resulted in this enforcement action are set forth in the Notices. As a result of Respondent's actions, the credit union suffered a loss of \$96,865.15.

### 1. Grounds for Prohibition and Civil Money Penalty

Respondent's collection of fees as settlement attorney was in violation of Section 701.21(c) of the NCUA Regulations. His involvement in lending practices as set forth in the Notices constituted unsafe and unsound practices, and was a breach of his fiduciary duty to the credit union. Further, his actions caused more than a minimal loss to the credit union and resulted in his own pecuniary gain. His actions involve personal dishonesty or demonstrate his unfitness to participate in the affairs of an insured credit union.

Section 206(g) of the FCU Act, 12 U.S.C. 1786(g) sets forth the requirements for the NCUA Board to issue a prohibition from the participation in the conduct of the affairs of the credit

union. In addition, Section 206(g) of the FCU Act imposes an industry-wide prohibition upon one who has been prohibited from participating in the conduct of the affairs of an insured credit union. Respondent's actions have met the requirements of Section 206(g).

Section 206(k) of the FCU Act, 12 U.S.C. 1786(k) sets for the requirements the NCUA Board to impose a civil money penalty. Respondent's actions have met the requirements for a second tier civil money penalty.

1. Conclusion

The ALJ concluded that Respondent, in failing to appear at the scheduled hearing, waived his right to a hearing, admitted of the alleged facts, and consented to the relief sought in the Notices. The ALJ recommended the relief sought in the Notices. This Board affirms the Recommended Decision of the ALJ and issues the following two orders.

**Order of Prohibition**

WHEREAS, on November 24, 1997, the National Credit Union Administration issued a notice to prohibit Frank J. Jess ("Respondent"), a former director, loan officer, and attorney of United Poles Perth Amboy Federal Credit Union, from further participation in the affairs of any federally insured financial institution; and

WHEREAS, Respondent failed to appear for the hearing, pursuant to Section 206(g)(4) of the FCU Act, 12 USC 1786(g)(4), and Section 747.21 of the NCUA Rules and Regulations (12 C.F.R. 747.21), the facts alleged are deemed admitted and the relief sought consented to.

Pursuant to the authority vested in the National Credit Union Administration Board by Section 206(g) of the FCU Act, 12 USC 1786(g), and in accordance with Part 747 of the NCUA Rules and Regulations, IT IS HEREBY ORDERED that Respondent is prohibited from further participation in any manner in the conduct of the affairs of any federally insured credit union. Under Section 206(g)(7) of the FCU Act, Respondent may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of any institution defined in that section. In accordance with Section 206(g)(4) of the FCU Act, this order shall become effective thirty days after service upon Respondent.

SO ORDERED, this 22nd day of October, 1998, by the National Credit Union Administration Board.

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Becky Baker

Secretary, NCUA Board

### **Order Assessing Civil Money Penalty**

WHEREAS, on November 24, 1997, the National Credit Union Administration, pursuant to its authority in Section 206(k) of the FCU Act, 12 USC 1786(k), issued a notice of assessment of civil money penalty in the amount of \$100,000 (Notice) against Frank J. Jess (Respondent), a former director, loan officer, and attorney of United Poles Perth Amboy Federal Credit Union; and

WHEREAS, Respondent requested a hearing on the Notice pursuant to Section 206(k)(2)(H) of the FCU Act, 12 USC 1786(k)(2)(H), and failed to appear for the hearing, pursuant to Section 747.21 of the NCUA Rules and Regulations (12 C.F.R. 747.21), the facts alleged in the Notice are deemed admitted and the relief sought in the Notice consented to.

IT IS HEREBY ORDERED that Respondent is assessed a civil money penalty in the amount of \$100,000.

So ORDERED, this 22nd day of October, 1998.

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Becky Baker

Secretary, NCUA Board

**UNITED STATES OF AMERICA**  
**NATIONAL CREDIT UNION ADMINISTRATION**  
**ALEXANDRIA, VIRGINIA**

<b>In the Matter of</b>  FRANK J. JESS A Person Participating in the Affairs of the United Poles Perth Amboy Federal Credit Union Charleston, South Carolina	Docket No. 97-11-01-II
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**RECOMMENDED DECISION**

**(Issued June 17, 1998)**

On November 24, 1997, the National Credit Union Administration ("NCUA") issued a Notice of Charges and Hearing for an Order to Prohibit and Notice of Assessment of Civil Money Penalty against Frank J. Jess ("Jess" or "Respondent") under 12 U.S.C. § 1786(g) and (k)(2)(B) respectively. For the relevant time period, Respondent was an attorney, director, and loan officer for United Poles Perth Amboy Federal Credit Union in New Jersey ("United" or "Credit Union"). Jess is charged with acting in his own self-interest by participating in both sides of a transaction by making loans in his capacity as loan officer and then settling them as closing attorney. Agency also charges Respondent in part with improperly influencing the approval of loans, receiving fees or commissions in connection with the granting and closings of various loans, engaging in poor underwriting, and making risky loans with uncreditworthy borrowers. Accordingly, the NCUA is seeking to prohibit Jess from further participation and to impose an order assessing a Tier Two Civil Money Penalty in the amount of \$100,000. Respondent failed to provide requested information regarding his financial condition though he orally agreed to do so.

The hearing in this matter was originally set for April 28, 1998. At the request of **both** parties, the hearing was continued to May 20, 1998, in New York City. An order issued April 27, 1998, providing Notice of Change In Hearing Date and Location. Agency Counsel represents that Respondent spoke with him personally by telephone the day before the start of the hearing and Jess confirmed that he had notice of the address of the courtroom and would be present the next day. TR 4 - 5. NCUA Counsel also represented that Respondent intended to consent to the charges in the Notice (TR 5) as Respondent had already advised the undersigned he would in previous telephone conferences. Respondent failed to appear for hearing on May 20, 1998.

Pursuant to 12 C.F.R. § 747.21, failure of Respondent to appear at hearing waives his right to a hearing, is deemed an admission of the alleged facts and constitutes a

consent to the relief sought in the notice. Accordingly, the undersigned recommends the relief sought in the Notice against Respondent. By virtue of his failure to appear, the facts in the Notice are deemed to be true. Accordingly, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty with United.

THEREFORE, TAKE NOTICE that the undersigned recommends prohibiting Respondent from further participation in any manner in the conduct of the affairs of any federally insured depository institution and any other institution, credit union, agency and entity referred to in 12 U.S.C. § 1786(g).

THEREFORE, ALSO TAKE NOTICE that the undersigned recommends the issuance of an order imposing a civil money penalty against Respondent in the amount of \$100,000 under 12 U.S.C. § 1786(k)(2)(B).

By virtue of his failure to appear and through his express agreement, Respondent has consented to the finding of facts and conclusions of law in the Notice, attached hereto and made a part thereof, and has waived the right to appear at a hearing and contest the charges.

**SO ORDERED.**

**Walter J. Alprin**

**Administrative Law Judge**

**Office of Financial Institution**

**Adjudication**

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**PROPOSED ORDER OF PROHIBITION**

WHEREAS, on November 24, 1997, the National Credit Union Administration issued a Notice to Prohibit Frank J. Jess ("Respondent"), a former director, loan officer, and attorney of United Poles Perth Amboy Federal Credit Union in New Jersey from further participation in the affairs of any federally insured financial institution;

WHEREAS, Respondent failed to appear for the hearing and the charges are therefore deemed admitted;

WHEREAS, the Board having considered the Recommended Decision of the Administrative Law Judge;

IT IS HEREBY ORDERED, that Respondent be prohibited from further participation in any manner in the conduct of the affairs of any federally insured depository institution and any other institution, credit union, agency and entity referred to in 12 U.S.C. § 1786(g).

So Ordered this day of , 1998.

**Becky Baker**

**Secretary to the Board**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 1998, I caused a true copy of the above to be served on each of the following by:

First Class Mail:

Becky Baker  
Secretary to the Board of the  
National Credit Union Administration  
1775 Duke Street, 6th Floor  
Alexandria, VA 22314

Federal Express:

Paul T. Sosnowski  
Enforcement Counsel  
Office of General Counsel  
National Credit Union Administration  
1775 Duke Street, 6th Floor  
Alexandria, VA 22314

Federal Express and Certified Mail  
Return Receipt Requested:

Frank J. Jess, Esq.  
149 Kerny Avenue  
Perth Amboy, New Jersey 08862

Charlene C. Pierce  
Secretary to Judge Alprin